

Submission to the inquiry into the administration and operation of the Migration Act 1958

From: Brian Davies, Manly NSW (Public)

I have been visiting Villawood Detention Centre weekly for more than two years, becoming a friend of the detainees and an 'advocate' helping with their cases, correspondence and pleas, accompanying them to court etc. I've observed injustices, depression, traumatized children, despair, anxiety and post-trauma disorders – a full gamut of pain in which Act and Government policy are paramount, faithfully, often excessively, observed, rather than according detainees the humanity and respect their human dignity warrants. (I am a retired journalist/producer of news¤t affairs at the ABC, SBS, and one of the commercial networks.)

A) Administration and operation of the Act its regulations and guidelines by the Minister and Dept. with particular reference to visa applications, migration detention and deportation of people from Australia:

The course of assessing is steered through three processes: first contact with Dimia, submission & hearing at either the RRT or the MRT and finally the Federal Court with the structure cleverly 'loaded' against the applicant. First statement to Dimia is a key from which all else can follow - eleven examples spring to mind. With predictable nervousness the applicants tell their story to Dimia, that becomes a statement set in concrete. Later on, a very human process happens in which the applicants reshape their story, add or subtract information, or recall facts previously overlooked; Strike One when contradictions emerge in front of a tribunal; Strike Two follows when, say, the RRT re-hears a submission, ruthless as to contradictions and omniscient so far as information of country goes. The Federal Court's only role on appeal is to test the Tribunals' findings for errors of law. This is least understood by people who believe it is an opportunity for them to make a fresh appeal. The whole process is parleyed into terms that can only grievously disadvantage the applicant.

Their final recourse of course is to appeal to the minister for an s 417 or s 351 intervention on her/his part. Here lies a most mysterious process. Only about 4% of such appeals have been granted. Why? 96% of them have been bogus? Unbelievable? Didn't match the necessary criteria? Didn't warrant consideration ... or compassion? Here's a, current instance: Michael R from country A is an overstayer. He has been 20 years in Australia; has two children born here and six grandchildren; his son, who married an Australian-born citizen, plays Sydney district rugby; his daughter also married an Australian citizen who is a business manager. Michael R has never been unemployed and had worked for ten years in aged care and hospital nursing. He meets at least three of the Minister's guidelines, including impact on family. His s 417 has been rejected, because he hadn't been entitled to write for another s 417. He is to be deported. Certainly he is an overstayer, but on the face of it he is being deported on a technicality. An s 417 letter from fellow overstayer from Country A, ████████ N, who has never married but has been 25 years in Australia has gained the Minister's approval. Compliance called him in yesterday, advised him, he signed a bridging visa application at 11 am, it was approved by 3pm and he left immediately to go home. Leichhardt ... a kindness and compassion. But what about Michael R. Can the Minister explain the difference.

(Incidentally, in the course of challenging Michael's deportation, in contact with senior Dimia Compliance and Case officer co-ordinators and so on, they assured me that "no – we *never* give advice or make suggestions to the Minister. We only ever give her the letter or document unadorned and she makes all the decisions." – Oh really!

Overstayers: There are others in Villawood who have overstayed 12, 16 and 18 years. Having slipped through the net, they became de facto Australian citizens with TFNs and useful jobs, well integrated into Australian society. Three I know all face automatic deportation. One worked for years in a famous Sydney restaurant; another for 7 years with the NSW Police Service and each has close ties with their local Sydney communities. One has now waited four months for an answer to his request for an s 417 - four months! Another had his appeal against the RRT upheld and the case returned to Dimia to start again. My legal advise was that he shouldn't have been returned to Villawood, but there he languishes, waiting for the RRT to set a date for a new hearing, *being told by his case officers to "shut up and stop annoying us."* In the two months since, his anxiety levels are "off the planet" and his weight loss and mental agitation are frightening. In fact he has been hospitalised for gastric examination. **How much sense does it make to deport these people?**

Dimia's replies to detainees' letters now have no reference ident on them, no name of the writer and an indecipherable squiggle of a signature. I too have had one such. (I intend to cut the squiggle out and stick it on the return envelope as the addressee.) Childish or silly. Similarly case officers now ignore carte blanche notes from detainees to discuss their case, with me for example, and refuse to do so or hide behind stock phrases.

B) Activities and involvement of DEAT and other government agencies surrounding deportations

My one direct experience of this involved the return to Fiji of a young man who had lost his permanent residence status because of a foolish but criminal offence, whose appeal the Federal Court had rejected. It was a nasty experience. His case officer told him she would assist him make a fresh appeal, but a few days later without warning he was taken into custody about 6 a.m to go to the airport. I was rung. I contacted his mother who was on her way to work...the first she knew of it. She was desperate to see him. Dimia refused to tell me where he was – at Villawood or at the Airport? She decided to take a taxi to Villawood (I don't know how she could afford it). Dimia relented and finally told me he was now on his way to the airport. She re-directed the taxi to the airport (!). She got to the airport but her son was already inaccessible. She never got to see him but one of the custodial officers passed some money and/or fruit on to him.

C) Adequacy of healthcare, inc. mental healthcare & other services/assistance in immigration detention.

- Psychiatric attention and assessment is carried out by specialists selected and paid by Global solutions P/L. Is this an appropriate system? In one particular case detainee Virginia X seen by a such a doctor because of her stress levels was told by the doctor that she would recommend Virginia be moved to another area. She so recommended, but Global Solutions took nearly two weeks to enact the transfer and had to be prodded into doing so - in fact at one stage claimed where the detainee lived was still a matter for them.
- To arrange for a private consultant to come in was unnecessarily difficult and awkward.
- In the last few months (April/May-July '05) health care seems to have improved. In the past, I had to push a consulate into again asking Global to call a doctor to see one of the detainees; it was commonplace to learn from a detainee that he/she had asked to see a doctor/dentist, but waiting time might be a week or two
- I recall one detainee who was in greater pain after a visit to the dentist, but was told he'd just have to wait until the dentist's next visit to Villawood.
- Twice I rang case officers re medical care of detainees to be given patently half-hearted assurances that they would respond appropriately, but next visit a week later I would discover nothing had happened.
- The most bizarre, ruthless example of mental health care was the time Global took it upon its own diagnosis to literally drag a female detainee into custody and bundle her and her two+ year old child to a major Sydney hospital, where, as far as I understand it, under Global's direction the child was suddenly taken from its mother who was locked up for three days in the psychiatric unit, with no idea where her child was. On the first day of full-scale assessment she was promptly discharged as being of sound mental order and returned to Villawood. It was another two days before the child was returned to her. To this day only Global knows what was done with the child. This was in Sydney 2004. Breathtaking deprivation of liberty and care, an abuse of rights; a form of hostage-taking and kidnapping; to this day also, nobody has had to answer for it. The detainee's 'senior minders' were too frightened to make a media issue of it.

D) The outsourcing of management and service provision at immigration detention centers

The whole concept of franchising imprisonment out for someone 'to make a quid out of it' is revolting. In the case of Villawood when I first began visiting custodial staff were rude, arrogant, deliberately slack and aggressive. Again, in the last few months their 'style' is almost totally reversed. Someone has spoken to them.

There are many petty aspects to it: detainees can't be contacted by phone between 11 am and 2pm ... they're having lunch, likewise between 4pm and six pm; outsiders can only deliver parcels in the mornings (and no detainees can't be notified that there's been a parcel dropped off for them; passing malice - an exchange between a detainee and a passing officer which was a casual "No... the detainee could not have access to 'property'; sex jokes by female officers directed at women detainees. Written complaints by detainees ignored, a petition tossed into a rubbish bin - material only acknowledged when one writes to senior staff who then note their "dismay and anxiety to respond."

E) any related matters

- Along the high wire fence, say 70-metres long, that separates an area of the detainees' living area from the visiting area a matching board fence was built, clearly not a further security measure but, it was explained, to give the detainees "privacy" – privacy! The only purpose it seems to serve closes down the view completely – they can't see out, and we can't see them. *How much did it cost?*
- Has anyone stopped to really look at the perimeter surroundings. Most visitors with the appropriate experience have never seen anything like it at an Australian jail. There's the outer surrounds of wire, perhaps 12' tall, crowned by rolls of razor wire and there are similar razor wire rolls along the foot of the fence. Then a 'no-man's land' separates them from a matching interior wire fence. The administrative block set at the entrance to this wire fortress is enclosed by wire on the inner side and its roof is protected by razor wire rolls and strips of electrified wire. And there are of course further wire fences within and so many gates and padlocks, it must have caused a run on hardware stores. *But how much did it cost? Who went mad, convinced we were dealing with crazed psycho serial killers? It is an alien and frightening construct, with one's back to it the road leads out through a tiny remnant of Western Sydney bushland, comfortingly familiar; turn around to be amazed.*
- Inconsistencies: just as Dimia responses and Ministerial decisions inexplicably vary from day to day or case to case, depending which set of officers are on duty – no, you can't take that child's dinky in for the children – it's made of metal", but on another day you can ...similarly biros and brief cases.
- Finally – watching N[REDACTED] for more than year, growing frighteningly strange and solemn and unsmiling... a silent little girl with none of the responses or stimuli of little girls of similar age – until the week before they were released I rang Michael Dudley to say – enough- you have to do something. There are moments when N[REDACTED] becomes catatonically rigid just staring ahead from her stroller. And that, thank God, set the ball rolling.... Government policy and action locking up children was to blame

Respect for the Dignity of the Vulnerable - Children in Immigration Detention*

Australia's detention of child asylum seekers, perhaps the most vulnerable individuals within its jurisdiction, violates international obligations to which Australia voluntarily submitted: the International Covenant on Civil and Political Rights (and) the widely ratified Convention on the Rights of the Child. Both prohibit arbitrary detention and (refer to) humanity and respect for their human dignity. The Convention on the Rights of the Child further provides that the detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

Yet DIMIA continues to affirm Australia's commitment to our international obligations and assert that these obligations are being honoured. *On any objective view this is demonstrably wrong.*

This assertion overlooks Australia's recognition of the right to seek asylum in its adoption of the Universal Declaration of Human Rights in 1948 and its ratification of the Refugees Convention in 1954. In employing the rhetoric of illegality, it seeks to justify the punishment imposed in order to deter others from seeking Australia's protection. It prolongs and intensifies the trauma already experienced by children who have little or no control over their destinies. And it undermines our international reputation as a fair-minded nation.

The great myth behind the debate is that this institutionalised wholesale denial of human dignity protects our borders and thereby protects us all. The truth is that border protection and respect for human rights are not mutually exclusive. *Respect for the dignity of the vulnerable is not inconsistent with Australia's sovereignty. And to remain apathetic in the face of such unnecessary suffering renders us all culpable.*

* [This is from the print version of <http://www.abc.net.au/rn/talks/perspective/stories/s1076176.htm>]