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# Edmund Rice Centre

Awareness ♦ Advocacy ♦ Action

## SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL COMMITTEE DEPARTMENT OF THE SENATE

### Inquiry Into the Administration and Operation of the Migration Act 1958

#### Terms of Reference

- 1 the administration and operation of the *Migration Act 1958*, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- 2 the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- 3 the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- 4 the outsourcing of management and service provision at immigration detention centres; and any related matters.

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## **EXECUTIVE SUMMARY**

### **I DEPORTATION PROCESS**

- 1 The Australian Government or its agencies have sent rejected asylum seekers to unsafe places.**
- 2 The Australian Government or its agencies have increased the dangers to rejected asylum seekers by sending incriminating information about them to overseas authorities**
- 3 In managing removals the Australian Government or its agencies have encouraged asylum seekers to obtain false papers and have become associated with corruption.**
- 4 The manner of conducting asylum seeker removals is not consistent with Australia's legal obligations**
- 5. The manner of conducting asylum seeker removals is not consistent with Australia's traditional values**

### **II PROCESSING AND ASSESSMENT OF VISA CLAIMS**

**Our study found evidence of:**

- 1 Professional incompetence of DIMIA officials and Immigration Detention Centres staff.**
- 2 'Lottery' aspect of RRT decisions**
- 3 Limitations of RRT - Ignorance and misinformation about conditions in Afghanistan, Iraq, Iran, Zimbabwe, Sri Lanka etc**

### **III MIGRATION DETENTION**

**Our study found evidence of:**

- 1 Harsh and demeaning conditions - punitive use of isolation.**
- 2 Treatment of asylum seekers as prisoners - use of shackles.**
- 3 Carelessness in loss of crucial documents.**
- 4 Threats and use of chemical injection.**
- 5 Lack of adequate health care.**
- 6 Long term physical and psychological effects of detention**

### **CONCLUSION**

**Summing up our position**

**Recommendations for reform of policy and its implementation**

# Inquiry into the Administration and Operation of the Migration Act 1958

This Submission from the Edmund Rice Centre concentrates on the first Term of Reference: *the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia.*

The report of the 2000 Senate Inquiry, *A Sanctuary Under Review*, recommended that a 'system of informal monitoring' of the results of deportation be set up, to check whether we were in fact meeting our obligations to people who had sought our protection. The Government did not take up this recommendation. During 2003 and 2004, however, the Edmund Rice Centre researchers travelled overseas and interviewed 40 asylum seekers, from 11 different high risk countries, who had been rejected and deported by Australia. These high risk countries included Afghanistan, Iraq, Iran, Syria, Angola, Rwanda, Nigeria, Democratic Republic of the Congo, Sudan, Sri Lanka and Zimbabwe.

*Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seekers* is the title of this research report and a copy has been provided with this submission. Our research raised serious concerns not only about the deportation process but about the processing and assessment of visa applications and about migration detention generally. These three issues are taken in turn.

## PART I: The Deportation Process

The Interview Schedule devised by the research team eventually provided answers to five specific questions about the deportation process. These questions are listed below and some major findings given for each.

1. Has the Australian Government or its agencies sent or attempted to send rejected asylum seekers to unsafe places?
2. Has the Australian Government or its agencies actually increased the dangers for rejected asylum seekers by sending reports about them to overseas authorities?
3. In managing removals, has the Australian Government or its agencies encouraged asylum seekers to obtain false passports, or become associated with bribery and corruption?
4. Is the manner of conducting asylum seeker removals consistent with Australia's legal obligations?
5. Is the manner of conducting asylum seeker removals consistent with Australia's traditional values?

The brief answers to the five questions are: **YES, YES, YES, NO, NO.**

### Question 1: Deported to Danger?

35 of the 40 people interviewed were living in dangerous circumstances immediately **on arrival at the final point of deportation** and only five are clearly **safe in the long term**. Some are back in their country of origin, some in another country to which they fled or were sent. All had tried to convince Australian authorities that they would not be safe if rejected. Two escaped from dangerous situations, including torture on arrival, to find permanent sanctuary in other First World countries, while another two escaped threatened deportation to danger through the intervention of friends who helped them procure visas to a First World country where they have now applied for asylum.

Details of each Interviewee's safety **on arrival** and **after arrival** are given below in **Table II**, where the criteria for 'safety' and 'danger' are clearly defined. Deportees are deemed **safe** if they have proper identity papers, are free, able to work and are free from persecution; they are deemed **not safe** if they have no proper identity papers, are in prison, subject to torture, unable to work, have to live in hiding, fear persecution, are in a war zone, are subject to threats from police.

Australian authorities seem to have taken a sanguine view of the prospects of Iraqis, Palestinians and Bedoons deported to Syria; of Sri Lankans returned to Colombo; of African asylum seekers anywhere on the African continent; of Afghans returned to Kabul and Iraqis to Baghdad.

In the case of Syria, Australian officials seem to have been oblivious of the risk to Iraqis of *refoulement* by Syrian authorities or of abduction by agents of Saddam Hussein before the fall of his regime. Nor do they seem to have understood the dangers of discrimination faced by people left with short-term visas in Syria particularly Palestinians or Bedoons from Kuwait. In removals to Afghanistan, little account seems to have been taken of the continuing presence of the Taliban, the power of the war lords and the revival of the opium trade. Some accounts from our interviews illustrate these perils. Fuller accounts are available in *Deported to Danger* on pages 26-36.

To preserve the anonymity promised to respondents, we have used codes throughout the Report. The code contains a capital letter and a number, for instance, C1.

## **In Danger on Arrival**

In Damascus, three men were imprisoned on arrival, T7 for one week, T8 and T1 for one month. Another was in great danger because of his ticket, which had the final destination as Kuwait City. As a Bedoon, he would not be allowed to enter Kuwait. As well as these, two Sri Lankans were immediately imprisoned on their arrival in Colombo. Despite earlier assurances from DIMIA officials about their safety, P8 had great difficulty at the airport because of his incomplete passport. P10 was charged with terrorism.

Similar difficulties met those removed to the African continent. Deported to the Congo by DIMIA without warning and without his own valid passport, MM3 was imprisoned on the way and in danger on arrival because of his known criticism of the excesses of both sides in the on-going conflict there. He had no option but to flee a second time, without papers. C5 was deported to Nigeria, where he had been a member of the Biafran Liberation movement and was immediately handed over to the Nigerian Security Services. He was allowed to escape in exchange for his money and belongings. Friends warned him that he was on the 'most wanted' list and helped him leave Nigeria for a First World country to seek asylum.

Another young man recounts his experiences in Kabul. In Nauru, IOM had assured him and his companions that on arrival in Kabul they would be taken to a special centre for returnees until they were able to move elsewhere. In fact, IOM only offered to take them to their homes but as their families had fled, this was quite impossible for most of them and they asked to be taken to the promised centre. IOM then told them that it was not yet ready and left them without any support, with little money and dressed in clothing appropriate for the heat of Nauru. It was snowing in Kabul. He told us:

*I left home because throughout Afghanistan I am not safe. I and few other boys found a rented room; we were hidden in this room and day by day we escaped to neighbouring countries. The weather in Kabul and all over Afghanistan was so cold and I had nothing to wear and could not go to buy. So I really spent very bad days of frigid weather. In Nauru the hottest, in Afghanistan the coldest!*

Escaping an assassination attempt, he fled again into a neighbouring country where he lives in hiding, still not safe: *I live in this country illegally and any time police can catch me or they can blame me of any crime as it has happened to me before.* When interviewed he had not been able to find his family and is not confident for the future: *I could not succeed to find them yet. It is impossible for me and for my family to go to my homeland and this issue can never be solved who ever comes [to power] in Afghanistan.*

Finally an illustration from Iraq. Deported to Iraq in a group by way of Jordan, C12 and his companions were put into a taxi for the last stage of the journey but were delayed at the Jordan/Iraq border. This led to a dangerous high-speed dash across the desert in an attempt to arrive before the curfew. The driver stopped short of the destination, demanded more money and then left them and turned back. Eventually another taxi set them down at a hospital near the home of one of them. C12's family risked their lives by defying the curfew to collect him. Iraqi police stopped them on the way home.

Unable to read C12's travel documents in English, they threatened to arrest and imprison him. A bribe secured his freedom for the moment.

### **In Danger after Arrival**

P5's claim for asylum was based on his public opposition to Saddam Hussein in the period 1969-1974, and the documented hanging of his associates. After deportation to Syria he told the interviewer:

*The Australian Government said that it was true that Iraq is too dangerous for you but your wife has made it out of Iraq to Syria and you too have lived in Syria. So they said, you can go to Syria. After the 1998 border was opened between Iraq and Syria, Syria was no longer safe for people like me who were enemies of Saddam.*

The situation has changed radically since the fall of the Saddam Hussein regime but until that point Iraqi people we interviewed had lived in fear of being *refouled* by Syria or assassinated by Saddam's agents who could easily cross the border. Some like P1 and P2 say they still cannot rid themselves of this fear.

Syria is also dangerous for other groups, the Bedoons in particular. Once their short-term visas expire in 1-6 months, life for them in Syria is characterized by continual fear, insecurity, loss of basic civil rights, discrimination and poverty. The depression is palpable in P4's typical account. Along with all Bedoons in the Kuwait army, he was ejected and discriminated against, on suspicion of being under Iraqi influence after the Gulf War. In the light of recent developments in fundamentalist groups opposed to the West, his comments about his children's education are particularly significant.

*I am very tired. I have no future. I am dizzy from the situation. I cannot go to Kuwait. Also the money my wife's family sends, \$200.00, is not enough to live on. I am dizzy. I do not know what to do. What can I do? Where shall I go? Where shall I stay? I don't know what to do. In tourists season, I dress like a Kuwaiti man but the rest of the year is a real problem when you can easily be asked about ID. Persecution is a big problem - we are in danger because our accent is different. Some people are informing the police because we have no passport. That is the reason for persecution. Children cannot go to school because they need a passport to go to school. I take them to the Mosque each day, where there is a school for studying Islam. They can listen but if someone wants to study then they must have ID. We have no ID so my children have to do unofficial study.*

In neighbouring Iran, conditions are also very difficult for returning refugees. D2 was handed over to Iranian officials on arrival in Tehran and detained for 3 days at the airport in a room the size of a bathroom and then released on bail - the title to his parents' house. (The Iranian officials kept this document for 6-7 months while they were investigating his case.) At the airport he was interviewed with repeated questioning: *Why did you go and when did you go?* One other Iranian was not allowed to pack his own bags and this caused him considerable problems because of Iran's stringent laws about conversion to Christianity and the seeking of asylum anywhere.

A young man deported to Baghdad graphically describes his own fearful situation in the still volatile and tragic environment of Iraq:

*I am in constant danger because I have no proper ID. To go out of the house is dangerous for me. I am unable to tell anyone where I have been for the last 4 years or that I can speak English. I would be suspected of being a spy for the Americans.... If the Americans find out I speak English there is the possibility that I will be coerced to work as an Interpreter. This would be dangerous for my family and me...*

*To look for work without ID is difficult and dangerous...Baghdad is bleeding to death. Everything is destroyed, the people are very tired and depressed. How do I come to terms with all the death*

*and destruction I see every day? Baghdad was once a great and beautiful city now it looks like Kabul...destroyed. The people have lost hope and they are humiliated beyond belief.*

## **Question 2: Passing on of Information About Asylum Seekers by Detention Officials?**

Our Question 2 dealt with the passing on of information about asylum seekers by various officials to overseas authorities. It is clear that the danger to rejected asylum seekers was exacerbated by documents issued under Australian authority. We received many reports indicating that DIMIA or ACM officials had actually sent on material that endangered the lives of deportees. These responses come from three major areas of deportation: Sri Lanka, Syria and the African continent.

In Sri Lanka, P6 was threatened with imprisonment on his arrival but escaped because a friend met him at the airport and paid money to bribe an official:

*Before that, I was very scared because the CID were provided with documents by either ACM or DIMIA. The CID had an A4 document with my picture in the top corner. Also ACM and DIMIA had lost my Sri Lankan identity card.*

Other similar cases are those of P10 and P13. The former was actually imprisoned and charged with suspicion of being a terrorist. He said:

*A fax had been sent from Australian Immigration saying I had links with a terrorist group. The judge said the CID had 14 days to bring evidence to prove the charges. I was sent to jail. After 14 days I went to court and was found not guilty and was released.*

The experience of P13 was similar and he too was released. He speaks of the taunts of the guard X who used to say that:

*when you go back to Colombo I will make sure that you are regarded as a terrorist and that will put you into trouble. And she did that. She faxed information (they told my lawyer) about me to the Criminal Investigation Department, part of the Department of Defence in Sri Lanka that interrogates and seeks to find the truth. This made me very afraid.*

In Syria, when T1 showed his passport at the airport, he discovered that his name was on a computer list. He was taken directly to the Political Security Prison in Damascus. He believes Syrian Customs was supplied with information from ACM regarding his activities in the detention centre where he was the Country representative on the detainees' committee, responsible for liaising between the detainees and the ACM. He also alleges that Syrian Customs had information about him speaking to Australian journalists when in the detention centre.

On the African Continent, PI 4 had a similar experience. When he arrived in Angola he discovered that *the Australian Immigration provided information about me, stated all about me. This information meant that I was sent to prison.* Ironically, when he escaped to another First World country his claim for asylum was accepted within six months.

## **Question 3 : False Papers?**

Our third question deals with the matter of false papers and possible bribery and corruption by Immigration officials or their sub-contractors. Many of those deportees who relied on the paperwork provided by the Australian Government or its agents were left without proper identification and therefore exposed to great danger. Instances where Australia actually provided money for payment to officials in other countries belies the Government's claim that the destinations were safe and invites the accusation of corruption.

Of the ten recorded interviews with deportees from Australia in Syria, six told us that they were encouraged to get false passports. Some declined to do this. We note that DIMIA spokespersons have publicly said that:

*There were safeguards to ensure that deportees did not travel on false passports. If there was any doubt about travel documents people have obtained themselves, the department referred them to the 'relevant authorities' for comment on their authenticity. (SMH September 30, 2003, p2)*

This denial has to be set against the fact that six people interviewed separately in Syria told us the same story and gave names of officials who had encouraged them to buy passports from 'people smugglers'. One such official allegedly told the deportee that if he disclosed this as a complaint, he would be in detention for 10 years. In addition, one interviewee, P5, gave us his now useless false passport stamped with two deportation journeys out of Australia. The second journey was needed precisely because the falsity of the passport was discovered at an intervening airport and P5 was returned to Australia. It is not possible to believe that these facts were not known by the Australian officials who organised the second journey on the same passport. P5 alleges that special arrangements were made to take him through several stopover check-points with the help of Australian Consular officials.

Collaboration between the South African company, P&I ( Protecting and Indemnity Pty Ltd) and DIMIA is well illustrated by the story of the Angolan PI 4. Asked by DIMIA to verify his nationality, P&I secured travel documents which claimed that P14 was a citizen of the DRC. On this basis, DIMIA decided to send him to DRC rather than Angola though he does not speak French or have family there. On the way in Johannesburg, however, P14 demanded contact with the Angolan Embassy, whose officials verified his Angolan nationality. Returned there, he eventually managed to flee again to a different First World country where asylum was granted.

Material evidence of the apparent duplicity of some officials emerges in another story. *I agreed to leave as I had a conversation with Mr X; he works with the Ministry of Immigration as a Manager of Departure. He said: 'If you can get a false passport from a smuggler, I will take you to any country.*

T2 was given a ticket purchased by DIMIA for travel from Sydney to Kuwait, with a seven day 'stopover' in Damascus. No entry documents were available for Kuwait and T2 alleges he was told to enter Syria on the short visitor's visa and then continue to live there illegally. He was told, if questioned at Damascus airport, to show the Syrian officials the ticket as evidence of the fact he was only staying for seven days. The ticket and plan were only revealed to the deportee on the day of departure from Australia. The researchers have accepted this story as true. The ticket coupon provides evidence. The top right hand corner bears a stamp indicating that it was bought by DIMIA at Belconnen in Canberra. The person is now trapped without documents in Syria. Other interviews also record that travel documents were provided only at the point of departure.

When leaving Australia, T9 was given a Certificate of Identity. It said his nationality was Kuwaiti. This is incorrect as he is stateless and has no Kuwaiti citizenship, which the Federal Court acknowledged. His Certificate gave him 3 months legal status in Damascus. However, by the time he arrived in Damascus only 6 weeks of this time remained. Since then he has been living illegally: *The DIMIA protection manager said that if I got a false passport, he would take me to any country. I refused. It would get me into more trouble.*

Two other cases demonstrate the fact that travel documents supplied by Australia were useful only for the journey or part of it, providing no security to the bearers beyond the airport at their destination. The Rwandan MM1 was deported to Kenya via Johannesburg. He informed us:

*The officials left me in transit. They gave me a temporary travel document. I did not see any South African official. This document was taken from me in Kenya. To get through South African customs I showed no documents. The guard showed his pass and we went straight through. I was arrested when arriving in Kenya. At the airport I was in a single cell but Br X was waiting for me with a lawyer friend. I told them friends were waiting for me. I gave them \$50 and they said they would make me a real passport but they didn't. They just let me out. I had no papers. I am in transit here. I can get arrested here. I feel unsafe.*

MM2 has a similar story: *They [DIMIA] send me a letter. You must go, we will send you anyway or you sign the paper.* As he has never been to school, the interviewers were unsure whether MM2 was

able to read the letter. His voluntary repatriation seems to have taken place under duress.

*At both Singapore and Johannesburg I saw no papers; the escort handled everything. In Nairobi the escort gave me a paper to show immigration then left me. I gave it to the man at Kenya Immigration. They took me to the jail at the airport for two days. One man told me if you just bribe the guard they will let you go. In the morning they came in the car to take me to the Immigration office. I gave the big boss 10,000 Kenyan dinar. He called his assistant. He carried my bags to the main gate and said go. No papers, nothing.*

Another practice reported in some stories is the supplying of currency with travel documents to secure acceptance by immigration officers in different countries on the journey, in the absence of proper papers. Specific amounts were mentioned, to be placed inside travel documents and handed to officials upon arrival. Again, the researchers tend to accept this allegation because it was made by several of the people interviewed, independently of one another. P4 told the interviewer:

*The Australian government gave me \$200 US for payments. Y ensured we had \$100 for food etc. The rest of the money was for paying off Immigration officials. After handing over my Certificate of Identity with \$20 US, I was allowed to enter Syria.*

#### **Question 4: Detention Policies and Practice in Accord with Australia's Legal Obligations?**

Australia has legal obligations under the 1948 Universal Declaration of Human Rights, international law and various Conventions to which we are a party. Among these the following have particular bearing on the rights of refugees and asylum seekers: the Refuge Convention and its Protocol; the International Covenant on Civil and Political Rights (CCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CROC); the Stateless Persons Convention and the Convention on the Reduction of Statelessness.

Among the fundamental rights and freedoms enshrined in the Universal Declaration of Human Rights (UDHR) are the following, having particular relevance to the situation of refugees and asylum seekers:

- \* right to life, liberty and security of person
- \* equality before the law
- \* presumption of innocence
- \* right to nationality
- \* right to seek asylum.

Members of the United Nations are presumed to acknowledge these rights as universal and inalienable and to safeguard them in policy and practice, without exception or discrimination..

The people we interviewed fled from homelands in which one or more of these fundamental rights had been denied them. In coming to Australia they were exercising, at great risk, their right to seek asylum in a country where they believed their right to 'life, liberty and security of person' would be respected.. In fact, they and others like them were not accorded 'presumption of innocence' but taken immediately into Detention Centres and constantly denigrated by the Government as 'illegal', in contradiction of UDHR and the Convention.

Severe restrictions were placed on the right to seek asylum by the internationally notorious Pacific Solution and the excision of various islands from the migration zone. Both these strategies were designed to prevent asylum seekers from setting foot in Australia, where they might have claimed the protection of Australian law. Four of the people in our study were sent to Nauru, where 'equality before the law' certainly did not apply. C8 reports that when he and others, realising that the assigned interpreters were mistranslating their statements, asked for a lawyer to take up their case, the UNHCR staff told them: *In Nauru you do not have that facility. If you were in Australian camp then you could demand for it.*



The right to seek asylum was also tampered with by the introduction of the ‘seven day rule’, which denied that right to anyone who had spent seven days in a third country en route to Australia.. This discriminatory regulation claims Australia is not obliged to protect anyone who has not taken ‘all possible steps’ to find protection elsewhere, even when to do so was manifestly impossible.

Some thousands of asylum seekers who have been granted refugee status have been subjected to discrimination by the introduction of the Temporary Protection Visa subclass 785. The Refugee Council of Australia has called this ‘morally and legally questionable’. Like the seven day rule, it imposed a penalty on refugees who applied for protection onshore, against the principles of the Convention. In effect, it created second class refugees. They were given only three years of protection, denied the right to family reunion, denied travel rights and given no assurance that they will receive permanent protection after three years. The fear and stress this situation created is a further punishment imposed upon them. These discriminatory measures are inconsistent with Articles 28 and 31 of the Convention.

To be stateless renders persons without rights anywhere, leaving them without recourse to establish their fundamental human rights. This human rights vacuum the Conventions of 1954 and 1961 attempted to address. Both ratified by Australia, they entail certain obligations, such as granting civil status and certain economic and social rights. The stateless people in our study were denied refugee status in Convention terms. However, their deportation indicates that in assessing their need for protection their rights under the two Conventions which address their plight were not taken into account. Australia made no move towards giving them the ‘right to nationality’ without which they cannot settle anywhere. P4, a Bedoon deported to Syria, expressed the hopelessness of his situation: *I have no future. What can I do? Where shall I go? Where shall I stay? I don’t know what to do.*

In the course of our study we learned that in August 2002 a **Joint Ministerial Statement in Support of Mutual Cooperation between South Africa and Australia on Migration, Refugees, Irregular Migration and People Smuggling** was signed by the Hon M. Buthelezi, Minister for Home Affairs and the Hon P. Ruddock, Minister for Immigration. A significant section details Transit Arrangements for Returnees, involving an international company, in collaboration with the governments, in transit arrangements. This raises serious questions about the responsibilities and legal obligations of the governments concerned. P & I, the company hired by Australia, escorted or received deportees into South Africa and passed them across borders without assuming responsibility for their ultimate safety. We interviewed people returned in this manner from Australia who have had to become refugees a second time.

Amendments to the Migration Act introduced in 1999 and 2001 were ‘justified’ by the claim that they were necessary to protect our borders. We submit that these measures involved us in lamentable failures to protect the human rights of vulnerable people exercising their right to seek asylum in a country which is party to the international agreements designed for their protection.

## **Question 5. In Accord with Traditional Australian Values?**

In many cases the treatment of these deportees was also inconsistent with the values we claim to espouse as a nation. Instead of the justice of the rule of law and ‘a fair go’ they experienced disregard of their human rights, their dignity as persons and the standards of common decency. The secrecy and lack of transparency in the actual deportation process have protected the Immigration Department from effective scrutiny and kept the general public unaware of the harshness of the detention system and the removal process. A few examples from our study will illustrate the inconsistency referred to above.

When the people rescued by Tampa’s Captain Arne Rinan were removed by the navy to the *Manoora* they refused to land on Nauru, having been promised passage to Australia. They were *kept on the boat for one month in a room large enough for 100 and we were 350. We could not breathe; there was not enough room and the toilet facilities were terrible, terrible.*

Without benefit of the rule of law, P10 was deported while his case was with UNHCR. When a DIMIA officer arrived without notice to tell him he was being deported that day he told him his case was pending with UNHCR. The officer ignored this. Taken to the airport without opportunity to return to his room, he told the Airport Immigration Officer that his case was with UNHCR. Again his statement was ignored.

A refugee since he was eleven years old, MM2, reported:

*They told us we were not real refugees. The guard treated me like a prisoner. They tell me if I bring trouble I get an injection. In Singapore I was locked in a cell for seven hours. Immigration, police and soldiers, they took me and locked me up. In Johannesburg they locked me in a room for two hours.*

For some, the suddenness of the deportation added to their distress. One man told us:

*At 5.30 am DIMIA officials came, handcuffed and took me. They threatened to beat me if I did not come. I had seen before people being treated violently. I was scared. ACM told me my card had been lost 'somewhere'. I did not know what would happen next. I had an ulcer. ... No food was provided from morning until we got to Perth. Our trousers were held from the back by an official when we went to the toilet. The toilet door was left open. I was afraid to say too much because I am afraid of the ACM boss.*

The behaviour of officials experienced by these men is not what the Australian public has a right to expect of its public servants nor of agents hired by the Government and acting therefore in our name. Our Report contains many other reports of behaviour which we would not tolerate if directed to ourselves. Delivering the Jessie Street Lecture in 2001, Justice Marcus Einfeld reminded his audience that we can always have illusions about ourselves: *It is just that we are not as good as we say or think we are*, he said. Referring to our treatment of asylum seekers generally he had this to say: *Indeed, while this situation persists, we are engaged in an empty, untruthful boast about our superior standards.*

## **Part II Processing and Assessment of Visa Claims**

### **1 Professional incompetence of DIMIA officials and Immigration Detention Centre Staff**

The bungled deportation of Mr Idreiss Abdulrhaman and the grievous failures in duty of care in the cases of Ms Cornelia Rau and Ms Vivian Solon are notorious examples of professional incompetence among DIMIA officials and Detention Centre staff. Our research provides examples which suggest that such incompetence is not uncommon in the system.

Professional competence in handling the claims of people seeking asylum would require adequate understanding of and adherence to the human rights principles expressed in international law and the relevant international conventions and protocols. Their experience in Detention Centres suggests that people in our study were regarded by some staff as law-breakers and treated as if they were prisoners, their legal right to seek asylum unrecognised or disregarded. It appears that the kind of professional competence needed to work daily with people needing and seeking asylum is not regarded as essential in selecting Detention Centre staff.

A well educated man, reflecting on his experience in detention, said of a particular guard:  
*He was cruel. This man treated black people very badly, especially the Africans. They were treated terribly.* A different man explained why he agreed to leave 'voluntarily' even though he expected to face danger:

*This detention centre is a hell-hole. There was a lot of persecution by ACM. ... I was afraid I would lose my mind if I stayed any longer. I felt it was better to lose my life trying to reach my family than to lose my life in that detention centre.*

The Research Report also records unprofessional behaviour of another kind, in two examples of Detention officials offering to *take you to any country if you can get a false passport from a smuggler.*

DIMIA, it seems to us, is involved in unprofessional behaviour in the assessment of stateless persons claims for asylum. People who have been arbitrarily deprived of citizenship in the land where

they were born, such as Bedoons from Kuwait, have been assessed as not having a claim on our protection and deported without any identity documents to a country in which they have no rights. DIMIA has failed to take into account the International Covenants relevant to the situation of stateless persons and disregarded the Refugee Convention and Protocol which hold that the country to which refugees apply for protection is the country obliged to provide it. DIMIA provided one stateless person denied protection with a ticket for a country where he would not be permitted to land but including a seven day stop-over in another country, where he was advised to stay on illegally.

## **2 The ‘Lottery’ aspect of RRT decisions**

‘Lottery’ is the term used by some Australian lawyers acting for asylum seekers to describe the assessment of claims process, including the operation of the Refugee Review Tribunal. Various members of the legal profession have criticised both the structure and operation of this Tribunal. Our research supports that criticism and the ‘lottery’ tag. I quote from page 48 of *Deported to Danger* one articulate man’s commentary:

*What has made our imprisonment harder to bear is the manner in which our claims have been considered. For some asylum seekers, the process has been fair, but that is more a matter of luck than justice. When two people with identical circumstances are interviewed by different officials, one will receive a visa, while the other will not. Ignorance about the culture and politics of our homelands, flawed translations, and even the temperament of officials have all led to unfair decisions. Whatever the evidence we present, whether it is our personal testimony or a report from a respected authority, it can always be ignored or dismissed by an official whose mind is already made up.*

He quotes the lawyers’ advice: *We know you have a just case, but it is finished. Stay here and live like a dog or go from Australia.*

## **3 Limitations of RRT - ignorance and misinformation about conditions in Afghanistan, Iraq, Iran, Zimbabwe, Sri Lanka ...**

The quotation above refers to various deficiencies in the operation of the RRT, including ignorance of the culture and of the politics in countries of origin at the time decisions were made. For example, one Sri Lankan man, asked for his religion, said *Muslim, language is Tamil*. The RRT official claimed to know better: *He said in Sri Lanka, Tamils are either Hindu or Catholic. The RRT Official confused the basic question of religion.* Such confusions can lead to a judgement that the person is claiming a false identity and so to a loss of credibility in the system. This man was in fact eventually rejected and deported.

A married couple from Sri Lanka provide an example of ignorance at RRT of cultural realities and current political developments abroad. The wife is a Burgher, the husband a Tamil. Their marriage across cultural boundaries was taboo and incurred persecution on ethnic and political grounds. The RRT refused to accept their first-hand evidence of ethnic tension and up-to-date reports of political violence in Sri Lanka..

*They told me. Now in Sri Lanka it is peaceful. Nothing is happening in Sri Lanka. You can live in Sri Lanka - we cannot give you a visa' This is wrong. All peace talks are followed by violence, '94 and '98 - now I don't know when it will start but it will start*

This couple were eventually deported and experienced exactly the persecution and danger they had predicted.

A young man from Afghanistan told us:

*DIMIA continued to say that it was safe to go back I knew it was not safe. I live in a remote mountain area of Afghanistan. The Karzai government have no control in my area. The Taliban are still active there. The US are still bombing and chasing Taliban and Al Qaeda in my province. For nearly two years I refused to go back and I did not accept any money offer. But finally I knew I would lose my mind if I remained any longer. I gave up all hope and to save my sanity I agreed to go back to a war zone.*

Deported to Afghanistan, he is now in hiding in another country because he found that *the Taliban are in control in my province and the situation is even worse than when I fled in 2001.*

The lives of the people we have quoted were in the hands of DIMIA and RRT officials. Elsewhere in this submission we have said that if a policy is unjust, its implementation cannot be otherwise. The injustice of the RRT system is laid bare by Justices Einfeld and North of the Federal Court, summing up in the case *Selliah v MIMA (1999)*, where they said that:

*The Tribunal is both judge and interrogator, is at liberty to conduct the interview in any way it wishes, without order, predictability, or consistency of subject matter, and may use any outside material it wishes without giving the person being interrogated the opportunity of reading and understanding the material before being questioned about it. ... These methods contravene every basic safeguard established by our inherited system of law for 400 years.*

### **Part III Immigration Detention**

Some of the processes of detention and deportation deny the dignity of the human person; inhumane treatment in toilet arrangements and use of handcuffs on long journeys ignore common decency standards; secrecy and lack of transparency in the actual deportation process screen the Immigration Department from scrutiny by the Australian people who for the most part do not know what is going on. Because these issues are already well covered in our Report and in other writings on detention centres, the strategy here is simply to give brief examples from our research

#### **1 Harsh and demeaning conditions - punitive use of isolation.**

The harshness of the Nauru regime is presented graphically by a young Afghan. He says that the Afghan detainees were told many times by the UNHCR translators and by the IOM staff that they must go back to Afghanistan *because it is now the policy of Australia to send the refugees back. However much your life may be in danger, you won't be accepted.* When he and others realised that what the translators were saying for them was *too different and incomplete*, their request for an alternative translator was refused. When they asked for a lawyer to take up their cases staff told them *In Nauru you do not have that facility. If you were in Australian camp then you could demand for it.*

The punitive use of isolation is also frequently mentioned; a Sri Lankan man records his

experience:

*The detention centre was very bad because the officers were very dangerous people Mr Y. treated us very badly. If someone did a small wrong, you were put in a cell. One time I was put in a cell for 4-5 days. I could not tell day from night. I could not go to the bathroom. Maybe for 5 minutes a day the door was opened so I could shower and toilet. One time I could not breathe. I knocked many times on the door. All officers and kitchen staff are all too bad. The officers used to beat the detainees. We were put in an 8 by 8 cell with one small.. window.*

## **2 Treatment of asylum seekers as prisoners - use of shackles.**

Other stories point to the gratuitous harshness of treatment in detention centres before and during deportation. A young Rwandan recorded his experiences: *They told us we are not real refugees. The guard treated me like a prisoner.* A Congolese man, deported by DIMIA without his own valid passport, was given no warning of his impending removal to the **Congo**; he was in danger there because of his known criticism of the excesses of both sides in the ongoing conflict there. He recalled:

*They came to me like military. I was crying. From the detention centre to the airport, I was handcuffed. In Johannesburg I was put in a basement room; it was a very bad place. They told me I was to be sent back to DRC. I saw no one, just security for four days. The place was very dirty. I saw no official from Immigration, not one. They put me on a plane to the Congo. They give me a paper and say you must go. They catch me at Congo Airport. Officials say 'we know you.' They took everything from me. They took my \$50, everything. They let me go but they talk bad to me, they threaten me*

## **3 Carelessness in the loss of crucial documents.**

For asylum seekers, proper identity documents are obviously crucial for their future safety. Yet we have three reports of documents 'lost' by DIMIA or detention centre staff and one of a failure to return a valid passport to a Congolese man on deportation. As well as this there are several cases already referred to of useless or irregular documents given to Bedoons and Africans. One Sri Lankan man recounts an extraordinary case which looks like gross carelessness or serious deception at the detention centre.

*In November, my mother... couriered to me (in the detention centre) documents about my father's death, his death certificate and my educational certificates. These would help me prove my case. I did not receive these documents. When I inquired about them, I was told they must have gone astray. I rang DHL in Sydney and they said the documents were delivered to the detention centre. I then told DIMIA that I had spoken to DHL and that I had the reference number and that DHL said that the documents had in fact been delivered to the detention centre. I was told that the documents had 'gone astray'.*

## **4 Threats and use of chemical injection.**

Threats or acts of injection increase the fear and anxiety of already vulnerable people; while actual chemical injection undermines people's capacity to be alert to dangers and to respond to demands when facing potentially critical interviews with immigration officials. Explaining his reason for agreeing to go from Australia 'voluntarily', one man said:

*I had witnessed what happens to resisters, Algerians, Turkish people. I saw people injected. One Turkish man was provided by DIMIA with a false passport and they deported him forcibly. I witnessed a lot of cases like this.*

An actual and horrifying example of chemical injection is graphically described by a former

ACM Officer when he was called to assist in an ‘extraction’ (*Deported to Danger.*, p49). While this account of chemical injection has been denied by DIMIA, we have reports from at least five rejected asylum seekers of seeing injections or being threatened themselves with injection and the Government obviously knew that there had been complaints.

The Senate Enquiry in 2000 received questions about injection and recommended: *That an inquiry be undertaken into the use of sedation and other means of restraint in detention centres and in the removal of unauthorised non-citizens from Australia.*<sup>1</sup> Hansard (8.02.01) records the bland response of the Government: *The use of restraints is under examination as part of a general security review being undertaken within DIMIA.*

## **5 Lack of adequate health care.**

The lack of adequate health care, especially mental health care in Australian and Nauru Immigration Detention Centres is now so well documented that it needs little more attention here. For human beings to flourish, health specialists agree there are a few minimum basic needs such as the recognition of their dignity and an atmosphere of trust and freedom. These basic criteria of general health care were not to be found in the detention centres according to our respondents.

In our study we were particularly concerned about the fundamental punitive culture of the centres everywhere, the palpable lack of trust, the climate of fear, the arbitrary nature of decision making, the secrecy, lack of transparency and general nastiness that so often prevailed. One young Afghan, who had already escaped an assassination attempt, sums up the terrible health situation of Nauru: *It will be better that Taliban killed me that time because they killed just one time but in Australia ...they killed every day and every minute.*

## **6 Long term physical and psychological effects of detention**

There are already several highly professional and well publicised studies of the detrimental psychological effects of long-term detention on people, so that there is little need to labour the point. In our study, however, there were two groups which deserve special mention.

The first group comprised four unaccompanied minors, who arrived at the ages of 16 and 17 years. Team members are still in touch with them and they exhibit obvious harmful results of their detention experiences here. Post traumatic stress, depression, constant headaches, poor cognitive development and limited attention span are obvious signs. All are in situations now where no proper health care is available..

The second group included two Iraqi families with young children. These families (now given permanent protection in another First World country) each had two young children, who at the time of the Interview exhibited very distressing signs of mental illness. (One of the two Interviewers in these cases was a practising Clinical Psychologist). While this latter group of young children has a **possible** chance of recovery, because of the welcoming environment and good health support systems offered in the First World Country, the others now aged 19, 20 and 21 have little chance of the necessary health care, living as they do in a war zone or in the crowded streets of South Africa where thousands of other refugees are barely able to live and where there is no possibility of proper health care and very limited opportunities for work.

## **CONCLUSION**

Our study of Australia’s treatment of 40 rejected asylum seekers leaves us in no doubt that Australia has not recognised, respected and safeguarded the relevant human rights of these people. It appears that the Government’s present policy regarding refugees is dictated not by the Universal

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<sup>1</sup> op. cit., p.324, Recommendation 10.1

Declaration of Human Rights, the Refugee Convention and other relevant international criteria but by domestic political agenda.

As a sovereign nation and a member of the United Nations, Australia is obliged to defend the human rights of its citizens and of persons appealing for our protection. Because fundamental human rights are at stake, the treatment of refugees and asylum seekers is a moral issue, not simply a legal one. We submit that responsibility and accountability for the treatment of these people rests ultimately with the Government and the responsible Minister, not with the bureaucrats of the Immigration Department. If a policy is unjust and inhumane, its implementation cannot be otherwise.

None of the international treaties to which Australia is a signatory has been fully incorporated into Australian law. Until such incorporation is effected, it is not possible for anyone to enforce through domestic legal processes the rights those treaties establish. This gap between international standards and Australian law has been a major obstacle for people seeking asylum here. For the people we interviewed that obstacle was insurmountable.

**We therefore submit that the incorporation of the content of these treaties into our domestic law is a matter demanding urgent action, in order to safeguard the human rights of refugees, asylum seekers and every citizen of this nation.**

**While this development of the domestic law would obviously be a lengthy project, current refugee policy and its implementation can be reformed by the Government in various ways without delay.**

**We submit that this reform requires at least the following:**

- \* **that recent legislation and regulations restricting the rights of refugees and asylum seekers be rescinded;**
- \* **that the so-called Pacific Solution be abandoned, as it constitutes an abdication of responsibility in the international community;**
- \* **that the notorious detention system be replaced by humane arrangements which acknowledge, respect and safeguard the human dignity and rights of asylum seekers;**
- \* **that the recommendations of the 2000 Senate Inquiry for reform of DIMIA and RRT assessment processes be implemented;**
- \* **that the implementation of policy at all levels be assigned to accountable public servants, not hired agents with commercial interests.**

Thank you for the opportunity to make a submission to this Senate Inquiry. Our concerns about the impact of the Migration Act and recent amendments to it on the rights of refugees and asylum seekers arise from long personal experience with detainees and refugees with Temporary Protection Visas. These concerns have been immeasurably deepened by our experience as researchers and interviewers in the *Deported to Danger* study. The study was undertaken after the Government's failure to respond to the Senate Inquiry in 2000. One may hope that recent events may be a catalyst for a positive response to this one.

## **Table II**

### **SAFETY ON ARRIVAL AND AFTERWARDS BY NATIONALITY BY DEPORTEE**

**S=Safe    S?= Uncertain    NS= Not safe    FWC= First World Country**





## Iraqis

<b>C2</b>	<b>S</b>	Threatened with deportation to danger	<b>S?</b>	Detention Centre
<b>C3</b>	<b>NS</b>	In hiding – fear of persecution	<b>S?</b>	FWC applying for refugee status
<b>C4</b>	<b>NS</b>	Deported first to Nauru	<b>S?</b>	FWC applying for refugee status
<b>C12</b>	<b>NS</b>	No proper papers – war zone	<b>NS</b>	No papers - war zone
<b>P1</b>	<b>NS</b>	No proper papers - in hiding	<b>NS</b>	No proper papers
<b>P3</b>	<b>S</b>	Met by father	<b>S?</b>	Takes care - previous political party
<b>P5</b>	<b>NS</b>	False passport	<b>S</b>	Safe after death of Saddam

## Palestinians

<b>T1</b>	<b>NS</b>	Security prison one month -beaten	<b>NS</b>	No proper papers
<b>T3</b>	<b>NS</b>	2 weeks in Political Security Prison	<b>S</b>	Has a job
<b>T4</b>	<b>NS</b>	Great psychological stress	<b>NS</b>	Cannot work – injury in IDC
<b>T7</b>	<b>NS</b>	Security prison one week.	<b>S?</b>	Has job but 'being Palestinian in S difficult'
<b>T8</b>	<b>NS</b>	Security prison one month	<b>NS</b>	No job- too distressed to answer
<b>D1</b>	<b>S</b>	In Asian country as tourist	<b>NS</b>	Forced to bribe police to cross border to work

## Sri Lankans

<b>P6</b>	<b>NS</b>	DIMIA 'lost' his identity card	<b>S?</b>	Worried if peace talks fail – 'they will come after me'
<b>P7</b>	<b>NS</b>	Threatened with violence	<b>NS</b>	Fear of persecution
<b>P8</b>	<b>NS</b>	3 months in Security prison	<b>NS</b>	Fears harassment from police.
<b>P9</b>	<b>S</b>	Papers from Sri Lankan Embassy	<b>S?</b>	With family but 'worried about future'
<b>P10</b>	<b>NS</b>	14 days In Security prison	<b>NS-</b>	Fearful because of his ethnicity
<b>P11</b>	<b>NS</b>	Detained –forced to bribe police	<b>S</b>	Working in own profession
<b>P12</b>	<b>NS</b>	Threatened with violence	<b>NS</b>	Ethnic tensions
<b>P13</b>	<b>NS</b>	Detained at the airport prison	<b>NS</b>	No proper papers DIMIA lost his ID Card

**Code S** is used when respondent indicates safety, has proper identity papers, is free and able to work.

**Code NS** is used when respondent indicates danger, eg: no proper identity papers, is in prison, unable to work, has to live in hiding, fears persecution, is in a war zone, subject to threats from police etc.

**Code S?** used when respondent is in an Immigration Detention Centre, applying for refugee status in a First World Country, worried about safety because of past political activity, having to bribe police to maintain safety on a tourist visa.