

Coalition For The Protection Of Asylum Seekers

An interfaith coalition to protect asylum seekers with a well founded fear of persecution.

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

By Email legcon.sen@aph.gov.au

8 August 2005

Dear Secretary

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

Thank you for giving the Coalition for the Protection of Asylum Seekers (COPAS) an extension to 8 August 2005.

Accompanying the COPAS Submission are the following attachments which will be sent as separate email attachments:

1. Attachment 1 : COPAS Supplementary Submission to the 2003 Senate Inquiry into Ministerial Discretion
2. Attachment 2 : 2005 Senate inquiry Case Studies
3. Attachment 3 : Vicki McDuie's Account of Bashing at Port Hedland Detention Centre
4. Attachment 4 : Residential Housing Project in Port Augusta
5. Attachment 5 : COPAS Case Studies of Deported Asylum Seekers
6. Attachment 6 : Excerpts from Cork v ACM in NSW IRC
7. Attachment 7 : Impact of Isolation and Incarceration on a Victim of Torture
8. Attachment 8 : Bridge for Asylum Seekers Foundation June 2005 Newsletter

Yours sincerely

Frances Milne
Convenor
Balmain

SUBMISSION

Inquiry into the administration and operation of the Migration Act 1958

Introduction

The Coalition for the protection of Asylum Seekers (COPAS) is an interfaith and human rights coalition concerned that the Australian Government, refugee determination system, detention, family and refoulement policies implemented under the *Migration Act 1958*, has resulted in an inhumane culture throughout the Department of Immigration and Multicultural and Indigenous Affairs where the Government's deterrence objectives over-rule just and humane process.

Of most concern to COPAS, the Government has deported asylum seekers to countries of origin or third countries whose governments have not demonstrated their willingness and ability to offer effective protection. COPAS published a Declaration in November 2002 signed by the leaders of Australia's major religious and human rights organisations and case studies of failed asylum seekers who were returned to their countries and were murdered, tortured, imprisoned or 'disappeared', and more happily, case studies of other failed asylum seekers from Australia who were recognised as refugees in other countries.

COPAS assumes the Edmund Rice Centre (ERC) has forwarded its recent studies on the dumping of failed asylum seekers in countries like Syria where they are in danger of imprisonment and refoulement. The ERC report incorporates the COPAS case studies.

Submission

This submission, while not claiming to be comprehensive, seeks to put on the public record accounts of events about which we have first-hand experience and records.

Pseudonyms have been used unless expressly given permission to do otherwise. The punitive nature of Australia's deterrent objectives and the power of immigration and detention officers to mete out punishments, withhold protection or indefinitely delay decisions, sews up the lips of asylum seekers and their advocates far more effectively than any needles or thread ever could.

Where we have resorted to broad generalisations about situations like the treatment of asylum seekers in Baxter and Villawood Management Units and isolation blocks, the signatories to these accounts can provide additional details on request, in camera if required. The detailed accounts of the cruel and degrading treatment of asylum seekers in Australia are likely to fill our courts for decades to come.

This submission does not attempt to be comprehensive. Many of our members are currently involved assisting individuals and families settle into the community following the more benign policies for release into the community and have not found time to contribute.

Deterrence v Refugee Policy

The Coalition for the Protection of Asylum Seekers (COPAS) believes that over-riding any refugee protection objectives, the Australian Government's deterrence policy has infected and affected the entire administration and operation of the Migration Act to the shame of all fair minded Australians and those immigration and detention staff who try to make the lives of asylum seekers more bearable. The *Palmer*

Inquiry report has found that DIMIA operates under a "culture of denial and self-justification" that reaches all the way to the top. The system is inhumane and deeply flawed.

It has resulted in :

- A refugee and humanitarian determination process which fails to provide protection to numbers of asylum seekers who have a genuine fear of persecution;
- Prolonged appeals in the courts by desperate asylum seekers who are in terror of being forcibly returned to their own countries
- Prolonged appeals by the Minister for Immigration against asylum seekers who win their appeals in lower courts
- Prolonged detention for failed asylum seekers, most of whom eventually obtain a protection or residency visa
- No systematic process for determining humanitarian visas except by pleas for Ministerial discretion which are non-appellable and apply only to "unique or exceptional cases where it may be in the public interest"
- Temporary Protection Visas which cause families to be separated and lives to be on hold for years and years
- Refoulement of failed asylum seekers to countries where they may face torture, imprisonment, death or living the life on the run as a fugitive
- Families split apart when a parent who is an unauthorised non-citizen is later detained and removed from Australia
- Families with children born in Australia, some more than a decade ago, now required to return to countries where they will not be able to speak the language or be educated

Changes Required in the Migration Act

COPAS recommends amendments to the Migration Act which prevent :

1. The removal of asylum seekers to either countries of origin or third countries whose governments have not demonstrated their willingness and ability to offer effective protection;
2. The removal of asylum seekers whose claims have been rejected but who are in need of protection for other humanitarian reasons;
3. The removal of asylum seekers to a third country where there is a possibility of forced deportation to their home country;
4. The separation of parents from their children as a result of deportation;
5. The administration of chemical restraints for the purposes of subduing or sedating asylum seekers during forced deportations.

COPAS further recommends that the Australian Government :

6. uphold our moral obligation to help those at risk and ensure that people are treated humanely at all times;

7. allow, subject to any order of a court, all asylum seekers to reside in the community, with rights and support, whilst their applications are processed and until they are granted protection;
8. enact legislation to give effect to Australia's non-refoulement obligation under the International Covenant on Civil and Political Rights, Convention on the Rights of the Child, and Convention Against Torture.
9. ensure that asylum seekers' full legal rights are upheld and that they have access to fair, accountable and transparent application processing, accredited interpreters and translators in their own languages, and full access to administrative and judicial review;
10. Implement a Complementary Protection policy as proposed by the Refugee Council of Australia and the National Council of Churches of Australia policy to protect asylum seekers who :
 - are stateless;
 - come from a country enveloped in civil war;
 - have been subject to gross violations of their human rights for non-Convention reasons;
 - would face torture on return to their country;
 - come from a country where the rule of law and order no longer applies,
 - come from countries whose governments have not demonstrated their willingness and ability to offer effective protection

The policy should :

- grant residency on humanitarian grounds to asylum seekers who are not determined to be refugees but who are in need of protection for other humanitarian reasons;
- grant residency on humanitarian grounds to asylum seekers who are not determined to be refugees but who cannot be returned, or are unwilling to be returned to allow onshore applicants to apply for residency on humanitarian grounds, with a determination and review process similar to that of refugee protection applications;
- grant visas to allow parents to remain separated from their Australian spouses and/or children;
- monitor the outcomes of deportation to ensure that where humanitarian concerns arise, including the serious violation of human rights, disappearance, or death of a person removed from Australia, this information informs the Government's decisions relating to deportation.

COPAS Response to the Terms of Reference

a. 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;

(a.1) Processing and Assessment of Visa Applications

Previous Report by Senate Legal and Constitutional References Committee

In June 2000 the Senate Legal and Constitutional References Committee reported its findings in *A Sanctuary Under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes*.

Its findings are still relevant and should be the starting point of this more comprehensive Senate Committee investigation in July 2005. **COPAS recommends this Inquiry into the administration and operation of the Migration Act 1958 takes into account the findings of *Sanctuary Under Review*.**

Since then concerns about bias have consolidated. Most community advocates in direct contact with the process of primary assessment by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and the appeal process under the Refugee Review Tribunal believe that the Government's deterrence policies consciously or unconsciously result in bias against asylum seekers. This claim was also researched and submitted to the 2003 Senate Inquiry into Ministerial Discretion¹ and is appended as Attachment 1.

The primary objective of many RRT Members appears to search out petty inconsistencies in order to dismiss the whole case as "not-credible", "implausible" and as lacking sufficient evidence to substantiate the claims - evidence which is often unavailable to some-one who has fled from persecution. "Guilty until proven innocent" is deemed by many to be the motto of the RRT. Fortunately the courts have the ability to decide legal error and many cases are remitted back to the RRT "to be determined according to law".

Failure of the initial determination process

Most failed asylum seekers are eventually given protection or residence visas after spending years in detention or the community fighting in the courts to prove legal error and then pleading with the Minister under s417 or s48B of the Act. Those decisions should have been made in the first place by the Delegate or by a properly constituted and independent RRT. It is indefensible and cruel to keep refugees in a state of terror for years and when they are given a visa they have post traumatic stress disorders partly due to the protection determination process in Australia. Australia will pay for this in the long run because of

¹ Attachment 1: COPAS Supplementary Submission to the 2003 Senate inquiry into Ministerial Discretion.

broken health and spirits, lack of trust, difficulty forming relationships, loneliness and a pervading sense of danger suffered by most asylum seekers.

Unqualified and Corrupt Migration Agents

Many cases which come before the Federal Court requesting leave to appeal out of time are allowed because people alleging themselves to be migration agents have given wrong advice to applicants. One notorious overuse of allegedly corrupt migration agents is outlined by journalist Julie Macken of the Australian Financial Review in her article *Lost in Translation : the dangerous undercurrents of refugee politics.*[25.9.2003]²

She writes of brothers ██████████ who were migration agents for Ahad Bilal from Pakistan. Macken stated :

"Interpreters were assigned 15 or so cases at a time," says an International Organisation for Migration officer who worked on Nauru at the time. "Malyar would regularly declare 10 out of his 15 to be Pakistani. Other interpreters found either none or one at most."

The consequences of a declaration of ethnicity could prove fatal to an asylum seeker's chances of finding protection in Australia, because these remarks would become part of the application process.

It is important to note that, according to a former Pakistani diplomat, the Pakistan government had told the federal government in the last half of 2003 that Australia would not be allowed any access to Pakistan's identity database. That meant Dimia had no way of confirming or denying whether an asylum seeker was from Afghanistan or Pakistan."

Chinese Migration Agents are also responsible for wrong advice such as advising applicants not to come to RRT hearings.

Harassment by DIMIA

By 2003 most of the 260 Iranian asylum seekers in detention were refused s417 applications at least once. Some 100 or so in Port Hedland, Baxter and Villawood Detention Centres were given a 28 day warning period to accept voluntary repatriation back to Iran with a \$2,000 grant as an inducement. This warning was accompanied by an onslaught of psychological harassment and threats from DIMIA staff, that if they do not take the option of voluntary removal, that they will be forcibly removed to Iran under a joint agreement between the Australian Government and Iran, which up till now has not accepted forcible repatriation. Before the 28 days were up, advocates had assisted the Iranians to lodge claims to the Federal Court arguing that their removal would be contrary to the Convention against Torture. These claims lost before the full Federal Court which determined that under s198 (6) of the Act the Minister had the power to remove failed asylum seekers to their own countries even if they faced certain torture and death.

The draft Minute and Memorandum of Understanding (MOU) with Iran included the explicit proposal that the Department of Immigration create a "credible threat" of forcible deportation to terrify the Iranians into returning voluntarily (page 4. No.10). If the Minister condoned these brutal psychological strategies, as clearly appears to be the case, and if the identification of those to be removed is broadened to include the most psychologically vulnerable detainees who may 'self-harm' as recommended (see page 6 No. 22 of MOU), we see a level of gratuitous cruelty by DIMIA which ordinary Australians would find

² Attachment 5 : COPAS Case Studies of Deported Asylum Seekers (AFR Article at end of document)

repulsive. After suffering years of such torment, the large majority of Iranians in detention have now been given protection visas.

Similar harassment claims are referred to by Debby Nicholls in her submission.³

Refusal to Make Tapes of Original Interviews Available

One Iranian man still in Villawood IDC has been successful three times in the Federal Court after each time being once more rejected by the RRT. On this last occasion RRT and DIMIA relented and the tapes confirmed his original claims which the RRT had refuted had ever been made. We expect a successful outcome in the near future this time. An Algerian man also claimed that he was provided with a wrong language interpreter who made seriously wrong claims about what he had actually said because the interpreter did not understand him. The tapes were never produced and the process has gone on for 2.5 years. We now expect his last application under 48B to be successful. It could have been decided years ago.

Tapes must be made available. Minister Ruddock's claimed that he no longer released the first interview tapes on the alleged grounds that these tapes were being sold in Pakistani bazaars to coach Pakistani's how to claim refugee status successfully. This is no excuse when a dispute arises whether the Delegate has been given wrong information about what the applicant said in the original interviews. Nor would tapes help as a coaching device if the asylum seeker lost at the RRT.

Examples Highlighting the Need for a Complementary Protection System

K██████'s Story⁴

The case involved K██████, a Russian mother in Villawood Detention Centre whose legal case in the Family Court failed to win her the right to stay in Australia under various international covenants. She was threatened with permanent removal from Australia and permanent separation from her 18 month son. She also lost her claim for a protection visa under the Refugee Convention based on danger to her in Russia. She had witnessed and reported the murder of a high profile political person to the Russian authorities which resulted in assaults and injuries to herself and those who protected her to stop her from talking.

However, no matter how great her personal danger from corrupt authorities in Russia, she was not found to have a well founded fear of persecution for reasons of race, religion, nationality, or membership of a particular social group or political opinion as defined under the Refugee Convention. She has submitted s417 applications seven times to the Minister and was rejected on each occasion. Eventually in 2004 she was given a permanent visa and her now three and a half year old son lives with her for most of the week. Kristina went through absolute hell as all avenues of appeal including repeated appeals to the Minister for her to stay in Australia failed. A complementary visa system would have given her the right to stay on humanitarian grounds.

Australian-Lebanese Father

A father of 5 Australian children and married to an Australian wife migrated to Australia with his family from Lebanon as a six year old. All his family obtained citizenship but he got into trouble as a youth and only obtained a permanent residency visa. This was cancelled when he given a two year jail sentence.

³ Attachment 2 : 2005 Senate Inquiry Case Studies : No 1 - Submission by Debby Nicholls, COPAS

⁴ Attachment 2 : 2005 Senate Inquiry Case Studies : No 2 : Kristina's Story

After finishing his sentence he was placed in Villawood Detention Centre waiting deportation to Lebanon. The Lebanese Embassy have stated verbally that Lebanon will not let him return. This man has already paid his debt to society and his wife and children's lives are being shattered not knowing whether their father will be deported and they will never see him again or whether he will be kept indefinitely in detention. He attempted to commit suicide and slit his throat from ear to ear. He is ill with diabetes and chronic depression. The Minister continues to refuse to allow him to remain in Australia, yet he cannot be removed to Lebanon. A complementary protection system should include such cases.

Ministerial Discretion delays and Loss of Work Rights

Asylum seekers who have been rejected by the RRT are in a catch 22 position. They have to choose whether to apply under Sections 417 or 48B of the Migration Act for the Minister to exercise discretion or apply within 28 days to the Federal Court. When Mr Ruddock was Minister he made it known that there is far more chance of getting a positive discretionary response from him if applications were made to him after the RRT rejected them but before appeals to the Federal Court. The long response time by the Minister to Section 417 or 48B applications causes asylum seekers in the community to lose their work rights and therefore their survival and also to exceed their 28 day time limit to lodge appeals to the Federal Court.

The account of the hardship experienced by an Acehnese family by unwarranted delays by the Ministerial Intervention Unit is included in the attached Senate Inquiry Case Study No 4,⁵ relating to Dramun and Rifani.

(a.2) Migration Detention

We congratulate Senator Vanstone for implementing new release conditions for long-term detainees and families under the new Removal Pending Bridging Visa and community detention scheme.

These conditions now resemble those in NZ where each asylum seeker is:

- provided with hostel accommodation for three months where they are free to come and go
- assisted by the NZ employment service to get jobs;
- given a voucher for \$200 on arrival to buy food and household essentials at an approved supermarket to last for a fortnight;
- free legal representation, psychologists, psychiatrists, medical, pharmaceutical
- genuine questions from the NZ immigration delegate which use proper inquisitorial techniques to obtain information and which are not geared to finding reasons for refusing a protection visa.

The long years spent by asylum seekers in Australian detention centres by comparison is cruel and psychologically destructive especially for detainees who have spent time in the remote detention centres at Pt Augusta, Pt Hedland and Curtin where they are far removed from community scrutiny and advocacy. Information on some of these matters including the isolation units and punishment compounds in Baxter IDF has been covered by the Palmer Report.

I draw to the Committee's attention the account of abuse and cruelty recorded by Vicki McDuie⁶ regarding violence towards an asylum seeker in Port Hedland Detention Centre. These are not one-off

⁵ Attachment 2 : 2005 Senate Inquiry Case Studies : No 4 : Dramun and Rifani's Story

⁶ Attachment 3 : Vicki McDuie's Account of Bashing at Pt Hedland Detention Centre.

incidents. Often they occur when an asylum seeker argues back or acts out about some injustice, not least of which is their imprisonment in detention centres for an indefinite period of time.

These violent episodes have made a most traumatic impact especially among the young people, some of whom I spoke to from the Baxter Residential Housing Complex, who witnessed the excessive violence used by detention guards.

One young man stated "Curtin was hell – far worse than Baxter because of the riots, fights and tear gas. The guards would charge into the dining rooms in full riot gear while children were still eating, throwing tear gas. Children were terrified and were then cordoned off from their parents and other adults and seated outside in the blazing sun with their hands on their heads. The children were terrified."

We have leaked videos of another violent incident in Port Hedland where the riot squad forcibly tackled a 15 year old youth to the ground, hand-cuffed him and roughly threw him into an isolation cell. This occurred when the 15 year old attempted to stop his father being tackled and led away in a police van to jail because his father was perceived to be one of the leaders of a riot.

Detention : Violence During Forced Removals from Detention

Another area of reported violence is during the forced removal of failed asylum seekers.

I wrote the following account of the forced removal of Hassan from Villawood IDC on 27 July 2003. Hassan told me the following details of his removal from Villawood Detention Centre in Sydney on 25 July 2003. He was told to report to the Stage 2 interview room at 8.45 am Friday 25 July just after talking with one of his Sydney visitors. He was told he was being removed and he immediately asked to phone me. J [REDACTED], his case officer, refused to let him phone, and when he said he had a 48B presently before the Minister she said "I don't care what you have - you are going today".

He was left alone for a time, and he took a large commercial sewing needle he had on him and started slashing into his arms so they would get a doctor. His aim was to ask the doctor to ring me. Instead, they sent in 8 or so male guards and a male nurse who forcibly held him down hurting his back, demanding he either take sedatives or receive an injection.

He kept yelling that that this was unjust and screaming "not this one" meaning the injection. He said "if you inject me I will break the needle in my body" and that "God then gave me the strength to fight them" so that he struggled and they could not get the needle in even though he was being restrained. One guard was filming the whole episode and said "I don't agree with this but it is my job" . Hassan answered "This is your job to hurt people and break a body?".

That guard continued filming throughout the struggle at Villawood, throughout the journey to the airport, and at the airport when Hassan was shouting about injustice. He changed the film twice.

J [REDACTED] and other guards took Hassan to Bankstown airport and put him on an 11 am charter flight on a small plane. At Bankstown airport Hassan shouted out "This is injustice, You don't understand. They will kill me at the airport just like they kill the Iranians when they are returned to the airport in Iran".

Hassan had two guards and the male nurse who had been the most brutal in the matter of restraint and injection. They strapped him in with a big body harness which had handcuffs on it. These were left on

him from the time he left Villawood to the time he arrived in Perth some 10 hours later. Because his wrists were bleeding he begged for the handcuffs to be closed loosely ("easy") but they tightened them even more and this became agonising. They stopped to refuel in Whyalla but did not let him go to the toilet (although the pilot and escort guards did) or loosen his body harness or handcuffs.

When I learned on Friday 25 July that Hassan had been taken from Villawood, I assumed the worst. I contacted DIMIA in Canberra and Sydney to alert them that there was a s48B application lodged with the Minister on 17 July 2003. DIMIA was entirely ignorant of the 48B despite the Minister's legal representative assuring the Federal Court on 18 July 2003 that the Minister would not remove a person while considering their first 48B application. I faxed a copy of the s48B to DIMIA and they rejected the application very quickly so that the deportation arrangements would not be aborted.

I then contacted Hassan's barrister to take out an injunction against Hassan's removal from Australia. It was 1.40pm Sydney time and 11.40am Perth time on Saturday 26 July 2003 when Justice Branson issued a restraining order to prevent Hassan removal. She requested the Minister's solicitor leave the court to take whatever action was needed to prevent the removal which he then did. Hassan was at the checkpoint being forced onto the plane which was to leave at 12 noon to Algeria via Johannesburg just as the phone rang and the injunction took effect. He was utterly shocked and traumatised by and his nerves were shot to pieces by the whole event. Later, the doctor treated him for back and leg injuries and pain and also for swollen and inflamed wrists. These injuries occurred during his removal from Sydney.

Sister Margaret visited Hassan on the 26th July in Perth IDC and wrote an account of Hassan's trauma. She noted his very inflamed wrists because of the tight handcuffs. What profoundly shocked her, however, were the suicide bags she saw in the corridor outside the area where Mourad was housed. She assumed these might be in case Hassan suicided on the plane. Medical reports from Villawood IDC obtained later under FOI recorded Hassan's terror of removal, the physical evidence of gross torture he had already suffered, and stressed Hassan was likely to attempt suicide during his removal.

Please also note the attached account of Koomi's brutal attempted removal and subsequent removal by Lyn Chaikin.⁷

Residential Housing Project⁸

The Baxter Residential Housing Project at Port Augusta for women and children was an inadequate and painful community detention solution because it split families apart. During the five days I visited Baxter Immigration Detention Facility in June 2004 I spoke with many young people about their experiences in the Residential Housing Project using pseudonyms and removing all country information.

Senator Kerry Nettle, Australian Greens NSW, was at Baxter at the same time and presented the a report which included the residential housing program to the Parliament on 17 June 2001. Excerpts from her report included the following information:

"Last week I visited Baxter detention centre and the Port Augusta residential housing project to see whether things had changed in three years. I was particularly keen to visit the residential housing project because this is what both the government and the opposition point to when they are asked thorny questions about locking up children in our detention centres. I met a 20-year old Iranian girl Bahareh who

⁷ Attachment 2 : 2005 Senate Inquiry Case Studies : No 3 Koomi's Story by Lyn Chaikin.

⁸ Attachment 4 : Notes on the Residential Housing Project

has been held behind razor wire in Australia for the last four years. She described the residential housing project as a 'golden cage'. She pointed to the furniture supplied by the Department of Immigration and Multicultural and Indigenous Affairs and said, 'We don't want this furniture; we want our freedom.'

The residential housing project is a gated cul-de-sac in a suburban street of Port Augusta. It is cordoned off from the community by two large fences. At regular intervals along the fence are security cameras and motion detectors. Security cameras also line the edge of the road through the middle of the area. Standing at any one point you can see the entire area, which is only about 100 metres by 40 metres. There are eight sterile demountable buildings, each with a two-metre backyard. Eight to nine guards are present daily, and several times throughout the day they walk into the homes to do a head count. Up to three families are housed in each home.

If it is hot at night, as I imagine it often is in Port Augusta, and someone opens the window after 11 o'clock at night, then guards descend on the home to check whether detainees are trying to escape out the window, past the two fences with motion detectors and security cameras and into Port Augusta. Mothers are escorted by three guards to the shops one morning a week. A detainee described to me how, if you are shopping and you see someone you know and say hello, you will be stopped from going on future shopping trips—so much for living in the community in these residential housing projects. There is no talking to neighbours through the two fences and cameras; there is no talking to friends whilst guards escort you on a weekly shopping trip. Children in these prisons who are able to go to school are body searched on the way to and from school each day.

The government boasts of allowing children in detention to attend school. I met two young people who have been in detention for four years and have faced persistent obstruction from the Department of Immigration and Multicultural and Indigenous Affairs in trying to access schooling. Benjamin and Bahareh were initially held in the Curtin detention centre when they were 14 and 15. At that stage no children in Curtin detention centre were allowed to access school. The family were told that if they agreed to transfer to Baxter detention centre the children would be able to go to school. So the family agreed to the transfer. On arrival, the children, now 16 and 17, were told they were too old to go to school—regardless of the fact that they had just missed two years and schooling and that they had moved to Baxter on the promise of being able to attend school.

Years of obstruction from DIMIA in trying to access education led the children to approach a private education provider of distance education in Adelaide. The provider was supportive until they received a phone call from DIMIA insisting that the children needed permission from DIMIA before proceeding. Not only has DIMIA been obstructionist with the children's requests to access education but it has been actively preventing them from gaining access to schooling. After four years of trying in vain to get access to education, Benjamin and Bahareh have finally been given permission to access limited study by correspondence. They cannot receive a recognition of the study they do. Baxter detention centre holds onto Benjamin's books and other materials for so long when they arrive in the post that he cannot get any work handed in on time. These children are asked to pay \$10,000 each of their own money for this privilege of accessing education.

I met another young man at Baxter called Ali Gharamany. Ali has spent most of his life since childhood in prison, first as a political prisoner in Iran's infamous Evin prison, and now in the desert prisons of this government's mandatory detention regime. What is his crime? Struggling for democracy in Iran. He escaped the torture and persecution he received in Iran only to be locked up in Australia. This young man's mental health is clearly under strain. All he is asking for is the chance to live a regular life, to contribute to Australian society and live free from persecution. Instead, this government locks him up.

My trip to Baxter and the residential housing project has highlighted for me the urgent need for Australia to change its asylum seeker processing system to a humane process that does not involve mandatory detention.

The residential housing projects and community or home detention of asylum seekers are not appropriate or humane systems for detaining asylum seekers. They are simply another form of detention; they are simply a different type of prison. The residential housing projects separates families and community detention extends the system of detention into our society in the same way that home detention of prisoners extends the criminal justice system into our communities.

Community or home detention is when responsibility for a detainee is given to an agency, often a church agency. The house in which they are kept is designated a place of detention and certain individuals are police and DIMIA checked in order to be able to interact with the detainees. Children can be taken to school only by these individuals and parents can only leave the home in the company of these individuals. If a mother runs out of milk and there is a shop across the road selling milk, she cannot simply go out and go across the road to buy some milk.

Families are locked up in these houses in the community and are completely isolated. They rely on approved and security checked individuals for any contact. It is unlike even the situation in a detention centre when there are other detainees to talk to and interact with. It is also an incredibly expensive form of detention. We heard last night about the \$700,000 of taxpayers' money spent on keeping a mother and her youngest child in a hotel in Adelaide away from her five other children. There is another mother and a child who have been kept in the same hotel for at least two years. If the costs of keeping them there are the same as the \$80,000 a month to keep Mrs Bakhtiyari in the same hotel, then this government has spent \$1.9 million dollars in detaining one woman and her young child. Think about the incredible community services and support that we could be providing to asylum seekers in this country with this money".

b. 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;

Examples of Failed Asylum Seekers Being Removed without Entry Papers to their Countries

(b.1) COPAS' Case Studies⁹ of failed asylum seekers who were returned to their countries and were murdered, tortured, imprisoned or 'disappeared' were referred to in the Introduction to this submission.

(b.2) COPAS assumes the Edmund Rice Centre (ERC) has forwarded its recent studies on the dumping of failed asylum seekers in countries like Syria where they are in danger of imprisonment and refoulement, and so will not attach this material.

(b.3) Another large-scale example of DIMIA dumping failed asylum seekers was detailed in Cork and Australasian Correctional Management Pty Ltd [2003] NSWIRComm 1056 (7 October 2003). I have attached an abbreviated 8-page version¹⁰ of some of the events which are quite appalling expose of DIMIA operations. It concerned a dispute between Robert Cork and Australasian Correctional Management Pty. Ltd. A couple of quotes (my emphases added) flag some of the issues in this case.

Mr. Cork stated that he became aware of "Operation Long Haul" some three or four weeks prior to its commencement as there had been a preliminary meeting with representatives from DIMIA to discuss the fact that overseas destinations were refusing to accept those detainees. It was the first multi-country repatriation operation conducted by ACM. He probably became aware that he was to be second-in-charge of the Operation at that time. As part of his duties he was asked to prepare an Operational Order (on which he described himself as Escort Team Leader) and to coordinate the movements of staff and detainees within Australia as they were being drawn from all over the country.

Mr. Cummins described the operation as "a mess from the start to the end; a complete mess". They did not know how many detainees they were removing or their final destinations until just prior to the plane taking off. They had a Queen's Counsel on hand in case there were late applications filed to remain in Australia. On the aircraft, some detainees had been handcuffed and others were restrained in their seats depending on their level of risk.

Cummins had removed himself from the discussions, which were continuing, and made his way to the back of the plane where that detainee was seated. He thought that Mr. Cummins was attempting to convince him to take a drink. However, when he heard that detainee yell out "stop", he had turned around to find Mr. Cummins holding the detainee by the head and forcing a cup to his mouth. The Doctor had attended to that detainee and advised him later that he had a bleeding gum but was not seriously injured. He testified that during the discussion, he had agreed with the medical staff reminding Mr. Cummins that operational staff normally followed medical opinion but he had not been able to talk to Mr. Cummins

⁹ Attachment 5: COPAS Case Studies of Deported Asylum Seekers

¹⁰ Attachment 6 : Cork and Australasian Correctional Management Pty Ltd [2003] NSWIRComm 1056 (7 October 2003) (abbreviated version).

privately prior to him force-feeding the detainee. After the event he had spoken to Mr. Cummins again advising that he did not think it was a smart move and indicating that they ought to have followed medical advice. During cross-examination, he stated that he regarded the force-feeding of the detainee inflight as a breach of duty of care as he understood it.

(b. 4) The following information concerns two failed asylum seekers who were being returned to Algeria via Abijan in Ivory Coast without entry documents to Algeria. As already mentioned the removal of Hassan, one of the asylum seekers, was aborted on 26 July 2003 by Federal Court Injunction. In his subsequent s48B application to the Minister, Hassan had the benefit of FOI information when he wrote :

"I am concerned about the negotiations of DIMIA with the Algerian authorities prior to my attempted removal in 2003. In particular, I think that the local authorities may have visited my mother in the process of seeking verification of my identity.

The initial stages of the removal preparations for Algerians were outlined in a letter of 14 February 2002 to ██████████ Deputy Manager VIDC from ██████████, Unauthorised Arrivals Section. The letter stated

"As discussed the Algerian Embassy in Jakarta has consular jurisdiction for Australia. To enable a travel document to be issued by the Jakarta mission, the applicant should complete the enclosed application form and provide the following :

- a copy of his expired passport or Algerian Identity Card or Military Card;
- six (6) recent passport photos;
- copies of his fingerprints.

For applicants who do not possess supporting documentation [expired passport, Algerian Identity Card or Military Card], the information will be transmitted to Algiers for confirmation of their identity prior to issuing a Laissez-Passe travel document".

Since I had destroyed his Algerian Passport when it expired in Libya and I had no Algerian Identity Card or Military Card, DIMIA would have forwarded information about me to Algiers at some stage.

What then happened is not clear but presumably Algiers Immigration was asked to issue a Laissez-Faire travel document sometime between February 2002 and 18 June 2003 when ██████████, Unauthorised Arrivals Section, DIMIA, wrote to D ██████████ in the Passports Office, DFAT, requesting a Certificate of Identity. Apparently neither the Jakarta Mission or authorities in Algiers issued a Laissez-Passer travel document.

Instead, arrangements were finalised in July 2003 for me and another Algerian to stay in Abijan in Ivory Coast while, according to an email sent on 2 July 2003 by S ██████████ to ██████████ W ██████████, the Ivorian Immigration authorities provided "Port Authorities to transit the two Algerian nationals to Abijan for the purpose of obtaining their onward travel documents". These transit travel documents were issued in the interim to getting final verification and documentation by the Algerian Embassy in Abijan for us to enter (after the Australian escort had left them in Abijan where a brutal civil war was raging.). Also, on 2 July 2003 a Certificate of Identity was issued for Mr Beladjine with "Unable to Sign" stamped in it. "On 30 January [2004] I saw a passport in my name signed by some-one else.

In Oct 2003 I rang my mother at my sister's house and she told me that the police came to her door and said "We know where Hassan is. He is in Australia. We are going to Australia to get him". I fear the police learned this information when the Immigration Authorities in Algiers were trying to verify my identity. I believe they will know my movements and persecute me if I am returned."

c. the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;

Detainees in detention have to beg for medical and dental attention and there are usually long delays or the person is fobbed off with panadol instead of proper investigation. I have heard too many complaints to try to record them all. I have been forbidden to relate the most dramatic instances of gross neglect because the detainees are still waiting on decisions under Ministerial discretion requests. I just refer the Committee to :

(c.1) The Palmer Report.

(c.2) The failure to properly address Hassan's needs has been outlined by Sister Aileen Crowe, the then Justice and Peace Promoter of the Catholic Archdiocese of Sydney in *The Impact of Isolation and Incarceration on a Victim of Torture*¹¹.

(c.3) The reports of psychiatrists forwarded to the Committee. Please also note the following email from Sister Jane Keogh

"Hi friends
So much has happened in three days.
I have noted the changes or new information since 21 July in Blue print.

With so many getting out we cannot forget those growing more and more distressed inside. It is no consolation to note that they are now much too ill to deport!

Every one of the long termers still in Baxter is in very poor condition mental health wise.

A few young Afghans I have known for three years are now unable even to communicate or think clearly. Yet they have had their Afghani ID papers supplied by the Afghan embassy weeks and months ago. Why are they still waiting when it was only on the basis of identity that they were rejected four years ago? These last weeks have been the straw that has finally broken their backs. The ones I know best of the most ill now are Mohsen Ali and Mohammad Ali Anwari - and Said Arif already in Glenside. Hardly recognisable as the young men I began to visit over three years ago. Who can look after them once they get out in probably a few weeks time?

We have seen this with so many Iranians and now it is so very clear with the remaining Afghans. These three I named - and many others - will need a lot of psyche help for along time before they can survive outside.

There are 13 Afghans still in Baxter- will DIMIA wait until these too break down fully before they stop adding to their trauma?

¹¹ Attachment 7 : The Impact of Isolation and Incarceration on a Victim of Torture by Sister Aileen Crowe

No Afghanis were offered the Return Pending Bridging Visa.

Jane

d. the outsourcing of management and service provision at immigration detention centres;

There is a basic problem when a large corporate private-for-profit company is contracted to manage and service immigration detention centres. Clearly such a company has a primary responsibility to shareholders to make as much profit as possible which will be achieved by cost cutting. High cost services such as medical and dental services in particular will and do suffer from cost cutting. Hopefully other submissions will outline the plethora of complaints about management and service provision.

e. any related matters.

Bridging Visa Es

Most asylum seekers now in the community are on a Bridging Visa E (BVE) which prohibits them from working or from accessing any community benefits including Medicare. They live in absolute poverty and rely entirely on charity from relatives or friends or church agencies. Their physical and mental health deteriorates rapidly under the conditions imposed by BVEs.

The Bridge for Asylum Seekers Foundation was established in mid 2003 under the auspices of the Benevolent Fund of UnitingCare NSW.ACT, the justice and community services arm of the NSW Synod of the Uniting Church. The Foundation raises funds for asylum seekers on BVEs. The Foundation currently gives meagre subsidies to some 100 asylum seekers and is more than aware of the inadequacy of the funding available. It currently distributes over \$5,000/week but cannot guarantee that funds will always be available. In fact, in January 2005 the Foundation had a funding crisis when the attention of most Australians was on victims of the Tsunami and funds were extremely low. I attach the June 2005 Newsletter¹² of the Foundation for your information.

On behalf of all of us trying to raise funds for asylum seekers on BVEs we request the Senate inquiry recommend the extension of the more generous provisions available under the new Removal Pending Bridging Visa or community detention to all asylum seekers in the community on BVEs.

¹² Attachment 8 : BASF June 2005 Newsletter

These are cheap options for the Government compared with the costs of \$137/day for every man, woman and child in Villawood Detention Centre.

Frances Milne
Convenor,
Coalition for the Protection of Asylum Seekers

Member, Bridge for Asylum Seekers Foundation

Member, National Refugee Taskforce of Uniting Church in Australia

Secretary, Balmain Uniting Church