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

Term of Reference (a) "the administration and operation of the Migration Act 1958…… migration detention and the deportation of people from Australia"

My submission is based on my conviction that, "the right to individual liberty is one of the most fundamental of human rights. Indefinite detention without trial wholly negates that right for an indefinite period." (Lord Nicholls, UK House of Lords 16 December 2004.)

Under Australia's mandatory detention legislation, asylum seekers who arrive without adequate documentation are held in immigration detention pending the outcome of their asylum claim. Under Australian law, this detention can come to an end only if the person is granted a visa enabling them to remain lawfully in Australia or is removed or deported to another country. The Australian High Court has recently found that, under the Migration Act, those whose detention cannot be ended in any of these ways must continue to be detained. Therefore, a rejected asylum seeker may be subject to indefinite detention pending removal. This may result in many years or even a lifetime of detention without charge, trial or access to an effective remedy.

This is manifestly unjust. Mandatory, indefinite detention of asylum seekers is uncivilised and a breach of human rights that I consider to be intolerable. The Migration Act must be changed so that this gross violation of human rights can not be perpetrated under any circumstances.

Regardless of their immigration status, all refugees and asylum-seekers in Australia should be treated without discrimination and with full respect for their human rights. Any distinction made between those that arrive documented and those without adequate documentation must satisfy requirements of necessity and proportionality and must be prescribed by law.

There should be a **presumption against detention** of asylum-seekers who arrive without authorisation. Detention of an asylum-seeker should only be resorted to if it is necessary to verify their identity and/or to determine the basis for the claim for refugee status or asylum and/or to protect national security and public order and/or where the asylum-seeker has deliberately sought to mislead the authorities.
The Migration Act must be amended to specify a statutory maximum duration for detention that is reasonable. Once this period has expired the individual concerned should be released.

Unless detention is deemed necessary for the reasons given above, all asylum-seekers should be released into the community on bridging visas, as soon as possible after their arrival in Australia. Such visas should provide for the right to work, to access to Medicare and access to the Asylum-Seeker Assistance Scheme.

The Australian Government must urgently establish a formal, independent process to assess the need for the continued detention of all asylum-seekers and rejected asylum-seekers who are presently detained in Australia, including those on Christmas Island and on Nauru. Each case must be reviewed specifically.

With regard to the "Pacific Solution" the Australian Government should revoke this, close Australia's detention centre on Nauru and restore all excised Australian islands.

Term of Reference (c) "the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention"

The recent disgraceful treatment of Cornelia Rau has brought into sharp focus the appalling inadequacy of the mental healthcare provided to people in immigration detention. Over recent years this deficiency has been pointed out many times by professional Psychiatrists but there appears to have been little or no response. As a matter of natural justice, the standard of healthcare provided to people in immigration detention must be improved substantially, taking account of the fact that the circumstances of detention themselves cause mental illness in many detainees and aggravate the condition of those already at risk.

Term of Reference (d) "the outsourcing of management and service provision at immigration detention centres"

It is my belief that the management and service provision at immigration detention centres should be provided directly by a statutory body established by the Government. It is manifestly inappropriate for this work to be outsourced to a private for-profit organisation that has substantial involvement in the management of prisons.

Submitted by

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