Attachment A

## Issues for consideration

1. **Can Australia's refugee obligations be delegated to another country?**

Australia's human rights obligations also extend to acts done in the exercise of Australian jurisdiction, even if these acts occur outside Australian territory[18]. The UNHCR's regional representative, Rick Towle concurred with this view, when he stated[19]:

> *Australia may choose to transfer physically people to other jurisdictions, but we believe that under international law very clearly Australia is not absolved of its legal responsibilities to protect people through all aspects of the processing and solutions."*

Offshore processing won't let Australia off the hook

Guy Goodwin-Gill

Under the law of "state responsibility", any unlawful treatment of refugees offshore, including human rights violations, will remain attributable to Australia, even if Nauru and PNG are also at fault. Insofar as Australia may engage another country as its "agent" to implement obligations under the Refugee Convention, Australia will remain responsible for the conduct of that agent.

Indeed, the Houston report impliedly recognises Australia's legal responsibility for people intercepted or rescued at sea. That responsibility arises from the custody and control exercised by the Australian Navy, whether on the high seas or in other maritime zones (even in other countries). That responsibility continues until those people are delivered to safety, and/or are recognised as refugees or others entitled to protection, and are in fact given the protections they are entitled to under international law. This includes the general protections under international human rights law, and the specific protections for refugees under the Refugee Convention.

Australia will need to firmly establish the legal basis for offshore processing through agreements with Nauru and PNG. Which law will govern that space? Will the local courts have jurisdiction, and will that jurisdiction extend to "foreign" officials, or will Australia seek immunity for its agents? Have either Nauru or PNG considered the loss or limitation on their sovereignty which may follow? International law, of course, will apply and no agreement can ultimately relieve the territorial state of responsibility for what is done within its jurisdiction, even if done by the organs of another country.

International human rights law and Australian law both prohibit the expulsion of people to places where they are at risk of torture, the death penalty, cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life. If asylum seekers processed in Nauru or PNG do not have their claims assessed against these additional "complementary protection" grounds, then there is a risk that Australia and those countries will breach international law.

In practical terms, this means asylum seekers may be returned to places where they face significant harm and even death - a sad irony given that one of the objectives of offshore processing is to reduce deaths (well, at least at sea).
.
Australia may try to shift people and responsibilities, but when it comes to international law, Australia can run, but it can't hide[20].

*Guy S. Goodwin-Gill is a professor of international refugee law at Oxford University.*

[18] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory(Advisory Opinion)*[2004] ICJ Rep 136(dealing in particular with rights under the ICCPR and the CRC)..

[19] UN won't work with Labor on asylum-seeker processing on Nauru and Manus Island; The Australian, August 24, 2012 2:18PM; Ben Packham;

[20] Excerpts, Offshore processing won't let Australia off the hook; G. Goodwin-Gill; Sydney Morning Herald; 24/08/ 2012 www.smh.com.au/opinion/politics/offshore-processing-wont-let-australia-off-the-hook-20120823-24ob4.htm

## 2. **Nauru – asylum seekers subjected to arbitrary detention**

Article 9 of the Universal Declaration of Human Rights states that no one shall be subjected to arbitrary arrest, detention or exile.[21]

Immigration Minister Chris Bowen visited Australia's offshore processing detention centres on the Pacific Island of Nauru and Papua New Guinea's Manus Island in early October. He made the following comments to the detainees:

> *"I have spoken to the people in the centre at Nauru, and I have explained the no-advantage principle to them to their face," Mr Bowen told ABC television on Wednesday. "I have told them that it is a period of years, and talked that through."*[22]

While the Minister has announced that asylum seekers will be detained for years on Nauru, it's not clear under what law they're being detained. Under Nauruan law, police may only hold a person for no more than 24 hours without a hearing before a magistrate. Nauruan law provides for accused persons to have access to legal assistance, and detainees are allowed prompt access to family members.

If asylum seekers are being detained under Nauruan law, their detention is arbitrary because their detention has exceeded 24 hours, they have not been given legal assistance, have not been before a magistrate, and are being held for an undetermined amount of time[23].

The Australian Attorney-General's Human Rights Guidance Sheet on arbitrary detention[24] states that the right not to be put into arbitrary detention arises in relation to all forms of detention, including in immigration processing. It further states that arbitrariness may result from a law which is vague or allows for the exercise of powers in broad circumstances that are not sufficiently defined. An arrest or detention may be arbitrary if it is not reasonable and necessary in all circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.

In Australia, the right to personal liberty requires that persons not be subject to arrest and detention except as provided for by law, and provided that neither the arrest nor the detention is arbitrary. The right applies to all forms of detention where people are deprived of their liberty[25]. The ICCPR Human Rights Committee found, in the case of A. v Australia (No. 560/1993)[26], that "A", a Cambodian asylum seeker who was detained at Port Hedland and elsewhere from November 1989 until January 1994, had been subjected to arbitrary detention contrary to article 9 of the Covenant because of the length of his detention. Australia was unable to advance grounds in his particular case which justified detention of that duration.

If asylum seekers are being detained under Nauruan law, under what laws does the Australian Minister for Immigration say they will be will be detained for a period of years?[27]

Australia's Human Rights Commissioner, Gillian Triggs, has noted that the indefinite detention of asylum seekers on Nauru is "an egregious breach of international human rights law".[28]

---

[21] http://www.un.org/en/documents/udhr/index.shtml
[22] Asylum seekers told of no-advantage rule; Sydney Morning Herald November 1, 2012 http://news.smh.com.au/breaking-news-national/asylum-seekers-told-of-noadvantage-rule-20121101-28lbo.html
[23] US Country Reports on Human Rights Practices for 2011; Nauru
[24] http://www.ag.gov.au/Humanrightsandantidiscrimination/Humanrightsandthepublicsector/Humanrightsguidancesheets/Pages/Righttosecurityofthepersonandfreedomfromarbitrarydetention.aspx
[25] http://www.ag.gov.au/Humanrightsandantidiscrimination/Humanrightsandthepublicsector/Humanrightsguidancesheets/Pages/Righttosecurityofthepersonandfreedomfromarbitrarydetention.aspx
[26] Communication No 560/1993 : Australia. 04/30/1997;CCPR/C/59/D/560/1993. (Jurisprudence)
[27] Asylum seekers told of no-advantage rule; Sydney Morning Herald November 1, 2012 http://news.smh.com.au/breaking-news-national/asylum-seekers-told-of-noadvantage-rule-20121101-28lbo.html
[28] Nauru delays illegal, commissioner warns; Sydney Morning Herald; November 7, 2012

3. **Nauru – land ownership and construction delays**

Land on Nauru is owned by individuals and family groups. Government and corporate entities do not own land, and must enter into a lease arrangement with landowners to use land. Non-Nauruans cannot own land on the island[29].

This system of land ownership has contributed to delays in the construction of safe and hygienic accommodation for asylum seekers in Nauru[30]. Nauru's Foreign Minister Doctor Kieren Keke has said that construction of the permanent accommodation is yet to even begin because a deal has not been struck with the hundreds of Nauruans who own around six portions of land that cover the site.[31]

Amnesty International's Dr Graham Thom said it was clear that lease arrangements should have been finalised before asylum seekers were sent to Nauru, adding[32]: "I think they (the Nauru government) would have liked to have had time to have those negotiations without the stress of 400 vulnerable people slowly going crazy."

Dr Keke conceded it would be a matter of months before Nauru had either the human or physical resources to begin processing those who are living in tents[33].

---

http://www.smh.com.au/national/nauru-delays-illegal-commissioner-warns-20121106-28wm9.html#ixzz2E5ZAho9a

[29] Nauru Department of Economic Development and Environment (2003). "First National Report To the United Nations Convention to Combat Desertification". UNCCD. Retrieved 25 June 2012.

[30] Nauru minister not happy with asylum facilities; http://www.abc.net.au/news/2012-11-21/nauru-foreign-minister-to-make-changes/4385004; Thu Nov 22, 2012

[31] We want justice: view from Nauru; The Examiner; By Michael Gordon Nov. 22, 2012 http://www.examiner.com.au/story/1137279/we-want-justice-view-from-nauru/

[32] We want justice: view from Nauru; The Examiner; By Michael Gordon Nov. 22, 2012 http://www.examiner.com.au/story/1137279/we-want-justice-view-from-nauru/

[33] http://www.examiner.com.au/story/1137279/we-want-justice-view-from-nauru/

## 4. **Is the "screening out" process a lawful process?**

The Australian government is conducting "screening out" interviews with asylum seekers on Nauru. Screening out replaces the usual asylum-seeker determination and involves just one interview that can last as little as a few minutes to determine whether an asylum claim is being made.[34]

There is no independent witness such as a lawyer to determine whether the interview is fair, whether procedural fairness has been upheld, or whether the person interviewed understands, has been listened to, or has been able to contribute to the process.

People who are screened out do not get the chance to lodge an application for refuge.

The Refugee Action Coalition (RAC) supported a group of Sri Lankan asylum seekers in a High Court challenge[35] to the practice of "screening out", when asylum seekers are asked to explain why they came to Australia and the circumstances in their home country.

Rather than defend the process in court, DIAC told the men involved in the court challenge that they would now be able to make their protection visa claims in the usual way[36]. Ian Rintoul of RAC welcomed the move but said that the government:

> *".. has been desperate to avoid the court and any public scrutiny of its screening-out process. It has virtually admitted that it cannot defend the way the way in which screening-out decisions are being made."*

Australia has deported hundreds of Sri Lankans involuntarily since August 13. Many were screened out and denied a refugee assessment process. Asylum seekers who were forcibly deported from Australia say the government ignored their claims of persecution, granted them only one brief interview in detention and knowingly sent them back to danger in Sri Lanka[37].

And in a separate development, Australia has told Sri Lanka that it must stop its police and army abusing, torturing and mistreating its citizens and end the disappearances and abductions occurring across the country.

Australia's demands to Sri Lanka were made in Geneva as part of the United Nations' universal periodic review process, in which all UN countries have their human rights records assessed by fellow members[38].

On 6 December 2012, Minister Chris Bowen defended the practice of "screening out" asylum seekers, and said he won't rule out sending back to Sri Lanka any of the 56 Tamil asylum seekers who have agreed to drop a High Court challenge against their removal from Australia. Mr Bowen defended the way some asylum seekers were being screened out, saying it was one of the mechanisms to deal with those people coming to Australia for "economic purposes". "Yes, it's controversial but it's entirely appropriate," he said.[39]

---

[34] Tamil supporters concerned by 'screening out' http://www.sbs.com.au/news/radio/episode/244795/Tamil-supporters-concerned-by-screening-out

[35] http://www.refugeeaction.org.au/?p=2361

[36] Asylum seekers drop court challenge; The Australian; December 05, 2012 http://www.theaustralian.com.au/news/breaking-news/asylum-seekers-drop-court-challenge/story-fn3dxiwe-1226530752084

[37] www.smh.com.au/opinion/political-news/asylum-officials-ignore-claims-20121205-2avx6.html#ixzz2EEu931OC

[38] http://www.smh.com.au/national/nauru-delays-illegal-commissioner-warns-20121106-28wm9.html#ixzz2E5ZAho9a

[39] Bowen won't rule out deporting Tamils; The Herald-Sun; December 06, 2012 10:48AM http://www.heraldsun.com.au/news/breaking-news/bowen-wont-rule-out-deporting-tamils/story-e6frf7kf-1226530982898

5. **Is screening out a fair and accurate process?**

What an asylum seeker says

Australian Tamil Congress spokesman Bala Vigneswaran said of one man, that officials talked to the man "for only five minutes". The man tried to tell an official he was a refugee but Mr Vigneswaran said she replied:

> *"No I am not here to hear all those stories, you are going."*

He said the man "kneeled down and begged and cried and they said, 'Please leave now', and he came back [from the screening interview] after only three minutes.[40]'

What a former Ombudsman says

Former Commonwealth Ombudsman Alan Asher said of the screening process:

> *It's an easy way of saying, well we've taken away their rights to engage the Australian legal system and so we'll dispense with them straight away[41].*

What the UN says

A spokesman for the UNHCR in Canberra said the agency was troubled by the way Australia was processing people's claims:

> *"In principal, UNHCR has no objection to the return of people found clearly not to need international protection. However, the first step must be a fair and accurate process to assess any protection claims that are raised. The current procedures raise troubling questions as to both fairness and accuracy, which we have raised with the Australian government[42]."*

What a refugee lawyer says

Leading refugee lawyer David Manne said:

> *"If Australia were to summarily expel someone without due process who had expressed fears of being persecuted, that would amount to a flagrant violation and a flagrant rejection of our obligations under the Refugee Convention. The concern here is not that all of these people are refugees - they may or may not be - the concern is that we don't know because they have been denied basic due process.'[43]*

What the Department says

The Department's spokesman, Sandi Logan, has tweeted the following comments:

- A reminder: Screening process & removal of people who make economic or unfounded claims for protection is consistent w AU's obligations.
- It's a screening process used for many years by successive governments, for air as well as sea arrivals.
- People will continue to be returned where they don't engage Australia's international obligations.

---

[40] Asylum officials 'ignore claims'; Ben Doherty and Bianca Hall; Sydney Morning Herald; December 6, 2012 www.smh.com.au/opinion/political-news/asylum-officials-ignore-claims-20121205-2avx6.html#ixzz2EEu931OC

[41] Former ombudsman slams Govt on asylum seeker removals; Nov 2, 2012 The World Today http://www.abc.net.au/worldtoday/content/2012/s3624231.htm

[42] Asylum officials 'ignore claims'; Ben Doherty and Bianca Hall; Sydney Morning Herald; December 6, 2012 www.smh.com.au/opinion/political-news/asylum-officials-ignore-claims-20121205-2avx6.html#ixzz2EEu931OC

[43] www.theage.com.au/opinion/political-news/asylum-officials-ignore-claims-20121205-2avx6.html#ixzz2EC6k5l5q

## 6. **What are conditions like on Nauru?**

Louise Newman, Professor of Development Psychiatry at Monash University

A former adviser to the federal government on mental health in detention has slammed Labor's immigration policy. Professor Louise Newman says the majority of asylum seekers on Nauru will develop psychiatric disorders.

Omid, a 35-year-old Iranian man, has been on hunger strike for over 55 days at the time of writing this submission, refusing food and fluids in protest against his indefinite detention by the Australian government on Nauru. He is reportedly close to death. More than 30 others remain on hunger strike on Nauru, but the heat and conditions are taking their toll. Two more of the hunger strikers have been hospitalised – taking the total in hospital to three – two Iranians (the longest of the hunger strikers, Jamal, 32 days, and Mehdi 36 days) and an Afghan asylum seeker.
On Thursday 6 December, 13 asylum seekers collapsed and were taken to the medical centre. Another man severely cut his arm and he too is now in the medical centre[44].

Professor Newman described Nauru as an "explosive situation", and said that evidence from other detention centres showed these events were "highly predictable and therefore should have been prevented".[45]

Amnesty International inspectors

Amnesty International inspectors have since described the conditions at the Nauru detention centre as appalling[46]. Two inspectors visited two detainees who have been hospitalised after going on a hunger strike. One of those men had not eaten for 40 days and is suffering from internal bleeding. The inspectors say detainees are getting infections because their tents are wet, and there have been several suicide attempts and incidents of self-harm.
Dr Thom said that there's not enough by way of shower blocks and facilities, there's not enough mental health facilities to look after these people. He described how the detainees had shown him where they'd cut themselves, they showed him where somebody had tried to hang themselves on a pole.

Statement by Nauru's acting health secretary

In September 2012 the head of health services in Nauru, Setareki Vatucawaqa, asked that women and children asylum seekers not be sent to the tiny Pacific island, and revealed that Nauru would be unable to cope with any mental health issues experienced by the detainees[47].

Dr Vatucawaqa also revealed the Australian army was helping to refurbish one of the wards at the island's 70-bed hospital so it could be used to treat asylum seekers. But once refurbished, the ward will only have between four and 12 beds, and it is unclear whether that will be enough to deal with the overflow of a camp slated for a maximum population of 1500.

Nauru has only two psychiatric care nurses, and one is studying abroad. A psychiatrist visits the island four times a year. Dr Vatucawaqa said he did not expect any pressure to be placed on the Nauruan health system by the arrival of pregnant asylum seekers, but said the hospital has one maternity ward - refurbished by AusAID last year - with eight beds and two delivery bays.

---

[44] http://www.refugeeaction.org.au/
[45] Nauru's 'Explosive Situation'; By Adam Brereton and Wendy Bacon; New Matilda.com; 30 Nov 2012
[46] Amnesty inspectors appalled by Nauru conditions; ABC news; 20 November 2012
http://www.abc.net.au/news/2012-11-20/amnesty-international-appalled-by-nauru-conditions/4382198
[47] Nauru camp unable to deal with mental health issues; Dylan Welch, Sydney Morning Herald September 25, 2012
www.smh.com.au/opinion/political-news/nauru-camp-unable-to-deal-with-mental-health-issues-20120924-26hgc.html#ixzz2CwoYjJ6k

## 7. Malaysian immigration officials and human trafficking

In November 2011, Immigration Minister Chris Bowen linked the drowning of up to 27 asylum seekers with the collapse of the Malaysia refugee swap deal, and blamed the Greens for not supporting the deal in parliament[48].

While it may be tempting to "contract out" Australia's refugee processes, Australia cannot control the conditions and practises in other countries. Evidence[49] from a range of sources[50] confirms that Malaysia immigration officials have been selling men, women and children from Malaysian refugee camps into forced prostitution[51] and slave labour.[52]

Refugee trafficking in Malaysia

**MARK COLVIN: There are claims that Malaysian immigration officers have been involved in the human trafficking and bribery of refugees in detention camps.**

WENDY CARLISLE: In 2008 a US State Department report documented allegations of women being sold into sex slavery on the Thai/Malaysian border. The UN High Commission for Refugees in Malaysia had also been hearing the same things.

YANTE ISMAIL: What we understand is that there are investigations had been done by the Malaysian government on this and generally this is something that Malaysia has viewed very, very seriously. What we have learned is that from the refugee communities and from UNHCR's own monitoring, this practice has ceased since mid-2009.

WENDY CARLISLE: But Dr Irene Fernandez from the watchdog group on human trafficking Tenaganita is not comforted.

IRENE FERNANDEZ: We documented a number of cases and testimonies that came through where women had claimed that they were sold to prostitution rings at the Thai/Malaysia border.

WENDY CARLISLE: Who was actually trafficking these refugees?

IRENE FERNANDEZ: The immigration officials who took them to the border to, basically to deport them.

WENDY CARLISLE: And were any of these immigration officials ever brought to justice?

IRENE FERNANDEZ: Not that I know of as yet.

The Malaysian High Commission was not available for comment tonight. But Dr Fernandez from Tenaganita says corruption is continuing and refugees are too afraid to make allegations against government officials[53].

---

[48] Failure of Malaysia deal caused boat deaths; Kirsty Needham; Sydney Morning Herald; November 2, 2011 http://www.smh.com.au/national/failure-of-malaysia-deal-caused-boat-deaths-minister-20111102-1muq7.html
[49] amnesty.org/en/news-and-updates/report/refugees-malaysia-arrested-abused-and-denied-right-work-2010-06-16
[50] Burmese Refugees Sold As Slaves In Malaysia http://www.huffingtonpost.com/2009/07/13/burmese-refugees-sold-as_n_230811.html
[51] http://www.bpf.org/take-action/human-trafficking-in-malaysia
[52] US Department of State Trafficking in Persons Report 2010; Malaysia; excerpts; (Tier 2 Watch List) http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm
[53] Claims of refugee trafficking in Malaysia; Wendy Carlisle; PM; www.abc.net.au/pm/content/2011/s3213013.htm

## 8. **Is a policy of deterrence in violation of Article 31 of the Convention?**

Deterrence contradicts Article 31 of the UNHCR's 1951 Convention relating to the Status of Refugees, to which Australia is a signatory. Article 31 states:

> *Article 31:* **Refugees unlawfully in the country of refugee**
>
> 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

## 9. **Asylum seeker deaths in detention**

The Australian Border Deaths Database 2000-June 2012[54] documents over 600 deaths of people who died either travelling to Australia, or during or after periods in Immigration detention.

The Australian Institute of Criminology operates the National Deaths In Custody Program, which has never counted deaths in immigration centres.[55] If we care about asylum seekers we must count deaths in detention. However, at present, when a person dies in Immigration detention, their death is not brought before a Coroner's Court.

According to accepted definitions, those on board an asylum seeker boat are considered to be in the custody of the navy or customs from the point of interception until they are transferred to Christmas Island or some other point of disembarkation. They are clearly in custody while in detention on Christmas Island or other mainland detention facility. They remain in custody during air transfer to Nauru or Papua New Guinea and of course are in detention (closed, open or otherwise) under the direction, funding and operation of Australia while on these islands.

All the offshore processing arrangements are now falling into place because of the brief the Expert Panel was given – to prevent further loss of life. Yet none of these arrangements would bring a death occurring during interception, transfer or detention into the data collected by the Australian Institute of Criminology because for years it has been determined that asylum seekers in these kinds of circumstances are not in custody.

Professor Sharon Pickering has requested that the National Deaths In Custody Program include:

- Deaths within immigration detention centres operated under Australian legal authority (whether located onshore or offshore).
- Deaths while under escort during deportation, or while designated authorities (such as police or immigration department compliance field officers) are attempting to take individuals into custody under the Migration Act.
- Deaths that occur during operations in Australian territorial waters once individuals or vessels have come under the surveillance or control of Australian border authorities.

All of these circumstances generate a duty of care that falls on Australian law enforcement and

---

[54] http://artsonline.monash.edu.au/border-deaths/files/2012/07/AUSTRALIAN-BORDER-DEATHS-DATABASE-2000-June-2012-1.pdf

[55] Sharon Pickering; Professor of Criminology at Monash University and Leanne Weber; Larkins Senior Research Fellow at Monash University; 15 October 2012 theconversation.edu.au/if-we-care-about-asylum-seekers-we-must-count-deaths-in-detention-9731

border officials.

Official designation as a “death in custody” would mean the deaths that occur in detention be brought before a Coroner’s Court.

If we are serious about preventing the deaths of asylum seekers these measures must be included in the arrangements that are now being pieced together as we return to offshore processing.

10. **No minimum standards for Australia’s immigration detention centres.**

Asylum seekers who are transferred to Australian prisons have commented on return to immigration detention that the conditions in prison are better.

There are a range of international guidelines relating to the treatment of detained persons. These include:

- the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment
- the Standard Minimum Rules for the Treatment of Prisoners
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- guidelines issued by the United Nations High Commissioner for Refugees, including the Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers

Australia’s immigration detention centres are unofficial psychiatric institutions without medical care. The difference is that the inmmates are not mentally ill on arrival, but become depressed, hysterical, or psychotic once detained. Mentally ill asylum seekers are placed in solitary confinement as a way of managing their illness, and are subject to occasional violence and brutality from the guards.

Australia continues to have one of the strictest immigration detention regimes in the world – it is mandatory, it is not time limited, and people are not able to challenge the need for their detention in a court. This arrangement breaches of Australia’s human rights obligations, including the obligation not to subject anyone to arbitrary detention.

Australian law and policy do not set out standards for conditions or treatment of people in immigration detention. This creates an environment where there is no accountability, and anything can happen. While immigration detention is maintained as a system, it allows for ongoing human rights violations and arbitrary decisions to be made by the people in charge.

Australia should return to the pre-1992 immigration policies and conduct its immigration programs without detention.

---

.

11. **Do asylum seekers suffer psychiatric disorders due to long term detention?**

In her speech of March 2007 to the Dame Roma Mitchell International Women's Day Lunch, Barrister Claire O'Connor[56] gave evidence of the large numbers of detainees who developed mental health disorders due to their time in immigration detention. Some examples she gave:

a) Glenda Koutroulis, a psychiatric nurse who was employed at Woomera in 2002, for 6 weeks and dealt with 400 or so asylum seekers, wrote,
    a. "As I look back on my time in Woomera Detention Centre, picturing the silver fences and razor wire mark it, entrapping all those whose implacable despair will burden Australia long after I am gone from this earth, I think about what I was involved in. It was unequivocally observation of and participation in something very indecent, devoid of the values that Mooney forwards as representing decent society. As I reflect, angry and ashamed with what I have witnessed and experienced I feel like I was unknowingly part of a perverse social experience, testing endurance in the face of deception and incongruous decisions about freedom, and the capacity to survive in those who have already struggled to survive. Seen in this light there is an urgent need for sociologists, health care workers and the public health community in general to take a more active political stance against a Government and its policies that actively erode the spirit, the body, and for some, even life." [i]

b) Lyn Bender, a psychologist who had also been at Woomera wrote in a letter in 2004 on behalf of detainees being sentenced for escaping from immigration detention,
    a. "Daily acts of self harm were enacted, and many detainees were suffering extreme mental ill health; including severe depression and traumatic stress".

c) Following the discovery of Cornelia Rau's identity the world's press became interested in what was occurring in detention centres in Australia. In an article in Time Magazine in February 2005 Lisa Clausan examined the detention centre system and the breakdown in the mental health of detainees. She wrote,
    a. "Two years after he walked free from Sydney's Villawood detention centre, Mohsen Sultany should be enjoying his freedom. But the 34 years old, who fled Iran to avoid persecution for his political beliefs and is now studying surveying and writing poetry, has frequent nightmares and panic attacks: the verse he writes is always dark. He has been recognised as a refugee by the Australian government, but he can't shake free of the four years he spent in detention fighting for that recognition, or forget the attempted suicides, mental illness and mistreatment he saw there…….

d) Pamela Curr, a well known refugee advocate from Victoria, commented on an SBS Dateline programme:
    a. "…Right now down the road there is a 19 years old boy sitting in his room (in Baxter) rocking backwards and forwards. He's been there for nine months. He's mentally ill, he's depressed, he's come from Kirkuk, a place that was bombed to smithereens. He's terrified of noise and he's going to still sit there until he's suicidal."[57]

e) Claire O'Connor learnt that one of her clients, Mr Abdul Hamidi had not seen a psychiatrist in detention except one brief visit in August 2004 and although on medication was not being treated. He had self harmed many times; his stomach was so ribboned with scar tissue that he could no longer be stitched when he cut himself, and he had to have sterile strips instead. Both arms had cuts from the armpit to the wrist and his neck was similarly scarred. He had tried to hang himself in detention, had swallowed shampoo on one occasion, and had cut his feet.

---

[56] The Impact of Detention on the Mental Health of Detainees in Immigration Detention, Dr Claire O'Connor, 9th March 2007

[57] Dateline Transcript April 26 2005

12. **Do mentally ill asylum seekers receive adequate health care while detained?**

Claire O'Connor[58] has also given evidence of the failure of immigration officials and security companies to exercise adequate care with detainees. Some examples include:

A doctor employed at Woomera spoke on the ABC Lateline programme in 2004[59]. In his interview Dr Simon Lockwood, who had been at Woomera for 3 years said,

> ..[T]hat he kept a diary of matters that were significant during his three years in Woomera. Some of his entries are grim reminders of his working life. On the Lateline programme he read out the following entries, *"7 April 2002, a 12 year old boy tried to kill himself today. 6th June 2002 a female detainee signed a suicide note in blood."*

Dr Lockwood went onto say that during a meeting in Canberra where he was explaining his concerns about the degree of mental illness at Woomera to DIMIA management –

> "And then towards the end of the meeting one of the bureaucrats said to me in front of everyone, "That sounds all well and good to us, Simon, but we don't want to make it so nice for them in detention that they won't want to leave"……The problem I had with DIMIA is that they're not doctors, they're not nurses, they're not psychologists, and yet they would do the opposite of what was recommended by an expert in child psychiatry for example."

[58] The Impact of Detention on the Mental Health of Detainees in Immigration Detention, Dr Claire O'Connor, 9th March 2007

[59] www.abc.net.au/lateline/content/2004/s1229335.htm

13. **Is the Government obliged to provide adequate health care in Immigration detention centres?**

Statement by Claire O'Connor[60], Barrister:

After making submissions in the Magistrates Court in October 2004 for Mr Hamidi I learnt that Mr. Hamidi had not seen a psychiatrist in detention except one brief visit in August 2004 and although on medication was not being treated. He had self harmed many times; his stomach was so ribboned with scar tissue that he could no longer be stitched when he cut himself, and he had to have sterile strips instead. Both arms had cuts from the armpit to the wrist and his neck was similarly scarred. He had tried to hang himself in detention, had swallowed shampoo on one occasion, and had cut his feet.

I sought a judicial review seeking **only** that a psychiatrist be permitted to see him. I had a psychiatrist, (the wonderful Dr Jon Jureidini), who was willing to travel the 300 ks to Baxter and visit for no cost. DIMIA refused, and in court argued that they were dealing with his health issues appropriately.

The GP contracted by DIMIA, and the psychologist who had seen Mr Hamidi while in detention, gave evidence at the Federal Court in the Judicial Review application. Amongst other things they both confirmed that Mr Hamidi was not eating or drinking and had sewn his lips together. They denied his medical condition was as bad as reported by Mr. Balfour and said he did not need any further psychiatric treatment.

Eventually, after days of evidence, the Judge asked the lawyer for the Commonwealth if it was possible for a doctor to see Mr. Hamidi. On the 23rd of December 2004 Mr Hamidi was taken to the Royal Adelaide Hospital, seen by the psychiatric registrar and immediately transferred to Glenside Psychiatric Hospital. He was diagnosed as depressed and suffering from a psychotic condition. He was hearing voices. He was detained in Glenside for months and he even self-harmed even while in Glenside, as a result of these voices. He was not released from Glenside, even after he obtained a protection visa, until he had recovered sufficiently to live independently. Even now, in January 2007, he still receives psychiatric treatment.

While Mr Hamidi was before the Federal Court the three detainees referred to above remained on the roof. The roof was a good place for detainees to be seen. Baxter has been designed so that you cannot see in and detainees cannot see out. It was hot on the roof; some days it was over 30 degrees and there was no shade. After over a week the detainees were taken to the local hospital, not seen by any psychiatrist, rehydrated then sent back to Baxter. They learnt on their return that Mr. Hamidi was being cared for in a psychiatric hospital. They asked me to get medical treatment for them as well.

In February 2005 I lodged applications in the Federal Court seeking treatment in a hospital for these detainees. All were very ill. Dr. Jureidini saw them; Dr. Dudley from Sydney and Dr. Richards from South Australia had seen them after their return from the local hospital for reports for their migration cases. All the medical reports prepared said that all three should be receiving in patient psychiatric treatment. [ii]

In mid 2005 the Federal Court of Australia brought down their decision in relation to their applications; *S v Secretary of DIMIA.*[iii] This case held that the Government had failed to exercise care in the treatment of the mentally ill detainees. Justice Finn found there was systemic failure to deal with the mental health of the detainees and that detention conditions

[60] The Impact of Detention on the Mental Health of Detainees in Immigration Detention, Dr Claire O'Connor, 9th March 2007

had exacerbated their mental illnesses. It was an interesting judgment, made all the more interesting by two facts – firstly that all three detainees were in hospital by the time the judgement was delivered, second, which all three detainees now have visas and are living in the community and all three continue to receive mental health treatment. All three were refugees from Iran, who developed mental illnesses while in immigration detention because of the conditions of detention.

.

In the Judgment Justice Finn said that the applications were,

> " ….a predictable consequence of the decisions of the High Court in *Al-Kateb v Godwin* (2004) 208 ALR 124 and *Behrooz v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* (2004) 208 ALR 271. ……. In *Behrooz* it was held that the conditions of immigration detention do not affect the legality of that detention. Nonetheless a clear majority of the court accepted, to use the words of Gleeson J (at [21]) that, *Harsh conditions of detention may violate the civil rights of an alien. An alien does not stand outside the protection of the civil and criminal law. If an officer in a detention centre assaults a detainee, the officer will be liable to prosecution or damages. If those who manage a detention centre fail to comply with their duty of care they may be liable in Tort."* [iv]

14. **Burning boats endangers lives**

When asylum seekers arrive by boat in Australian waters, their boats are routinely confiscated and towed into deep water by the Royal Australian Navy, or moved under their own steam, before Customs removes any fuel and sets them alight[61].

There is rising concern that the Australian government's policy of destroying asylum-seeker boats has contributed to the increasing use of unseaworthy vessels[62]. Burning asylum seeker boats is one of the Australian government policies which makes boat travel more dangerous.

[61] Asylum seeker boats are destroyed off Christmas Island. John's Naval and other Marine and Service News; A collection of Navy and Marine News from around the world and back home in New Zealand; Friday, July 20, 2012http://www.nz16613.com/2012/07/asylum-seeker-boats-are-destroyed-off.html

[62] Those in peril on the sea; Mark Dodd and Brendan Nicholson; The Australian ; June 28, 2012 www.theaustralian.com.au/national-affairs/immigration/those-in-peril-on-the-sea/story-fn9hm1gu-1226410512009