

Submission of the

New South Wales Council for Civil Liberties

to the

Inquiry into the Cornelia Rau Matter

1. INTRODUCTION	3
2. THE MEASURES TAKEN TO PROVIDE FOR THE CARE NEEDS OF MS. RAU	4
2.1 SYSTEMIC PROBLEMS	4
2.2 GLOBAL SOLUTIONS LIMITED'S 'BEHAVIOUR PLAN'	4
2.3 THE RULES LACK PROCEDURAL FAIRNESS	6
2.4 THE RULES ARE SECRET	6
3. WHY THE MISTAKES ABOUT MS. RAU AND THE ABUSES PREVALENT AT BAXTER WERE NOT DEALT WITH SOONER	8
4. DEMOCRATIC ARGUMENT FOR PUBLIC OPENNESS.....	10
5. CONCERNS ABOUT PRIVACY AND CONFIDENTIALITY	11
6. MANDATORY IMMIGRATION DETENTION VIOLATES INTERNATIONAL HUMAN RIGHTS STANDARDS	12
7. AUSTRALIA NEEDS A BILL OF RIGHTS.....	14
8. APPENDIX 1: BAXTER BEHAVIOUR PLAN.....	15

10 March 2005

Authors:	Dr Martin Bibby Michael Walton Ken Buckley
-----------------	--

Summary of Recommendations

Recommendation 1. The Inquiry should investigate the role of pressures placed on psychiatrists not to burden the health system in bringing about the detention of Ms. Cornelia Rau. The pressures to examine should include those arising from a shortage of beds/places in mental hospitals.

Recommendation 2. The Inquiry should investigate whether pressures are placed upon psychiatrists who visit Baxter Detention Centre not to diagnose mental illness. It should condemn in the strongest terms efforts that have been made by staff at Baxter Immigration Detention Centre to prevent psychiatric assessment of detainees and access by lawyers.

Recommendation 3. The managers of Global Solutions Limited should be invited to present the research that they believe justifies their 'Behaviour Plan'. The Inquiry should examine whether negligent, or even criminal, behaviour is involved.

Recommendation 4. The Inquiry should find that the treatment to which Ms. Rau was subjected was unjustified, even on the assumption that she was sane, and as she asserted, a German citizen overstaying her visa.

Recommendation 5. The Inquiry should find that Global Solutions Ltd. is in breach of human rights in its system of rules for dealing with difficult behaviour. Its contract should be reviewed. If the Government persists with immigration detention centres, they should be run by a public service body, which should be required to draft new procedures incorporating the rights of appeal and review, and to subject the draft to public debate.

Recommendation 6. The Inquiry should find that the rules imposed at Baxter were not suited either to improving the behaviour of detainees whose actions were "unsatisfactory", nor to deterring other detainees from similar behaviour. The rules were therefore not appropriate to the care of Ms. Rau, independently of any judgements about her mental state.

Recommendation 7. The Inquiry should investigate claims made by GSL about expertise in the treatment of detainees, so that they may be either ratified or exposed as fraudulent. Both the Baxter management and DIMIA should be reviewed.

Recommendation 8. The Inquiry should recommend that guards and managers at immigration detention centres should be given training in the recognition of mental illness. Reliance however should not be placed on their reports alone, for they are not mental health experts. Regular visits of psychiatrists should be arranged to examine and report on the mental health of all detainees in all centres. They should also report on the impact of the conditions and the rules at the centres on the mental health of the detainees.

Recommendation 9. The Inquiry should recommend that procedures, policy and practice at all immigration detention centres be open to public scrutiny. Specifically, until the detention policy is abolished:

- all immigration detention centres should be located in or near major cities;
- a system of regular visits to immigration detention centres by magistrates should be instituted, (coming in sequence since a single magistrate may risk developing the Baxter mindset);
- all centres should be open to inspection from time to time by relevant experts;
- an inspector-general of immigration detention centres, with powers akin to those of the Inspector-General of Security and Intelligence, should be appointed.

Recommendation 10. The Inquiry should recommend that a broader, public inquiry into the conditions and procedures at Baxter be held, and that the considerations of privacy and confidentiality that have been adduced against such an inquiry are without merit.

Recommendation 11. The Inquiry should find that further abuses of the rights of detainees are likely to occur until Australia changes its policies on asylum seekers. Specifically, mandatory detention should be replaced by a temporary detention for the purposes of preliminary processing for health and security reasons, and detention should be reserved for those awaiting deportation or who are identified as security or criminal risks.

Recommendation 12. CCL urges the Inquiry to recommend that Australia strengthen its human rights commitment by introducing a Bill of Rights to protect all Australians from the abuses to which Ms. Rau was subjected; and that all Australian States should amend their laws concerning mental illness accordingly.

1. introduction

This submission is addressed to the first two of the terms of reference of the Inquiry:

1. *the sequence of events that gave rise to her being held in immigration detention;*
2. *the circumstances, actions and procedures which resulted in her remaining unidentified during the period in question*

This submission is premised on the view that mistakes can occur in any profession. The errors that led to the incarceration of Ms Cornelia Rau, her placement in Baxter Detention Centre and her treatment there will properly be one focus of the Inquiry. It might be found, for instance, that psychiatrists are heavily overworked and subject to pressures not to diagnose mental illness (in the community because of a shortage hospital wards, and at Baxter for fear of dissembling by asylum seekers); that there is inadequate support available in the community for patients and their families; and that more funds should be provided to address these issues.

It is noteworthy that Australia spends only 7% of its health budget on mental health, while it is 10% in the U.K., 11% in Canada and in New Zealand, and some European countries spend 15%.¹

We have sufficient anecdotal evidence of the impact of under-provision of funding to recommend:

Recommendation 1. The Inquiry should investigate the role of pressures placed on psychiatrists not to burden the health system in bringing about the detention of Ms. Cornelia Rau. The pressures to examine should include those arising from a shortage of beds/places in mental hospitals.

The CCL is in possession of information revealing persistent efforts by staff at the Baxter Detention Centre to prevent psychiatric assessment of detainees, and to prevent visits by lawyers.

Recommendation 2. The Inquiry should investigate whether pressures not to diagnose mental illness are placed upon psychiatrists who visit Baxter Detention Centre. It should condemn in the strongest terms efforts that have been made by staff at Baxter Immigration Detention Centre to prevent psychiatric assessment of detainees and access by lawyers.

Ultimately, however much money is spent and even if governments remove the pressures under which psychiatrists operate, mistakes may still be made. The bulk of this submission is concerned with the abuse of rights at Baxter, and the way that those abuses reduce the likelihood that mistakes will be corrected.

Without a Bill of Rights, the recognition and protection of, and respect for, the rights of people with mental health issues in Australia are likely to remain inadequate. Careful consideration should be given to recommending the introduction of an Australian Bill of Rights to protect everyone in Australia from the tragic fate of Ms Cornelia Rau.

¹ Boyce, Philip, Press Release, The Royal Australian and New Zealand College of Psychiatrists, 1 September 2004 1999.

2. The measures taken to provide for the care needs of Ms. Rau

2.1 systemic problems

Rather than being given care, Ms. Rau was subjected to a system of punishment which is in major breach of human rights, is unjustified in terms of effectiveness, and which appears to have exaggerated her problems. The existence of this approach at Baxter is one of the reasons that Ms. Rau's needs were not recognised nor attended to. Even if she had been what she purported to be, the actions taken under these rules were wrong.

2.2 Global Solutions Limited's 'Behaviour Plan'

CCL has obtained a copy of the Behaviour Plan used at the Baxter immigration detention centre. That Behaviour Plan is annexed to this submission, for the information of the Inquiry. CCL is appalled at the punitive nature of the plan and its blatant disregard for the human dignity of detainees and for fundamental human rights standards.

The procedures in the plan are poorly designed for the purposes they supposedly serve, being likely to increase misbehaviour. They impose cruel punishment, without the option for appeal or redress and they are in breach of the rights of detainees. They have been kept secret, so that their weaknesses could not be analysed by experts.

The rules impose a series of harsh penalties. The most severe penalties are imposed first, at 'Stage One', and detainees progress by stages from Stage One to Stage Four if their behaviour is deemed to be satisfactory. At Stage One, detainees (prisoners is the appropriate term) are placed in isolation (imprisoned is the appropriate term) for most of the day, with a minimum entitlement to possessions in their cells. Accordingly they have very little opportunity for activity, for their minds or their bodies. They are under constant observation. The lights are on twenty-four hours a day. They are separated from friends and support inside the Centre, and may receive no personal visits from outside. These conditions are highly stressful. They have been inflicted upon individuals for five to ten weeks at a stretch.

Should the prisoner swear at a guard, he or she may have the period on Stage One extended. This is disproportionate—under no recognised justification of punishment can so severe a penalty be justified for so trivial an offence.

Presumably, the progression from Stage One to Stage Four is intended to change the prisoner's behaviour. It has been known since the 1970's that punishment by itself is a poor means of producing behavioural change. Nothing is included in these procedures by way of support for the prisoner—no instruction in how to achieve reasonable objectives, no counselling, no opportunities to express their anger and frustration nor guidance in how to handle them. There is no attempt to create an understanding of the fairness of detention. Instead, prisoners are subjected to abuse and rough handling.

In addition, there are petty restrictions and absurdities, calculated to increase frustration. For example, at Stage One, a prisoner is entitled to have a copy of the Bible or Koran with them. But only at Stage Two are prisoners entitled to request reading glasses. And they have to fill out a form to make the request. (How do they read it?) Again, a Stage One prisoner is entitled to one set of clothing (that which is being worn) and two changes. At Stage Three this is increased to five changes. This is demeaning and insulting.

If the focus of the rules is on deterrence, that is ensuring that other detainees are deterred from engaging in such “misbehaviour”, then those who devise the rules are poorly informed. Deterrence is poorly correlated with crime reduction even in the community at large², and its limited success depends on recognition by potential offenders that the laws that are being enforced, together with the legal processes, are fair and reasonable. But Australia’s treatment of asylum seekers is anything but fair and reasonable. The conditions at Baxter are not fair and reasonable. Both are in breach of human rights.³

It has been asserted that those who criticise the treatment of detainees are ignorant of what is required to maintain order. That claim merits examination. It is apparent from criminological research that common sense and the experience of prison guards are poor guides to crime reduction.⁴

The use of punishment in other contexts in the attempt to change behaviour leads to a vicious cycle of increased penalties and increased defiance.⁵ Reports of the impact of Baxter's isolation policy are that prisoners typically alternate between sitting in a curled up position rocking backwards and forwards, and sleeping. These are classic symptoms of depression. There are also reports that mental illness is common amongst detainees. It would appear that the vicious cycle has continued, until at last compliance is achieved as a result of forcing detainees into mental illness. If this were deliberate, it would be criminal behaviour.

Recommendation 3. The managers of Global Solutions Limited should be invited to present the research that they believe justifies their ‘Behaviour Plan’. The Inquiry should examine whether negligent, or even criminal, behaviour is involved.

Finally, it has been claimed that the harshness of treatment in immigration detention centres is justified by the reduction in asylum seekers who enter Australia without visas. CCL has three objections to this claim

- i. The treatment of Ms Cornelia Rau, and of other detainees breaches human rights. (See 2.3 below.) These breaches of human rights involved cannot be justified by a gain in convenience.

² Weatherburn, Don, *Law and Order in Australia*, The Federation Press, 2004 pp. 117-128.

³ See Encel, Sol, Statement on Refugees and Asylum Seekers, NSW Council for Civil Liberties, c.2003. Also available at <<http://www.nswccl.org.au>>

⁴ Weatherburn pp121-123

⁵ Hoffman, L., *Foundations of Family Therapy*, Basic Books, New York 1981, Wender, P.H, ‘Vicious and Virtuous Cycles: The Role of Deviation Amplifying Feedback in the Origin and Perpetuation of Behaviour’ *Psychiatry*, 1968, Vol. 31, pp. 309-324, Maruyama, M. ‘The Second Cybernetics: Deviation-Amplifying Mutual Causative Processes’ *American Scientist*, 1963, Vol. 51, pp. 164-179

- ii. Since the great majority (more than 90%) of asylum seekers who entered Australia by sea have been determined to be genuine refugees, a reduction in their numbers is not a desirable end.
- iii. The claim that immigration detention works has been supported merely by a correlation between the introduction of the regime and a decline in the numbers of 'boat people'. This is no substitute for proper research. For example, there has been a worldwide reduction in asylum seekers because of changing circumstances in Afghanistan and Iraq, and it may be that the decline in persons reaching our shores reflects that change.⁶ Nothing follows from that, either. It takes competent, careful research to establish causal connections. Without it, there is no case for deterrence at all.

2.3 the rules lack procedural fairness

The 'Behaviour Plan' rules allow no appeal nor any redress. They lack the most basic aspects of procedural fairness. They are in breach of human rights.

The rules in effect allow imprisonment without trial. While detainees are permitted to request a lawyer to assist them, Global Solutions Ltd does not inform them of this right. There is no redress, as there would be in a prison, nor appeal to the courts. There is no system of inspection by a magistrate, such as is routinely provided in prisons. And it must be remembered that these detainees have not been convicted of any crime.

These are very serious breaches of human rights.⁷

Global Solutions Limited, in the running of the Baxter immigration detention centre, is exercising statutory power under the *Migration Act*. Though it might be a privately run company, it exercises public power. Therefore, GSL should be subject to the common law rules of procedural fairness.⁸

2.4 the rules are secret

The rules have been kept secret. The climate of secrecy at Baxter is addressed below. The relevance here is to competence. Since the rules were not openly discussed and debated, their weaknesses (or their incompetence) were not analysed, breaches of rights were permitted, and improvements or replacements were not sought. Mistakes can be made in any profession. The principal means by which they are discovered is openness to scrutiny. As a result of this failure, Ms. Rau was subjected to treatment that should not have been imposed on any detainee.

Recommendation 4. The Inquiry should find that the treatment to which Ms. Rau was subjected was unjustified, even on the assumption that she was sane, and, as she asserted, a German citizen overstaying her visa.

⁶ Shaw, Meaghan, 'UN Undercuts Canberra Asylum Claims' *The Age*, March 2, 2005, quoting a report by the United Nations Commissioner for Refugees, March 2005

⁷ *International Covenant on Civil and Political Rights* articles 9(1), 9(4), 7 & 10(1).

⁸ see *Chapmans Ltd v Australian Stock Exchange Ltd* (1994) 51 FCR 501, 510 (Beaumont J); and, *R v Panel of Takers and Mergers; Ex parte Datafin plc* [1987] QB 815. See also discussion in: *Neat Domestic Trading Pty Limited v AWB Limited* [2003] HCA 35, [110]-[126] (Kirby J).

Recommendation 5. The Inquiry should find that Global Solutions Limited is in breach of human rights in its system of rules for dealing with difficult behaviour. Its contract should be reviewed. If the Government persists with immigration detention centres, they should be run by a public service body, which should be required to draft new procedures, including the rights of appeal and review, and to subject the draft to public debate.

Recommendation 6. The Inquiry should find that the rules imposed at Baxter were not suited either to improving the behaviour of detainees whose actions were “unsatisfactory”, nor to deterring other detainees from similar behaviour. The rules were therefore not appropriate to the care of Ms. Rau, independently of any judgements about her mental state.

3. Why the mistakes about Ms. Rau and the abuses prevalent at Baxter were not dealt with sooner

Ms. Rau was declared not to be suffering from mental illness. Accordingly, everything that she did that made people think that she might be ill was reinterpreted as dissimulation. That mistake continued for some time. It was not corrected by the processes of Baxter, nor those of DIMIA, but by chance.

Once a person is believed to be dissimulating mental illness, it is very difficult for the mindset so created to be dispelled. Every thing she did, no matter how bizarre, could be interpreted as her cunning, and so as a proof of her sanity and her immorality. The chief hope of the mistake coming to light was scrutiny from outside the system. That might have come from the public service. But DIMIA does not seem to be disposed to uncover faults in the asylum seeker arrangements.⁹ It might have come from independent observers. But because Baxter has been deliberately isolated from the public, there are few opportunities for external scrutiny.

Baxter is located about four hours drive from Adelaide, and 12 kilometres out in the country from Port Augusta—a town of fewer than 14,000 people, with limited availability of expertise. Visitors to the immigration detention centre are discouraged, with three weeks delay before permission is given to visit, and lengthy processing upon their arrival. Media representatives are kept out.

In such circumstances mistakes are likely to be perpetuated. Worse, abuses are likely to occur and to be rationalised, especially where the guards are led to believe that asylum seekers are wicked people or criminals. (Needless to say, neither claim is true.) Abuses are likely to become routine, and to get worse. Even a highly respected public organisation may develop wrongful procedures when put in charge of a detention centre. In Italy the Red Cross ran a centre in which people behaved like security guards, rather than people charged with looking after the welfare of detainees'.¹⁰ We might call this process creeping abuse.

The deliberate culture of secrecy isolates Baxter from informed scrutiny and criticism. This is further exacerbated by the fact that it is run by a private company. The company has no interest in deterring asylum seekers—rather the reverse, since they keep it in business. Nor do they have an interest in improving the behaviour of detainees. They do have an interest in keeping the number of guards to a minimum, and even more to reduce the number of professionals contracted to attend to detainees. They are protected from the normal processes of the public service, in which there are strict procedures for accountability. The contract between Global Solutions Limited and the Government is kept secret, on the grounds of commercial confidentiality. Detainees' mental health is not subject to public discussion, on the grounds of privacy.

⁹ Morton, Tom et al., 'The Detention System', Australian Broadcasting Corporation Sunday 20 June 2004. The South Australian Public Advocate, Mr. JohnHarley, is reported to have said that it is pointless for him to speak to DIMIA, because they ignore his representations. ('Advocate did not contact Govt' The Advertiser, 9 February 2005. The case of Mrs Cui Yu Hu, a 104 year old who has not received permission to stay in Australia, and of Peter Qasim who it seems is to be kept in detention for life are indicative of the need for substantial change.

¹⁰ Morton et al.

Creeping abuse has occurred at Baxter. The 'Behaviour Plan' rules (see the Appendix) exemplify it, but it is also testified to by the reports of detainees and their visitors. And it is getting worse. The Behaviour Plan says nothing about twenty-four hour surveillance, nor about sleeping on a mattress on the floor.

There has also developed a culture of denial. Reports by the few international observers have been ridiculed, and Australians who object are either told that they do not have the expertise to make comment, or that they are motivated purely by party political concerns. Like the mindset applied to Ms. Rau, the mindset that attributes ignorance and bias are unlikely to be altered without the blowtorch of exposure and criticism.

As noted above¹¹, the creeping abuse at Baxter is believed to have caused mental health problems in more of the detainees. At any rate, it is not surprising to find unusual behaviour resulting from the injustice of Australia's treatment of asylum seekers, and from the abuses inflicted on the detainees. Locking someone in an isolation cell especially with the additional burdens outlined above, is calculated to cause depression and anger. In this context, it becomes harder for guards or the management to discover what is a sign of mental illness and what is a healthy response to intolerable conditions.

These characteristics together work to ensure that once a mistake is made, it is likely to be perpetuated.

Recommendation 7. The Inquiry should investigate claims made by GSL about expertise in the treatment of detainees, so that they may be either ratified or exposed as fraudulent. Both the Baxter management and DIMIA should be reviewed.

Recommendation 8. The Inquiry should recommend that guards and managers at immigration detention centres should be given training in the recognition of mental illness. Reliance however should not be placed on their reports alone, for they are not mental health experts. Regular visits of psychiatrists should be arranged to examine and report on the mental health of all detainees in all centres. They should also report on the impact of the conditions and the rules at the centres on the mental health of the detainees.

¹¹ Page 5

4. democratic argument for public openness

There is a fundamental entitlement in a democracy for the public to be informed about what is done in its name. The running of the immigration detention system is one of the matters on which the government was judged at the last two elections. The denial of information is antidemocratic.

Recommendation 9. The Inquiry should recommend that procedures, policy and practice at all immigration detention centres be open to public scrutiny. Specifically, until the detention policy is abolished:

- all immigration detention centres should be located in or near major cities;
- a system of regular visits to immigration detention centres by magistrates should be instituted, (coming in sequence since a single magistrate may risk developing the Baxter mindset);
- all centres should be open to inspection from time to time by relevant experts;
- an inspector-general of immigration detention centres, with powers akin to those of the Inspector-General of Security and Intelligence, should be appointed.

5. concerns about privacy and confidentiality

The concern for the privacy of detainees has to be balanced against the risk that its enforcement becomes a cloak for wrongdoing.¹² In the case of Baxter, it is clear that that is what has occurred. The interests in privacy are: as a protection against harassment and discrimination; to ensure that information is not divorced from its context or combined with other partial information producing damage to a reputation or wrongful treatment; to enable persons to engage in activities that would be impeded by the prospect of hurtful criticism; to provide opportunities to experiment and develop as a person; and to protect relationships.¹³

But the cloak of privacy is being used at Baxter to conceal victimisation and harassment, to prevent mistakes from being corrected, and to allow the continued besmirching of the reputation of detainees. The activities carried on there are alleged to cause mental illness. They are not intended to encourage the growth and development of personhood.

Accordingly, appeal to the privacy of the detainees should not be used as a basis for denying a public enquiry into the Rau affair—nor a wider inquiry into the management of Baxter. Rather, the very concerns which justify our desire for privacy require that in this instance it be set aside.

Similarly, the normal reasons for keeping commercial decisions confidential is that unfair advantages would be given to a competitor if they knew of the details, and there is a public interest in the trust between the parties to the contract. In this case the result has been a lack of accountability of Global Solutions Limited. There is absolutely no reason why an open inquiry into the activities of GSL would give advantage to a competitor—except that they might learn something about the moral principles that should be followed. There is considerable public interest in the exposure of those activities.

Finally, there are many stories of conditions in Baxter—about weevils in food, about inadequate supply of food, about arbitrary and unfair decisions by guards. The company can only benefit from an inquiry into these things—either by the improvement of its reputation, or by it being encouraged to improve its performance.

There is a risk that creeping abuse will go even further. In April last year a fifteen year-old boy died in a detention centre run by GSL after he was physically restrained by three guards.

Given this, one of the reasons given for extending public access to Baxter applies mutatis mutandis to the Inquiry itself. The Inquiry should be open to the public and its recommendations would be the better for input from experts who can interpret what other witnesses are saying.

Recommendation 10. The Inquiry should recommend that a broader, public inquiry into the conditions and procedures at Baxter be held, and that the considerations of privacy and confidentiality that have been adduced against such an inquiry are without merit.

¹² Schoeman, Ferdinand 'Privacy: The Philosophical Dimensions', *American Philosophical Quarterly*, Vol. 21, No.3, July 1984 pp. 199 and 209-213

¹³Ibid., passim

6. mandatory immigration detention violates international human rights standards

On no less than five occasions, the UN Human Rights Committee has made it clear that Australia's mandatory immigration detention policy violates international human rights standards.¹⁴ Specifically, the Committee has condemned the policy for contravening the *International Covenant on Civil and Political Rights* ("the ICCPR") in the following ways:

- it amounts to arbitrary detention (contrary to article 9(1));¹⁵
- it is not subject to substantive judicial review (contrary to article 9(4));¹⁶
- it amounts to an arbitrary interference with the family (contrary to articles 17(1) and 23(1));¹⁷
- it fails to afford children the protection of the state (contrary to article 24(1));¹⁸
- it amounts to cruel, inhuman or degrading treatment (contrary to article 7);¹⁹ and,
- it fails to treat detained people with humanity and with respect for their inherent dignity (contrary to article 10(1)).²⁰

For the purposes of the Rau Inquiry, two cases are highly significant and need to be read and absorbed – the case of *C* and the *Madafferi* case. Mr *C*'s mental health deteriorated rapidly in immigration detention. Significantly, the UN Human Rights Committee condemned the fact that Australian authorities kept Mr *C* in immigration detention when they knew that that detention was the direct and irreversible cause of his mental deterioration.²¹ The Committee went so far as to identify Mr *C*'s treatment by Australian authorities as cruel, inhuman or degrading.

Mr *Madafferi*'s mental health also deteriorated in immigration detention. Mr *Madafferi* was placed in immigration detention *contrary* to the advice of doctors and psychiatrists.²² The UN Human Rights Committee condemned Australian authorities for failing to treat Mr *Madafferi* with humanity and failing to respect his inherent human dignity.

All of these contraventions of the ICCPR are human rights violations. While Australia continues to violate such fundamental human rights, the tragic stories of Cornelia Rau, Mr *C* and Mr *Madafferi* are destined to be repeated.²³

¹⁴ *A v Australia* (30 April 1997) CCPR/C/59/D/560/1993; *C v Australia* (14 November 2002) CCPR/C/76/D/900/1999; *Baban v Australia* (12 August 2003) CCPR/C/78/D/1014/2001; *Bakhtiyari v Australia* (29 October 2003) CCPR/C/79/D/1069/2002; *Madafferi v Australia* (26 July 2004) CCPR/C/81/D/1011/2001.

¹⁵ e.g. *A v Australia* (30 April 1997) CCPR/C/59/D/560/1993, [9.4]; *Baban v Australia* (12 August 2003) CCPR/C/78/D/1014/2001, [7.2].

¹⁶ e.g. *Bakhtiyari v Australia* (29 October 2003) CCPR/C/79/D/1069/2002, [9.4].

¹⁷ *Bakhtiyari v Australia* (29 October 2003) CCPR/C/79/D/1069/2002, [9.6]; *Madafferi v Australia* (26 July 2004) CCPR/C/81/D/1011/2001, [9.8].

¹⁸ *Bakhtiyari v Australia* (29 October 2003) CCPR/C/79/D/1069/2002, [9.7]; *Madafferi v Australia* (26 July 2004) CCPR/C/81/D/1011/2001, [9.8].

¹⁹ *C v Australia* (14 November 2002) CCPR/C/76/D/900/1999, [8.4].

²⁰ *Madafferi v Australia* (26 July 2004) CCPR/C/81/D/1011/2001, [9.3].

²¹ *C v Australia* (14 November 2002) CCPR/C/76/D/900/1999, [8.4].

²² *Madafferi v Australia* (26 July 2004) CCPR/C/81/D/1011/2001, [9.3].

²³ The Inquiry should review the comments of the federal Human Rights Commissioner on the issue of mental health and immigration detention centres, especially where they affect children. See: HREOC, *A Last Resort? The national inquiry into children in immigration detention* (May 2004),

Recommendation 11. The Inquiry should find that further abuses of the rights of detainees are likely to occur until Australia changes its policies on asylum seekers. Specifically, mandatory detention should be replaced by a temporary detention for the purposes of preliminary processing for health and security reasons, and detention should be reserved for those awaiting deportation or who are identified as security or criminal risks.²⁴

<http://www.hreoc.gov.au/human_rights/children_detention_report/report/chap09.htm>. Also: HREOC, *Report on visits to Immigration Detention Facilities* (2001), especially §3.9, <http://www.hreoc.gov.au/human_rights/idc/index.html>.

²⁴ For further argument see Encel, *op. cit.*

7. Australia needs a Bill of Rights

Australia is the only common law country without a Bill of Rights. A Bill of Rights would contribute greatly to a recognition and protection of, and respect for, the rights of the mentally ill in Australia. In the ACT, where Australia's first *Human Rights Act* came into force in 2004, mental health services and policy are expected to improve. In the UK, the introduction of a Human Rights Act dramatically improved the situation for people with mental health issues.²⁵

Recommendation 12. CCL urges the Inquiry to recommend that Australia strengthen its human rights commitment by introducing a Bill of Rights to protect all Australians from the abuses to which Ms. Rau was subjected; and that all Australian States should amend their laws concerning mental illness accordingly.

²⁵ ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act: Report* (May 2003) [4.62], <<http://www.jcs.act.gov.au/prd/rights/documents/report/BORreport.pdf>>.

8. Appendix 1: Baxter Behaviour Plan



Global Solutions

BAXTER IMMIGRATION DETENTION FACILITY

REDGUM COMPOUND

BEHAVIOUR PLAN

Detainees Name

ID NO:

This plan was designed as stage 1 of a 4 phase behaviour regime with the aim of reintegrating a detainee back into a normal compound routine.

Stage I

Detainee will reside on the 'B' side of Redgum compound while on this stage.

The procedures and interventions contained in this plan are to be implemented and adhered for 7 days whereupon they will be reviewed by the MURT team. Progression on to the next stage will only happen after successful completion of stage 1. There will be no deviation from this plan without the authority of the Operations Manager.

A. Passed / present behaviour

Summary of passed/ present behaviours resulting in admission to the Red gum compound:

B. Procedures

Visits

- No personal visits
- No inter compound visits
- Visits allowed from DIMIA, Red Cross, Religious, Legal and Consulate representatives will be facilitated

Time Out

- on this stage will only be permitted 4 hours of "time out" per day. A period is not to exceed 2 hours and will be between 0800 and 1200 and 1300 and 1900 hrs.
- declining the opportunity to exit his room during his allocated "time out" period will forfeit that period of time.

Phone Calls

- One outgoing telephone call per day at the expense to be made in "time out" period
- Telephone calls will not exceed 30 minutes duration both incoming and out going
- making telephone calls he will be escorted by two officers to the telephone
- Incoming calls will be allowed from 0800 till 2000

Laundry

will do his own laundry in "time out" period.

Education

Education Pack will be supplied at request.

Property

may have an allocated amount of personal property in his room: - in the form of personal clothing, this will be limited to:-

- Personal clothing (Clothes he is wearing and 2 changes)
- Reading and writing materials,
- Religious articles such as a prayer mat or bible.
- personal hygiene items (razors that are issued must be returned upon completion of use)

Meals

- Meals will be taken in the recreation area, and will be in containers and held in a hotbox until consumed.
- Meals will not leave the recreation area.
- not taking a meal shall have that recorded and an officers report submitted
- will always be offered meals at meal times.

Smoking

Cigarettes may only be consumed outside of all buildings, is not

C. Behavioural Objectives

is expected to meet with all 6 behavioural objectives over a 7 day period before consideration can be made for movement on to stage 2.

- 1. No assaults or threats to GSL staff or DIMIA
- 2. No assaults or threats to other detainees
- 3. No use of abusive language to GSL staff or DIMIA
- 4. No major outburst or disruptive behaviour
- 5. Compliance with all lawful instructions and requests from GSL staff and DIMIA
- 6. No deliberate damage to buildings, furniture or fittings

C. Summary of the detainees behaviour over the last 7 days

Has been compliant to an acceptable standard

D. Reason for recommending movement onto stage 2

Has reached a standard of behaviour which is acceptable to move on to stage 2

..... Date..../..../....
Detainees Signature

..... Date..../..../....
Detainee Case Management Coordinator

..... Date..../..../....
Operations Manager

The detainee refused to sign this plan:

..... Date..../..../
Officers signature



Global Solutions

BAXTER IMMIGRATION DETENTION FACILITY

REDGUM COMPOUND

BEHAVIOUR PLAN

Detainees Name

ID NO-

This plan was designed as stage 1 of a 4 phase behaviour regime with the aim of reintegrating a detainee back into a normal compound routine.

Stage 2

Detainee will reside on the 'B' side of Redgum compound while on this stage.

The procedures and interventions contained in this plan are to be implemented and adhered for 7 days whereupon they will be reviewed by the MURT team. Progression on to the next stage will only happen after successful completion of stage 2. There will be no deviation from this plan without the authority of the Operations Manager.

A. Passed / present behaviour

Summary of passed/ present behaviours resulting in admission to the Red gum compound:

B. Procedures

Visits

- 2 visits per Week booked 72 hours in advance
- No inter compound visits
- Visits allowed from DIMIA, Red Cross, Religious, Legal and Consulate
representatives will be facilitated

Time Out

- Mr * on this stage will only be permitted 6 hours of "time out" per day. A period is not to exceed 2 hours and will be between 0800 until 1200 hrs and 1300 until 1830 hrs and 1930 hrs until 2200 hrs.
- Mr * declining the opportunity to exit his room during his allocated "time out" period will forfeit that period of time.

Phone Calls

- Two outgoing telephone call per day at the Mr * expense to be made in "time out" period
- Telephone calls will not exceed 30 minutes duration both-incoming and out going
- Mr * making telephone calls he will be escorted by an officers to the telephone
Incoming calls will be allowed from 0800 till 2200 hrs

Laundry

Mr * will do his own laundry in "time out" period.

Education

Education Pack will be supplied at Mr * request.

Property

Mr * may have an allocated amount of personal property in his room: in the form of personal clothing, this will be limited to:-

- Personal clothing (Clothes he is wearing and 2 changes)
- Reading and writing materials,
- Religious articles such as a prayer mat or bible.
- personal hygiene items (razors that are issued must be returned upon completion of use)
- A transistor radio or stereo unit.
- Other personal effects i.e. reading glasses, watches etc. must be authorised by an Operations Manager. Requests must be made through use of request form.

Meals

- Meals will be taken in the recreation area, and will be in containers and held in a hotbox until consumed.
- Meals will not leave the recreation area.
- Mr * not taking a meal shall have that recorded and an officers report submitted
- Mr * will always be offered meals at meal times.



REDGUM COMPOUND - OPERATING PROCEDURES

STAGE 3

This compound has been designed to accommodate detainees who have demonstrated unacceptable behaviour or who have demonstrated behaviour that has threatened the security and good order of the facility and have been reviewed and allocated the compound by the Management Unit Review Team and authorised by an Operational Manager.

The process to be used in this compound is a 4 phase program where consistent good behaviour is rewarded by progression onto further stages of opportunity, with the goal being a return to normal compound routine after a specified period of time.

Progression to Stage 3 is conditional upon successful completion of Stage 2.

Detainees will reside on 'A' side of Redgum compound whilst on this stage.

Detainee Movement

- All movement external of Redgum Compound will be under officer escort and by vehicle. When escorting by vehicle the officer/s will ensure that no other detainees apart from Redgum detainees are in the vehicle whilst in transit.

Visits

- 3 visits per week booked 72 hours in advance to be approved by Operations Manager via Request Form.
- Visits by DIMIA, Red Cross, Religious, and Legal and Consulate representatives will be facilitated.
- All detainees requesting to attend church services within the facility are able to attend but must be observed by the visits officer. A request to attend a church service must be made 24 hours prior to the service.
- No inter-compound visits will be allowed.
- In the event there is only one detainee residing in this compound a detainee approved by the Operations Manager may have approval to visit on one occasion each day for association purposes.

Phone Calls

Outgoing calls

- Unlimited telephone calls per day at the detainee's expense to be made during "time out" period.
- Telephone call will not exceed 30 minutes duration due to the need for detainees accommodated on "B" side to access the telephone. A timetable is to be developed to allow scheduled timings for phone usage between sides "A" and "B" of the compound.

Incoming calls

- Incoming calls will be allowed from 08 00hrs till 2230 hrs
- Detainees will have a maximum time limit of 30 minutes per call.

Canteen Purchases

- Detainees will be permitted one canteen buy up a week. All orders for canteen will be forwarded to the officers by 2300 hrs on the Thursday for canteen on Friday.

Laundry

- Detainee will do own laundry in "time out" period

"Time out" of Room

- Detainees on this stage will be permitted "time out" of room between the hours of 08 00 and 2300.
- Recreational Equipment shall be provided for time out of their room, the nature of this compound prevents the introduction of free weights.
- Detainees not returning to their room when requested will have this non compliance recorded, an officer's report will be submitted and they may have their time on this stage extended or see a recommendation for alternate placement, continued non compliance may see the detainee return to stage one or two.
- Detainees may have the use of the "A" side recreation room during the time out of their room.

Education

- Education packs will be supplied to detainees from the Education Centre. Where it is deemed necessary a representative from education may attend for tuition in "time out" period if available.

Property

- Detainees may have personal property in their room in the form of personal clothing i.e. clothing they are wearing and 5 changes, reading and writing materials, religious articles such as a prayer mat or bible.
- They may have personal hygiene items however razors are to be issued on a 1 for 1 basis from within the officer's station.
- Detainee may have a Stereo as part of their property no more than eight C.D's in their possession and are not to have any property that does not belong to them in their room.
- Detainees can also have one other electrical item in their possession e.g. Computer or television. Television and video recorder will be considered as one item.

Medical

- Access to medical will be provided with detainees attending the nurses clinic during scheduled medication times, (an officer must be present at all times during medication rounds).
- Detainees wishing to see a nurse will need to advise the officer which they will process promptly.
- Access to PSS will also be actioned promptly.

Meals

- Meals may be taken in the Detainee Mess and served from Bain Maries between 08 00 and 09 00, 12 00 and 13 00, 18 00 and 19 00. Any detainee not taking a meal shall have that recorded and an officers report submitted.
- Detainees will always be offered meals at meal times regardless of actions they may take.

Merit Points

- Merit points may be paid to detainees taking part in Meaningful Activity.
- These positions will be rotated through the detainee population residing on "A" side. Merit points will only be paid if the meaningful activity is completed to an acceptable standard.
- The meaningful activities will be offered to the detainees on a day by day basis starting at room one and then offered to room two etc

once they have been offered to all rooms in numerical order the meaningful activity will be offered from room one again.

- Detainees declining the opportunity to take part in Meaningful Activities shall have this recorded on their case file and it shall be recorded in the occurrence log.
- Detainees will be paid one point per one hour of Meaningful Activity completed.
- A list of allocated tasks is to be developed and authorised by an Operations Manager. There will be no deviation from the list unless authorised by an Operations Manager.

Personal Management Plans

- All detainees accommodated in Redgum compound will have a personal management plan developed for them by the Case Manager. This plan will be discussed with the detainee.

Contents of Room

- On stage 3 detainees will be permitted reading and writing materials, items of religious significance, clothing as permitted by property, personal hygiene items, two towels and other items permitted in property section.

Fabric Checks

- All rooms will be fabric checked daily; officers are encouraged to be alert to the amount of property held by detainees and ensure a high standard of cleanliness is maintained.

Searching

- Two accommodation rooms will be searched daily and all common areas are to be searched each day.

Smoking

- Cigarettes may only be consumed outside; detainees are not permitted to smoke in their rooms or common areas.

Unacceptable Behaviour

- Any unacceptable behavioural incidents i.e. swearing, assaults, threats etc will be reported as per normal procedures and will also be reported to the MURT at their next meeting. The MURT may extend the length of time that the detainees are on this stage.

Review

Stage Three shall be reviewed after fourteen days, upon successful completion they may progress to stage four.

Stage three and Stage four will be completed on "A" side only

Baxter Detention Centre

GSL - RedGum compound (now called Red One),

Rules for Stage 4 of the Behaviour Plan

(Information collected verbally from detainee currently in Stage 4)

As for Stage 3 except for:

- Stage 4 extends for 31 days
- Maximum of 5 visits per week booked 72 hours in advance and approved by the Operations Manager
- Inter-compound visits allowed to a maximum of 4 hours per week

NB: Stages 1 and 2 detainees are kept in a separate section of the compound to Stages 3 and 4. (Red One compound has A and B divisions.)