

Project SafeCom News and Updates

Monday, 4 September 2017

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1. The Saturday Paper Editorial: National disgrace

The Saturday Paper
Edition No. 172
September 2 – 8, 2017

It was after Peter Dutton suggested refugees were terrorists and criticised Malcolm Fraser for his compassion that the prime minister praised him.

“Peter Dutton is a thoughtful and committed and compassionate immigration minister,” Malcolm Turnbull said. “Peter Dutton is doing an outstanding job as immigration minister.”

At the time the words played as farce. The longer Dutton is in cabinet, the more they sound like tragedy.

Peter Dutton is a disgrace. He is this country’s worst impulses. He is a man scared of the world. His only business is division. His only tool is malice.

This week, he complains of lawyers giving their time free to prevent his government from abusing refugees. He agrees that this is un-Australian. Of particular concern are those refugees who require medical treatment, who courts agree should not then be returned to terrible mistreatment on Manus and Nauru. He complains that the High Court makes the passing of inhuman policy difficult. “It’s gone on for too long,” he says, “and I think people believe in a fair go but this is ripping the system off.”

We now know who Peter Dutton is. He is a man who regards the constitution as an inconvenience. That alone should make him unfit for office. He has no respect for the laws made to protect the public from people like him.

This is the man who lied about the intentions of a woman raped while in detention, a woman who was pulled from a hospital bed and deported back to Nauru lest Australian laws be used to protect her. She had been waiting for counselling after seeking an abortion required by that rape.

This is the man who suggested that refugee advocates had coaxed people into self-harm. The man who suggested with no evidence that refugees were paedophiles. The man who ignores the facts of the wicked edifice over which he presides: that people are destroyed here, by rape and violence and mental sickness, and that these terrible facts are not accidents but part of his deliberate system of deterrents.

This is the man who looks at all this and sees only relish. “I enjoy it a lot.”

Dutton’s is a career of moral turpitude. Nowhere can he point to good. His portfolio is this nation’s disgrace.

More than anyone in this government, he stands on real corpses. He stands on women destroyed by rape, and children robbed of their childhoods by imprisonment. He stands on a calculus of cruelty.

It is this man who is touted as a future leader of the Liberal Party. The Australian has written a draft of the speech he would give. It draws on family values and a celebration of his simplicity.

There is nothing to celebrate in Dutton. He could be dismissed as dim if his idiocy were not so calculated. He allows himself to be stupid because he wants this country to be stupid. He wishes to strip Australia of its dignity and its humanity, to ruin its institutions and blacken its soul.

There is nothing to see in Dutton except the worst of what this country could be. We can only be thankful that the court he so criticises stops him from taking us there with him. He plays politics as if it were a game but there is nothing to win, only losses.

<https://www.thesaturdaypaper.com.au/2017/09/02/national-disgrace/15042744005145>

2. Claire Higgins: Dutton should learn to live with lawyers helping in matters of life and death

Mandatory detention and boat turn-backs have been proposed - and rejected - in the past. How have we moved from a humanitarian approach to this cruelty?

The Guardian
Claire Higgins
Wednesday 30 August 2017 13.02 AEST

Lawyers who defend asylum seekers, the immigration minister believes, are “un-Australian”. Peter Dutton is not the first minister to level criticism at asylum seeker advocates. But history shows that things could – and should – have turned out very differently.

Speaking in the wake of news that the Turnbull government is cutting financial support for about 100 asylum seekers in Australia, the minister was essentially criticising the right of these asylum seekers to have fair, principled and efficient determination of their claims for protection.

This is nothing new in Australia's political history. Dutton's sledging of legal advocates is nevertheless contrary to a firmly entrenched view, couched in the rule of law, that people have a right to legal representation – particularly vulnerable people.

Australia has had a formal procedure for refugee status determination since 1978. Before then, the UN refugee agency's senior officer in Australia found that because the country lacked formal procedures for assessing refugee claims, governments exercised deportation practices that risked sending people back to persecution, a potential breach of the principle of non-refoulement set out in the 1951 refugee convention.

When the then Fraser government established this procedure, it anticipated the possibility that refugee claims could extend outside the department of immigration and into the courts. Archival records show that officials from the departments of immigration, foreign affairs and prime minister and cabinet made this observation:

"Difficulties were foreseen in the proposed procedures breeding a new race of 'immigration lawyers', marked by their skill in delaying official procedures by exploiting appeal mechanisms and in other ways obstructing fair determination by the committee."

But the notes continue:

"It was decided that we would have to live with this prospect, in the interests of providing and being seen to provide the applicant with every opportunity to present a full and favourable case."

In this private conversation, principle took precedence over politics. The Australian government "would have to live with" the lawyers, because access to legal representation supports the integrity of the nation's legal system.

Since asylum seekers began arriving in Australia by boat in steady numbers from the late 1980s, ministers for immigration have increasingly decided they don't want to "live with it". Successive ministers have viewed judicial oversight as challenging the government's desire to control the admission of refugees. As a result, there has developed what experts in migration law call a "high profile interbranch dispute" between the courts and the parliament.

This dispute gained prominence in the early 1990s, when prime minister Bob Hawke publicly stated that Cambodian asylum seekers could be returned to their country, in a move that would have denied them access to individual refugee status determination. Asylum seekers' right to such determinations was thus taken up by a small but growing community of migration lawyers.

In turn, then immigration minister Gerry Hand developed a well-known dislike of the advocates who contested his department's decisions. They were a "classic type", he said. The type who wears tight-fitting jeans, sees themselves as a "radical" in a contest with his department, and "bitches and belly aches on the national airwaves" about the plight of their clients.

Crucially, this antipathy went beyond verbal criticism to inspire a cornerstone of Australia's current asylum policy. Minister Hand introduced the system of mandatory detention in 1992 in order to ensure the courts could not "interfere with custody". And, as one asylum seeker submitted in an individual communication to the UN human rights committee in 1993, the increasingly remote locations of detention facilities "vastly compounded" difficulties in accessing legal advice.

Minister Dutton criticises lawyers for pursuing a social justice agenda. But people fleeing persecution have a right to a "fair go" – as the Law Council of Australia has pointed out, there is nothing more Australian than defending that right. And as Khanh Hoang from Australian Lawyers for Human Rights notes, the rule of law is part of the government's own Australian values statement. Rather than trying to thwart this process, the minister for immigration should accept that access to legal representation can help to ensure vulnerable people in search of protection have the best chance to present their claims. Because for these children, women and men, their claims may be a matter of life or death.

The minister should learn to "live with it".

---->>>> *Dr Claire Higgins is a senior research associate at the Kaldor Centre for International Refugee Law at UNSW. Her book, *Asylum By Boat: Origins of Australia's refugee policy (NewSouth)*, will be out in September.*

<https://www.theguardian.com/commentisfree/2017/aug/30/dutton-should-learn-to-live-with-lawyers-helping-in-matters-of-life-and-death>

3. Michael Bradley: Government cynically seeks asylum from the judiciary when it comes to refugees

The government's recent announcement that the few asylum seekers on Australian soil will have their support cut off seems needlessly cruel. But it is actually part of a considered plan to avoid judicial responsibility.

Crikey
Michael Bradley
Managing partner at Marque Lawyers

Assume for a moment that Peter Dutton, the Minister for Immigration and Border Protection, is not a cruel and heartless man who derives pleasure from persecuting the unfortunate. Assume also that the Turnbull government is not so morally debased that its cabinet would sit around discussing what new torture it might inflict on boat people purely as a tactic of distraction, a morsel of red meat for the Murdoch press and shock jocks to noisily chew.

If that's right — if Dutton is actually human and there's something going on in the prime ministerial brain beyond his minute-to-minute survival — then why has the government chosen now to introduce its latest weapon of dehumanisation against a tiny group of people it has already reduced to non-person status in the country's consciousness? What's the deal with the "final departure bridging E visa"?

Remember when the word "visa" meant something positive? Way back, before immigration became an instrument of national security, a mode of prevention rather than nation-building. Now a visa can signify a status that includes no rights, no support, no hope, but is a tool designed solely to lever people into the conclusion that their only choice is between return to the country they originally fled, or return to a place — Manus Island or Nauru — where hopelessness is the entire design.

This new visa removes from fewer than 100 people presently in Australia, on no notice, their welfare support and gives them three weeks to move out of government-supported accommodation. They will be released into the community, free to work (ho ho, very droll, Minister) provided they've signed up to a Code of Behaviour. One wonders what the penalty for non-compliance is, when the choice is between deportation and starvation.

The small number of asylum seekers to whom this applies are here because they were brought here for medical treatment, from Manus or Nauru. The government didn't want to bring them here, didn't want Australian lawyers to take on their cases, didn't want the courts to grant injunctions preventing their early return, and wants absolutely anything other than their permanent resettlement in Australia.

But they're here, they have attracted the support of pro bono lawyers, and the courts have asserted a protective jurisdiction over them. Now getting rid of them is a prickly problem.

The politics of this are apparently obvious. The Coalition's sole unarguable policy achievement after five years in power is that it stopped the boats. Obviously, it needs to keep them stopped.

But does that explain this latest brutalisation of some of the most helpless people under our national care? Objectively, this "visa" imposition is an act of gratuitous victimisation. We are talking about a tiny number of people who have no prospects, suffer various health problems that necessitated their removal to Australia for medical treatment, and who genuinely fear persecution or worse in their countries of origin. Does anyone really think that any of the remaining boat arrivals, after all this time, knowing that the Australian government would fly them home any time they asked, is a so-called economic refugee?

Whatever those in the media who trade professionally in xenophobic fear-mongering may choose to believe, or at least spruik, the government knows for sure what these people are: destitute, helpless, lost souls who have nothing left but the faint hope of mercy from a wealthy nation. It knows they present no threat to national security, the welfare budget or social cohesion; at least they wouldn't if the government stopped telling lies about them.

So, no, the politics don't quite add up. The Howard government, despite its vaunted commitment to the Pacific Solution and keeping the gates padlocked, quietly resettled almost every asylum seeker from Nauru in Australia, once it had judged that the political mood had moved on. It would be easy for this government to paint these poor people as random victims of misfortune rather than willing manipulators of Australia's generous nature. And really, who would mind taking a hundred or so residual charity cases, the leftovers as it were from our success at breaking the people smugglers' business model?

I've seen it argued that the disconnection between the policy of stopping the boats and this seemingly endless persecution of asylum seekers is explicable on the basis that the government has lost sight of the end and is now just obsessed by the means. I think that pays way too little respect to the consciousness of Turnbull and his ministers. I think they're acting rationally, albeit with no conscience and ultimately counter-productively.

The clue lies in the recent decision by the government to pay \$70 million to the asylum seekers on Manus Island, to settle their case against the Commonwealth for wrongful detention. It was an utterly extraordinary thing for the government to do, in circumstances where it has never asserted anything but its 100% confidence that every one of its actions have been lawful.

Dutton is never shy about labelling every asylum seeker as a conniving con artist; so it's a lot more than strange that he decided to throw money at them rather than expose their deceitful ways in open court.

Clearly, the government either knew it was going to lose, or feared what would come out at the hearing — \$70 million is a bloody lot of hush money.

The wider issue for the government is the wretched independence of Australian courts. They doggedly insist on not doing the bidding of the government of the day. In the field of immigration in recent years, the High Court in particular has been willing to give the government a wide authority to mistreat asylum seekers and trample all over the Refugee Convention, as the court acknowledges that it has no power to prevent that (international treaties not automatically being part of Australian domestic law).

However, a close student of the subject will have picked up that the courts are ever-wary of the tendency of the executive arm to over-extend. In the case that found the Nauru arrangements lawful, the High Court did make it clear that it was not sanctioning indefinite detention. It was implicitly assuming that, one day, the asylum seekers being held on Nauru would have to be resettled somewhere. It did not let Australia entirely off the hook.

The courts have been prepared to grant injunctions to protect the human rights of asylum seekers that the government denies it needs to observe, as soon as those people come within jurisdictional reach.

The judicial strands are relatively indistinct, but they might be tied together in the government's nightmares to form a scenario like any of these: Manus and/or Nauru become dangerously untenable, the US doesn't take the refugees off our hands, there is no alternative regional solution as we continue to refuse to let any of them settle in New Zealand; the asylum seekers are under immediate threat of dying from disease, starvation or local violence. What happens then?

The Australian courts have upheld the validity of the offshore detention arrangements, but they've not upheld the Australian government's pretence that the asylum seekers are entirely not our responsibility. It is possible that, in an extreme situation, the courts might assert jurisdiction across the sea and order these people brought here; a form of habeas corpus, delivery of the body into the court's protective arms.

That would be a disaster for the government. That's what it's desperately trying to avoid. And that's why it's trying to force, through the threat of actual destitution, the few asylum seekers who made it to Australia, back to anywhere but here.

The connecting point in this sequence is not the physical presence of a few random asylum seekers in Australia; that's neither here nor there either politically or legally. The point is what the government is trying to avoid: precedent. As the lawyers look for ever more ways to engage the courts in their strategies to assert and protect the rights of asylum seekers, so the government is becoming ever more intent on not giving the courts the opportunity to rule on those asserted rights. Because the one arm of governmental authority upon which our rampant executive cannot impose its will is the judiciary. And the Coalition government is very uncomfortable with any force outside of its control.

For sure, Dutton is not empathy personified, and Turnbull is, well, nothing much at all. Their latest visa act is vicious and shameful; but it is rational. The game they are playing is avoidance of judicial intervention, and they've demonstrated that there are no limits to their expedience in pursuit of that goal.

For asylum seekers and their lawyers, this is actually good news. Now we know what the government fears most.

<https://www.crikey.com.au/2017/08/29/government-cuts-asylum-seeker-support-to-avoid-court/>

4. Lauren Williams - Exclusive: Dead refugee asked to go home

Before refugee Hamed Shamshiripour took his own life on Manus Island, he had made repeated requests to be sent home to Iran. By Lauren Williams.

The Saturday Paper
Edition No. 172
September 2 – 8, 2017
by Lauren Williams

Just one month before he was found dead outside the Refugee Transit Centre in East Lorengau on Manus Island, Hamed Shamshiripour penned a desperate plea to return home to his native Iran.

"I ask you please to return me to my country Iran. It has been 5 years since I have been in the Manus camp and I have spoken to the personnel of this camp and told them that I would like to be returned to my country. But they have not given me any reasonable respond," the handwritten request to Papua New Guinea Immigration read, on an official "Complaints and Feedback form" dated July 19.

"I have requested several times to be returned but I have not been given any answers. I am not in a good mental state. I beg you please to return me to my country."

In the months leading to his death, Hamed would make repeated requests to return home to Iran. Most went unanswered.

His anguished family in Iran said he repeatedly asked to be sent home but was told his mental state prevented authorities from facilitating his request.

"Hamed had requested to be sent back four times," his brother Ahmad Shamshiripour said in a telephone interview from Tehran. "Turns out one of the four times it was his decision not to come back and the other three times he put in the request and was insisting to be sent back but no one followed it up and they even prevented him from coming back.

"And what I figured out, actually today, was that they said that the PNG authorities had said they cannot take responsibility for Hamed's flight safety."

The family spoke to Hamed for the last time a day before his disappearance on Manus Island. He insisted authorities on the island were trying to kill him.

"He always repeated one sentence... we thought it is because of his bad mental condition that he is saying these words. But he always said: 'Mum, they want to kill me here'," Ahmad said.

"Hamed would say: 'I swear to God, I am serious, here they want to kill me. Why don't you believe me?'"

FULL STORY AT <https://www.thesaturdaypaper.com.au/news/politics/2017/09/02/exclusive-dead-refugee-asked-go-home/15042744005157>

5. Peter Martin: The appalling mathematics of offshore detention

The Age
August 31, 2017
Peter Martin

What kind of person cuts people off income support and gives them weeks to leave their homes?

What kind of person locks them up indefinitely without even processing their papers?

It isn't Trump. Here's the US President, trying to get sense out of Malcolm Turnbull: "Why haven't you let them out? Why have you not let them into your society?"

Here he is again, in the same 24-minute phone call earlier this year: "Maybe you should let them out of prison."

Australia's prime minister had to attempt to explain a policy that looks crazy from the outside and not much better from the inside.

More asylum seekers have arrived by plane than by boat over the past 20 years, and yet it's the ones that arrive by boat who are almost always genuine. Ninety per cent of boat arrivals are found to be real refugees when their claims are processed, compared to less than half of those who arrive by air.

Yet we only make life impossible for the ones who arrive by boats.

Here's Turnbull trying to explain it to a disbelieving US President: "The only people that we do not take are people who come by boat. So we would rather take a not very attractive guy ... than to take a Nobel Peace Prize winner that comes by boat."

Trump: "What is the thing with boats? Why do you discriminate against boats? No, I know, they come from certain regions. I get it."

Turnbull: "No, let me explain why."

Turnbull's explanation was that asylum seekers who come by boats are likely to pay people smugglers, and people smugglers let asylum seekers die at sea.

Stopping boats saves lives, in ways that stopping planes do not.

Because lives are very valuable, whatever we spend to stop the boats ought to be worthwhile, as ought whatever damage we inflict on people to do it.

It's a cost-benefit calculation of the kind made all the time by governments planning new roads or railways or anything else that will cost or save lives. Yet the calculation has never been made explicit for offshore detention and the renewed onshore cruelty that accompanies it.

Nor has a calculation compared it to alternative policies that might be able to achieve the same thing with fewer financial and human costs.

The Opposition isn't much use. It has broadly supported what the government is doing up until this week, when it has begun to make tiny noises about the plans to end support for the Australian-based asylum seekers who've come from Nauru and Manus Island for medical treatment.

So Melbourne University economist Tony Ward has stepped into the breach.

His new book, *Bridging Troubled Waters*, sets out the costs and the benefits of what we are doing and what we could be doing instead.

Calculations from Save the Children Fund and UNICEF put the total financial cost of our current suite of policies at \$9.6 billion over the past four years and up to \$5.6 billion over the next four. Offshore detention accounts for 95 per cent of the cost.

The Coalition's Commission of Audit found it costs \$440,000 per person per year, around \$1200 per day. It costs only half that, \$658 per day, to detain someone in Australia, and only about \$300 to keep an Australian prisoner in an Australian prison, which is about what it costs to put someone up in a luxury hotel.

Processing someone's papers in the community is cheaper still, at around \$250 per day. Handing out a bridging visa with support is even cheaper, at around \$90 per day.

And offshore detention has other, harder to quantify, costs. You can't easily put a price on mental health, but you can work out which kind of detention damages people the most. The United Nations High Commissioner for Refugees found 88 per cent of the residents in offshore detention suffered from a depressive or anxiety disorder or post-traumatic stress. Among asylum seekers living in Australia while their claims are processed the figure is as low as 52 per cent.

Ward concludes that the extra billions spent on offshore detention didn't buy us less damaged people, they wrought greater damage.

But what about the benefits? As far as we know, in recent years we've had not a single death at sea. Under Labor there were 1100. But the saving of lives mightn't have been due to offshore detention, it might have been due to the (much cheaper) program of boat turn-backs that accompanied it. Few boats try to come to Australia now, even after offshore detention has been softened by the prime minister's announcement that some of those detained will be taken by America.

Ward reckons a much cheaper way of saving lives would be to ditch offshore detention (saving \$1.7 billion over four years) move locally-detained asylum seekers into the community more quickly (saving \$1 billion), to spend more on turn-backs (\$11 million) and more on regional co-operation (\$150 million).

It's a human and financial saving worth having. If it fails, and deaths at sea resume, we can always reconsider.

---->>> *Peter Martin is economics editor of The Age.*

<http://www.theage.com.au/comment/the-appalling-mathematics-of-offshore-detention-20170830-gy6ztl.html>

6. Anglican church leader says cuts to asylum seeker welfare support 'callous'

Philip Freier says decision by the immigration minister, Peter Dutton, puts 'vulnerable people in even more exposed conditions'

The Guardian
Ben Doherty
Monday 4 September 2017 14.32 AEST

The head of the Anglican church in Australia has condemned the decision by the immigration minister, Peter Dutton, to cut welfare services from 100 asylum seekers and refugees in Australia as a callous attack on vulnerable people.

The Anglican primate of Australia, Melbourne Archbishop Philip Freier, spoke at the church's triennial synod on Monday, telling delegates from Australia's 23 Anglican dioceses that refugee policy was a matter about which many politicians would like churches to stay silent.

"But it should be a matter of conscience for all Australians that we have kept asylum seekers in deliberately callous conditions," he said. "Here many of them have suffered trauma and stress, especially defenceless children.

"I am deeply concerned about the recent announcement by the immigration minister that welfare services will be cut to around 100 asylum seekers who were brought here for medical treatment. This is just the latest in a series of decisions to place vulnerable people in even more exposed conditions."

Last week, 100 refugees and asylum seekers brought to Australia from offshore detention for medical treatment were told they would have all their welfare cut, and would be evicted from government-supplied housing, in an effort to encourage them to return to Nauru or Manus Island.

Many of those brought to Australia were assaulted offshore, including several women who were raped on Nauru. There are court injunctions preventing many of those affected being forcibly removed without notice.

And the 100 are part of a larger cohort of 400 refugees and asylum seekers brought to Australia from offshore detention, and currently living – in detention and in communities – across the country. There are concerns more will be targeted.

Dutton said the government brought the changes to stop asylum seekers and refugees exploiting the system in Australia, and that “the con is up”.

He told News Corp: “They were brought to Australia on the premise that once their medical needs were met they would return to Nauru or Manus.

“The medical care has been provided and through tricky legal moves they are now prevented from being returned to their country of origin, Manus or Nauru.

“In some cases, this con has been going on for years, costing the Australian taxpayer tens of thousands of dollars for each individual.”

It costs \$573,000 a year to house a single asylum seeker or refugee in offshore detention for a year, according to the government’s audit. The auditor says it costs about \$40,000 to have someone supported in Australia on a bridging visa.

In response to the minister’s announcement, the Australian churches refugee taskforce said it would again offer “sanctuary” – including physical sanctuary if necessary – to refugees and asylum seekers left without shelter, food, medicine or sufficient clothing.

“We will not stand by and allow them to be made destitute and forced back to danger on Nauru. When this government is cruel, the community will be kind,” the Anglican dean of Brisbane, the Very Rev Peter Catt told the Guardian.

Speaking at the Anglican synod in Queensland on Monday, Freier said he understood and appreciated the responsibility of governments to control national borders.

“But as Christians – or simply as people – our most urgent response must come from our common humanity and empathy,” he said. “It is tragic for these vulnerable people that political parties have hardened refugee resettlement policy and tragic for these few people to be treated in this way.”

Political and economic factors meant ethical questions went unasked in the debate over Australia’s asylum and immigration policies.

“For example, Australia and other nations often admit wealthy immigrants without asking how they acquired their wealth – provided they don’t come by boat,” he said.

The major theme of Freier’s speech was an apology to the victims of child sexual abuse at the hands of the church.

“On behalf of the whole Anglican church in this country we apologise unreservedly to those who have been harmed by sexual abuse perpetrated by people holding positions of power and trust in the church,” he said.

“We apologise for the shameful way we actively worked against and discouraged those who came to us and reported abuse. We are ashamed to acknowledge that we only took notice when the survivors of abuse became a threat to us.”

Freier also spoke on same-sex marriage, saying he encouraged people to participate in the plebiscite (if it went ahead), but that he would not be seeking to campaign or counsel people on how to vote.

“Anglicans, like other Australians, have a wide range of opinions on same-sex marriage, supporting or opposing it for a variety of reasons in accordance with their conscience and their understanding of the principles and issues. I do not presume to advise others how they should vote, though I myself intend to vote no.”

Freier said the church’s doctrine of marriage was that it was between a man and a woman.

“I think Anglicans are capable of a respectful discussion without vilifying our opponents and respecting that each side’s position can be principled and considered. Kindness in our speech should be the hallmark of our engagement in difficult issues.”

<https://www.theguardian.com/australia-news/2017/sep/04/anglican-church-leader-says-cuts-to-asylum-seeker-welfare-support-callous>

7. Australian security agencies may not have approved tighter citizenship laws

Immigration department officials unable to confirm whether Asio or AFP raised the need for Peter Dutton's proposed changes

The Guardian

Joshua Robertson

Thursday 31 August 2017 18.18 AEST

Immigration officials have been unable to say whether they gained security agency backing for tighter citizenship laws before Peter Dutton announced the controversial overhaul.

The officials told a Senate inquiry in Brisbane they could not confirm whether the Australian Security Intelligence Organisation (Asio) or the Australian federal police raised a need for the proposed changes, or were consulted specifically about them before they were unveiled in April.

The Labor senator Murray Watt seized on the testimony on Thursday as "evidence that shows very clearly there is no national security case for a tightening of the citizenship laws".

Dutton, the immigration minister, has framed the changes – which raise the hurdles on citizenship including through longer wait times and tougher English-language requirements – in part as a national security measure.

Watt told the Guardian: "Peter Dutton's own department was unable to produce any evidence that any national security agency had asked for these changes."

The department also confirmed it knew before the announcement that people who completed the government-funded Adult Migrant English Program (Amp) would still fall short of the university-level English required under the new legislation.

"I think it's bizarre that we have a government-funded program to help train people in English that will not even be able to provide the level required from the government's own citizenship test," Watt said.

David Wilden, a first assistant secretary at the Department of Immigration and Border Protection, told the inquiry he could not "give a definitive answer" to whether Asio gave any advice that tougher citizenship rules were needed to protect national security.

"I'd have to check, I don't think we went to a specific piece of advice on this bill," he said, adding the department had ongoing dialogues with the intelligence agency.

Linda Geddes, an acting secretary of the department, said it was the same case with the AFP.

When Watts asked whether the department had consulted either agency specifically on the bill, Wilden said he was unsure and would try to find an answer before the deadline for committee submissions on Friday.

Wilden said the "national security elements" of the proposal were driven by a recommendation of a joint commonwealth review of the Lindt cafe siege that "we need to look at our visa and citizenship rules".

The final day of hearings by the Senate legal and constitutional affairs legislation committee came after the inquiry having received more than 10,000 submissions against Dutton's proposal. Only two were in favour: from Dutton's own department, and the Australian Monarchist League. The committee is due to report next Tuesday. The immigration officials at the inquiry said the department had considered the fact that most people completing Amp would be at level 4 or 4.5 under the international English-language testing system (IELTS), short of the level 6 required for citizenship.

Wilden said these people would need to show "self-agency" and further their own English study to meet the new mark.

The Labor frontbencher Tony Burke told the Guardian he was "now confident the bill won't be passed in its current form but I'm not yet confident" it would be rejected in the Senate, as Labor hoped. Burke said he saw personal accounts of people affected by the proposed changes at a community forum in Brisbane's Sunnybank on Wednesday night, including Iraq and Afghani refugees who were shocked by the English levels required.

When Watt read out a section of the IELTS test relating to Herodotus' 480BC account of calisthenics at the battle of Thermopylae, "the whole room fell about laughing at just how ridiculous the level of language required was", Burke said.

"People laughed, and then they reflected on it, and then the frustration started to take over the room when people realised exactly what that would mean in their own instances," he said. "There was a despondency of people saying, if that's the new rule, I'll never become a citizen."

<https://www.theguardian.com/australia-news/2017/aug/31/australian-security-agencies-may-not-have-approved-tighter-citizenship-laws>

8. Manus refugees given ultimatum as Turnbull government comes under pressure

Canberra Times

August 30 2017 - 6:35PM

Michael Koziol & James Massola

Refugees and asylum seekers in Papua New Guinea have been threatened with arrest and prosecution as authorities ratchet up the pressure ahead of the closure of Australian operations on Manus Island.

Meanwhile, the Turnbull government is under pressure from Labor to "come clean" after Fairfax Media revealed a boat carrying six Chinese men and a PNG man had successfully landed in Australian territory.

About 100 men have now been transferred from Manus Island to Port Moresby, according to witnesses, while refugees were sent a forthright letter outlining their options before the Manus centre closed on October 31.

The men were given four options: relocate to the transit centre, move into the PNG community, go home voluntarily or resettle in a third country, potentially the US. Australia's offer of \$20,000 for those who go home voluntarily expires on Thursday.

They were warned services at the Regional Processing Centre would be "progressively reduced", and anyone who remained in closed areas of the centre was violating PNG law and could be reported to police.

On Tuesday, the Immigration Department deported to Manus Island a Rohingya refugee who had received medical attention in Australia, in an escalation of its crackdown on asylum seekers.

Fairfax Media understands the 34-year-old man had been in immigration detention in Melbourne, before being transferred to Brisbane and flown to PNG on a commercial flight this week. He is now understood to be in the East Lorengau Refugee Transit Centre.

An Immigration Department spokeswoman said it did not comment on individual cases.

On Wednesday, Opposition Leader Bill Shorten said the government should stop "keeping us in the dark" after Fairfax Media's report of a boat reaching Australian territory.

"We don't know what has happened here, I think the government needs to explain how this has happened and how we can make sure it doesn't happen again," he said. "The government has the facts, they are just not telling us."

The boat reached Saibai Island, about 4 kilometres south of PNG in the Torres Strait but which is part of Queensland, on August 20.

As recently as Monday, Immigration Minister Peter Dutton had boasted "we've not had a successful boat now in well over 1000 days".

A 40-year-old Chinese man and a 52-year-old Papua New Guinean man were charged with aggravated people smuggling and, according to the Federal Police, appeared in a Cairns court on August 29. The other five Chinese men were returned to China.

Foreign Minister Julie Bishop played down the significance of the boat arrival, arguing that the Border Force had successfully detected the boatload of people coming to Australia.

"We have very good border security strategies in place and these people have been detected," she said "Australia maintains a very tough line against the illegal entry into Australia of people."

Ms Bishop dismissed suggestions the arrivals could be the start of a new wave of arrivals.

As the Turnbull government moves to clear Manus Island and Nauru, long-awaited medical transfers in PNG appear to have finally materialised.

Ben Moghimi, a 25-year-old Iranian refugee who has been on Manus Island for four years, said he was among 30 men, some of whom were handcuffed, taken on a charter flight to Port Moresby last week.

More than 100 men were now at the Granville Motel in the PNG capital under the watch of medical and security contractors, Mr Moghimi said, and were worried about what would happen once Manus closed.

"They are relocating people from there to here," he told Fairfax Media. "Why didn't the medical transfer happen last year? It's just kind of suspicious, you know."

"We are scared ... that they [will] leave us homeless in the street in PNG. That's what they are planning to do, it's just obvious."

<http://www.canberratimes.com.au/federal-politics/political-news/manus-refugees-given-final-ultimatum-as-turnbull-government-comes-under-pressure-20170830-gy715b.html>

9. Six Chinese men reach Australia by boat, intercepted by Border Force

Canberra Times
August 30 2017 - 6:01AM
James Massola & Nick McKenzie

Six Chinese men have successfully landed on Australian territory by boat, in an apparent blow to the Turnbull government's claims to have stopped the boats.

Fairfax Media can reveal that a boat carrying six Chinese nationals and an alleged Papua New Guinean people smuggler – all of whom were men – reached Saibai Island on August 20.

Saibai Island is a low-lying island about four kilometres from Papua New Guinea and home to about 300 people. It is nearly 150 kilometres north of Queensland.

As recently as Monday, Immigration Minister Peter Dutton boasted that "we've not had a successful boat now in well over 1000 days".

One of the Chinese men and the Papua New Guinean man were arrested and charged with aggravated people smuggling, contrary to Section 233C.1 of the Migration Act.

The pair appeared in a Cairns court over the weekend and remain in custody. The other five Chinese men have been sent back to China. It is not clear what their motive was or whether they were asylum seekers.

A high-level source denied the arrival was a breach of Operation Sovereign Borders.

While the boat did manage to land on Australian territory, the government will likely argue that Saibai Island is much closer to Papua New Guinea than it is to the Australian mainland and that it rapidly intercepted the unlawful arrival by the seven men.

The use of a small boat may also signal a shift in the methods used by people smugglers to circumvent Operation Sovereign Borders in their attempts to bring people to Australia.

Under Sovereign Borders, put in place by Tony Abbott and Scott Morrison in 2013, Australia has turned back asylum seeker boats at sea that have attempted to reach the Australian mainland.

Prime Minister Malcolm Turnbull has embraced the controversial policy, which has drawn heavy criticism from human rights and asylum seeker advocates, the Greens and sections of the Labor Party.

But it is regarded within the Coalition as one of the government's signature policy achievements and Labor, under Bill Shorten, has promised that it too would turn back asylum seeker boats headed for Australia if it wins government.

Last month, the government hailed the three-year anniversary of stopping asylum seeker boats reaching Australia.

At the time, Mr Dutton said that "since Operation Sovereign Borders commenced we have turned back or dealt with 31 boats and had those 31 boats got through, hundreds and hundreds of boats would have followed. So this problem has not gone away."

News of the arrival comes as the government has been under fire for plans to end income support for up to 100 Australian-based asylum seekers and give them just three weeks to find a home.

Bill Shorten has attacked the decision as the Prime Minister's "weakest move yet" and a "new low" but Mr Dutton has defended it, arguing the asylum seekers will have work rights, access to Medicare and that children will be able to go to school until they are sent back to Manus Island or Nauru.

A spokeswoman for the Immigration Minister declined to comment.

<http://www.canberratimes.com.au/federal-politics/political-news/six-chinese-men-reach-australia-by-boat-intercepted-by-border-force-20170829-gy6oit.html>

10. Boat carrying alleged people smugglers and Chinese men landed on Queensland island

Julie Bishop denies boat arrival part of new wave of asylum seekers after two of the men charged with people smuggling

The Guardian

Ben Doherty

Wednesday 30 August 2017 08.48 AEST

A boat carrying six Chinese men and an alleged Papua New Guinean people smuggler made it to Australian land this month.

The boat landed on the low-lying north Queensland island of Saibai, 4km from the PNG coast and about 150km north of the tip of Cape York, on 20 August. Saibai is home to about 300 people.

One of the Chinese men, and the Papua New Guinean, were arrested and charged with people smuggling. They appeared in a Cairns court and have been remanded in custody.

The other five Chinese men have been sent back to mainland China. It is unclear whether they made, or were allowed to make, a formal claim for asylum. It is also unknown what has happened to them on return.

The last boat to make Australian landfall was in May last year, when a group of 12 Sri Lankan asylum seekers piloted a fishing boat into the lagoon at the Cocos Islands. That group were taken onshore, before being flown back to Sri Lanka. They were arrested upon return to Sri Lanka.

Vietnamese asylum seekers intercepted by Australian authorities at sea have also been returned to their country of origin, where they have been arrested and jailed, in some cases despite written assurances they would not face prosecution or punishment.

Operation Sovereign Borders, since it was introduced in 2013, has turned around more than 30 boats, carrying more than 770 asylum seekers. Some of those boats have been intercepted inside Australia's maritime zone, others in international waters.

The foreign affairs minister, Julie Bishop, confirmed the latest boat's arrival Wednesday morning. "I understand that they are before the court," Bishop told the Nine Network. "We have very good border security strategies in place and these people were detected."

Bishop denied the latest boat arrival represented a new wave of asylum seekers.

Fiona Pemberton, an Australian Border Force inspector based on Thursday Island, said patrols of the Torres Strait – which have been occurring for 20 years – involved officers from the ABF, Queensland police, Australian federal police and the PNG government.

"The ABF is forever vigilant in its shared responsibility to protect the Australian community from various risks and to stamp out any illegal activity," Pemberton said. "The Torres Strait region is large and unique, and our message to the community is we are here, we are patrolling and we are responding."

"Our response to any illegal activity is both multi-agency and multi-country, as we benefit from a very close working relationship with our PNG counterparts."

<https://www.theguardian.com/australia-news/2017/aug/30/boat-carrying-alleged-people-smugglers-and-chinese-men-landed-on-queensland-island>

11. Australia resettles Cuban refugees found clinging to lighthouse off Florida Keys

Resettlement is politically fraught in both Australia and the US, whose refugee deal was previously labelled a 'people swap'

The Guardian

Helen Davidson

Tuesday 22 August 2017 14.47 AEST

Seventeen refugees who were found clinging to a lighthouse off the Florida Keys after fleeing Cuba in a self-made raft, and then were sent to Guantánamo Bay for a year, have been resettled in Brisbane.

Under the United States's "wet foot, dry foot" policy, which Barack Obama ended in January as part of improving relations between the two countries, Cuban asylum seekers were immediately allowed to stay and apply to become legal residents if they landed on American soil.

However, those intercepted at sea were returned to Cuba or taken to a migration centre at Guantánamo Bay for assessment.

A legal challenge was launched to determine if the lighthouse, anchored to a reef under 1.3m of water, seven nautical miles south of Sugarloaf Key, was US territory under the policy. A federal court ruled against the asylum seekers' claim.

The group was sent to Guantánamo. The case made headlines across the US and Latin America.

"We crossed the ocean trying to arrive in the States," Alexander Vergara Lopez told Guardian Australia. "We were 24 guys but when we were crossing the ocean the boat was broken ... When we saw the lighthouse, we hopped on the lighthouse and then it was crazy.

"The relationship between Cuba and the United States is not the best. We happen to be normal people, members of the public, but we started to appear in social media and many other communications."

Of the lighthouse cohort, 20 were reportedly found to have refugee claims and remained in Guantánamo, awaiting third-country resettlement through the US's Migration Operations Centre. While at the MOC naval station, migrants are assisted by the International Organisation for Migration (IOM), including in finding work on the base.

Five months ago the group was informed they had been accepted for resettlement in Australia and they arrived in Brisbane at the end of last month, after travelling via the Dominican Republic, France and Dubai.

Upon arrival in Brisbane Vergara Lopez praised Australia as a "very free place", saying: "It's a dream – we are very happy, we have a million thanks for our lawyers [in the Democracy Movement in Miami]."

Ramón Sánchez, the leader of the Florida-based Democracy Movement, which led the group's legal challenge said: "The 17 Cubans of the American shoal lighthouse case have already landed in Australia, happy to finally attain full freedom."

Refugee resettlement is a politically fraught topic in both Australia and the US, and two separate arrangements between the countries have been labelled a "people swap".

In September Turnbull announced a protection transfer arrangement with the US to take refugees from Costa Rican camps as part of Australia's annual humanitarian intake. The arrangement is between the United Nations high commissioner for refugees, IOM and settlement countries including Australia and the US.

Currently US officials are also assessing refugees held in Australia's offshore detention centres as part of an agreement to resettle up to 1,200 people. Australia refuses to resettle any asylum seeker who arrived by boat after 19 July 2013.

The agreement between the Australian government and Obama has been controversial.

Under the arrangement the US doesn't technically have to take any refugees – which Turnbull assured the president, Donald Trump, of in a phone call, the transcript of which was leaked. Trump expressed disgust at the "bad deal". Turnbull also said Australia would take "anyone" the US wanted it to take in return.

"We are taking people from the previous administration that they were very keen on getting out of the United States," he told Trump. "We will take more."

It remains unclear who the "people" are or why the US was "very keen" to get them out of the country.

In May, Australia's Senate estimates learned that, under the Costa Rica agreement, seven cases involving 30 people were going through regular screening processes for resettlement in Australia.

At the same time the department was also going through a tranche of Cuban refugee placements as part of Australia's "periodical" assistance of the US, Mandy Newton, the deputy commissioner of Australian Border Force, told estimates.

It is not known which agreement the 17 Cubans arrived under and Australian and US officials decline to comment on specific cases.

The Australian immigration department said Australia and the US had "a long history of cooperation on mutual and respective humanitarian objectives", including resettling Cuban refugees.

"These refugees were assessed by Australian government officials and met the criteria for refugee and humanitarian visas, including rigorous health, character and security checks," the spokeswoman said.

A US state department spokeswoman declined to comment on individual cases but said 445 people had been resettled in third countries through the Guantánamo-based Migration Operations Centre since 1996. The vast majority were Cubans.

“Protected migrants are neither detained, imprisoned, nor held, and are free at any time to return to their country of origin,” she said. “Most, however, choose to stay at the MOC until a resettlement opportunity arises.”

Vergara Lopez said he didn't know why he and the other 16 Cuban refugees couldn't stay in the US, but hoped an appeal – currently before the courts – would allow them the option of returning. “Maybe if we win the case we can leave Australia and go to the States,” he said.

He has a grandmother and a four-year-old son in Cuba but Vergara Lopez had hoped to go to the US to live with his mother in Florida. If not, he said he was happy to stay in Brisbane and was grateful for the welcome and support of Australia.

“I like it here, it's a nice place. If I have to stay here all my life, I will. I like it,” he said. “Right now I'm working for a company ... they are teaching me right now. [Australia] is a good place, I like it, very nice people.”

<https://www.theguardian.com/australia-news/2017/aug/22/australia-resettles-cuban-refugees-found-clinging-to-lighthouse-off-florida-keys>

12. Obama administration urged Australia to change offshore detention refugee policy

Former deputy secretary of state Heather Higginbottom says US agreed to deal in order to relieve refugees' suffering

The Guardian
Paul Karp
Sunday 13 August 2017 11.37 AEST

The Obama administration urged Australia to change its policy of offshore detention of refugees while agreeing to accept up to 1,200 people to relieve their suffering, a former senior US official has said.

The former US deputy secretary of state Heather Higginbottom, who negotiated the deal designed to take refugees from offshore detention on Manus Island and Nauru, makes the revelation in a Time magazine article.

Higginbottom penned the article to address the leak of the full transcript of the phone conversation between US president, Donald Trump, and the Australian prime minister, Malcolm Turnbull, about the deal.

In the January phone call Turnbull persuaded Trump to honour the Obama-era agreement, despite protestations from the president it was a “stupid” deal that would “kill” him politically. Turnbull also falsely claimed that people held in Australia's offshore detention centres were “economic refugees”.

Higginbottom said the refugees were “people who risked their lives on makeshift boats to flee conflict and the lack of access to basic means of survival but were turned back by an Australian government that refuses asylum seekers who arrive by sea”.

“While the last administration strongly pressed the Australian government to change its policy toward asylum seekers, we also sought to immediately relieve the suffering of these refugees and agreed to resettle up to 1,200 after they went through the US government's rigorous refugee screening processes,” she said.

Higginbottom, who is now the chief operating officer of the aid organisation Care, singled out the “policy of detention” as the aspect of Australia's policy rejected by the Obama administration.

Higginbottom lamented that coverage of the Turnbull-Trump phone call had focused on personalities and not that “the wellbeing of 2,000 actual human beings hangs in the balance”.

The United Nations has called Australia's policy of offshore detention of asylum seekers unjustifiably punitive and unlawful, “cruel, inhuman and degrading treatment”.

In the leaked phone call, Turnbull told Trump that Australia had “taken a very strong line on national security and border protection” and said that he, Jared Kushner and a White House immigration adviser had “reflected on how our policies have helped to inform your approach ... We are very much of the same mind.”

Turnbull noted that Trump, who has attempted to ban immigration from certain Muslim-majority countries, prioritised “minorities” in his executive order and linked it to the fact 90% of the 12,000 refugees Australia had accepted from Syria were Christians.

Turnbull explained that Australia turned back boats at sea and sent asylum seekers to offshore detention “not because they are bad people” but rather to prevent people-smugglers of a “product”.

He said people who came by boat would not be let in even if they were a Nobel prize-winning genius, which prompted Trump to say "that is a good idea".

"We should do that too," he said. "You are worse than I am."

Turnbull referred to a speech he gave to the UN in September claiming that Australia's harsh treatment of refugees was necessary to control its borders and maintain support for its regular migration intake.

<https://www.theguardian.com/australia-news/2017/aug/13/obama-administration-urged-australia-to-change-offshore-detention-refugee-policy>

13. US Homeland Security staff return to Manus Island for resettlement interviews

ABC News Online

By Papua New Guinea correspondent Eric Tlozek

Monday August 14, 2017 at 4:59pm

Staff from the United States Department of Homeland Security have returned to Manus Island to interview refugees about resettlement in the US.

Refugees in Australia's offshore detention centre on the island have been told that interviews will resume this week.

Immigration authorities at the centre provided a notice to the men telling them only some will be interviewed.

"Don't worry if you do not receive an appointment slip," the notice said.

"Further visits are anticipated in the coming months.

"All cases are different and will move through the resettlement process at different speeds."

There are almost 700 refugees on the island who are eligible for resettlement in the US, but the US Government still has not said if any of them will eventually be taken there.

Refugees inside the centre said a total of 70 men have been interviewed by Department of Homeland Security staff in their previous visits.

The Australian and Papua New Guinea governments say the centre will be closed at the end of October, and the refugees can settle in Papua New Guinea if they are not accepted by the United States.

Immigration authorities are urging refugees inside the centre to move to a so-called "transit centre" near the main town on the island, but the refugees are refusing because they believe the other centre is not safe.

On August 7, an Iranian refugee living at the centre was found dead in nearby bushland, next to a primary school.

Police believe he took his own life but many refugees are sceptical.

There have also been several serious attacks on refugees in the town area in recent weeks.

<http://www.abc.net.au/news/2017-08-14/us-homeland-security-staff-return-to-manus-island-for-interviews/8805656>

14. Australia's asylum seeker deal with Papua New Guinea is valid, High Court rules

Canberra Times / AAP

August 17 2017 - 2:59PM

Michael Koziol

The High Court has again upheld the legality of Australia's asylum seeker deal with Papua New Guinea, ruling it does not breach the Migration Act or the constitution.

The court was asked to reconsider the arrangement struck by former prime minister Kevin Rudd, in light of a court ruling in PNG last year that found Australia's detention of asylum seekers on the island breached that country's constitution.

An Iranian asylum seeker, whose bid for refugee protection was rejected, claimed the PNG ruling invalidated the deal because the constitution prevented the Australian government from undertaking business with another country that was unlawful in that country.

In dismissing the claim, the High Court declared that to be a "novel and sweeping proposition", and one that had no basis in law.

In a unanimous ruling, the full bench found there was no constitutional requirement for the Commonwealth to conform to international law or the law of another country.

The court also dismissed the claim that the regional resettlement arrangement could not be seen as a valid "arrangement" because PNG lacked the lawful capacity to enter it. Neither of the plaintiff's claims were tenable, the court ruled, and the plaintiff was ordered to pay costs.

It is not the first time the High Court has examined the legality of Australia's offshore detention of asylum seekers – it was also considered in 2015 and upheld as lawful.

Maria O'Sullivan, deputy director of the Castan Centre for Human Rights Law at Monash University, said she was "totally unsurprised" by the High Court's latest ruling.

"Trying to argue that the judgment of the PNG Supreme Court ... affects the Australian constitution and how we justify things under the Australian Migration Act is a long stretch," she told Fairfax Media.

"Having said that, there is such an interaction between what Australia does and what's happening in PNG. I'm just not sure whether constitutional arguments are the way to go."

Despite the ruling, Australia's detention centre on Manus Island is scheduled to close by October 31, following the Supreme Court ruling in PNG last year.

Tensions on Manus Island have been building in recent weeks as parts of the regional processing centre are shut down ahead of an October 31 closure deadline.

Asylum seekers have been encouraged to move to the transit centre in Lorengau, but many have elected to remain in compounds where electricity and water supplies are being cut off.

The Turnbull government has confirmed a deal to resettle refugees in the United States, despite the reluctance of President Donald Trump, but as yet no refugees have been accepted by the US.

It is not clear what will happen to refugees who are not accepted by the US, or asylum seekers who have no valid protection claim but who cannot be forced back to their home countries.

In June, the government agreed to compensate about 1900 current and former asylum seekers on Manus Island to the tune of \$70 million to settle a class action alleging mistreatment.

The Iranian man who brought the case has failed to be recognised as a refugee under PNG law and remains in custody awaiting deportation.

Fairfax Media contacted Immigration Minister Peter Dutton for comment on Thursday's High Court ruling.

Separately on Thursday, the government suffered a loss in the Federal Court, which upheld an injunction preventing a ban on mobile phones in immigration detention. The court found it did have the jurisdiction to decide the matter, and will hear the government's full appeal at a later date.

Solicitor George Newhouse said the bid to remove mobile phones was "part of the process of criminalising asylum seekers".

"Mobile phones are a life line to the outside world that enables them to maintain their sanity and communicate with their families, their loved ones, the community and their legal representatives," he said.

<http://www.canberratimes.com.au/federal-politics/political-news/australias-asylum-seeker-deal-with-papua-new-guinea-is-valid-high-court-rules-20170817-gxy6oe.html>

15. MEDIA RELEASE: "Hold the phone..." Court ruling a victory for refugees and justice!

FOR IMMEDIATE RELEASE

Sydney, 17 August 2017
National Justice Project
George Newhouse
Principal Solicitor

Mobile 0422 255 109
Email georgen@justice.org.au

The Full Court of the Federal Court in Sydney this morning came down on the side of justice and threw another barrier in the path of Peter Dutton's plan to take mobile phones off every person in immigration detention.

In February this year the National Justice Project won an injunction to prevent the Dutton, Minister for Immigration, from implementing a blanket policy of removing all mobile phones.

The government has been appealing the right of the court to hear the matter and appealed to the Full Court of the Federal Court. That Court today handed down its judgement that the Court did have jurisdiction. The result is that the injunction still stands and that the Minister is prevented from seizing the phones. The Government's case was thrown out.

George Newhouse, Principal Solicitor at the National Justice Project and Adjunct Professor of Law at Macquarie University, today said, "The blanket removal of phones is part of the process of criminalising asylum seekers and this government ongoing policy of punishment and cruelty towards them. Peter Dutton claims that the use of mobile phones is linked to criminal behaviour but asylum seekers are not criminals. Mobile phones are a life line to the outside world that enables them to maintain their sanity and communicate with their families, their loved ones, the community and their legal representatives."

"If the Commonwealth Government are concerned about the criminal actions of convicted criminals who are in the process of being deported then they should separate them from those who need to retain their phones and who have done nothing more than come to Australia to seek asylum."

"Any suggestion that land lines in the detention centres are adequate is a joke. It is virtually impossible for people to call into Villawood, for example."

ABOUT THE NATIONAL JUSTICE PROJECT

The National Justice Project is a not for profit legal service. We combine strategic legal action with effective advocacy to advance human rights and social justice in Australia and in the Pacific Region.

For further information please visit our website -- www.justice.org.au

16. Peter Dutton loses appeal over detention phones

Canberra Times / AAP
August 17 2017 - 12:10PM

The federal government has lost an appeal over a court ruling that determined guards don't have the right to confiscate the mobile phones of people being held in immigration detention.

Immigration Minister Peter Dutton appealed against a Federal Court decision that in February put the brakes on a policy that would have prevented a detained person possessing a mobile phone.

The question of whether the case should have been heard in the Federal Court or the Federal Circuit Court was argued before three judges in Sydney in June.

But they ruled on Thursday the original injunction should stand.

"The court has jurisdiction under the Judiciary Act to review a decision purportedly made in exercise of s 252 of the Migration Act and therefore to hear and determine the originating application filed in this matter," Justice Susan Kenny wrote.

National Justice Project lawyer George Newhouse on Thursday said "the blanket removal of phones is part of the process of criminalising asylum seekers and this government's ongoing policy of punishment and cruelty towards them".

<http://www.canberratimes.com.au/federal-politics/political-news/peter-dutton-loses-appeal-over-detention-phones-20170817-gxy6t0.html>

17. Peter Dutton abandons detention centre secrecy rules amid High Court challenge

Sydney Morning Herald
August 13 2017 - 11:00PM
Adam Gartrell

The Turnbull government has quietly abandoned strict secrecy provisions governing Australia's immigration detention system, in a major victory for refugee advocates who challenged the laws in the High Court.

Immigration Minister Peter Dutton has put forward amendments to the 2015 Australian Border Force Act that will effectively strip out rules that threatened detention centre workers – including teachers, lawyers and social workers – with two years in prison if they spoke out about neglect or abuse.

The government has long argued the Act did not prevent people disclosing information that was in the public interest, and Mr Dutton says his amendments merely aim to "clarify" the reach of the controversial provisions.

But Barri Phatarford from Doctors for Refugees – which helped bring a High Court challenge against the laws that originally also covered doctors and nurses – said the government had completely capitulated.

"Short of repealing the law completely this in practicality waters it down so much that it's virtually non-existent," Dr Phatarford told Fairfax Media.

"Mr Dutton has had two years to clarify this draconian law but he hasn't. He's clarifying it now because the government is in the middle of a High Court challenge which frankly they know they cannot win."

Doctors for Refugees and the Fitzroy Legal Centre brought the constitutional challenge against the laws last year on the grounds they breached doctor's implied constitutional freedom of political communication.

The government subsequently exempted health professionals from the laws but the groups refused to drop the case, arguing doctors could not properly treat detainees if non-health professionals – such as teachers, cleaners and cooks – could not report or share information without fear of prosecution.

The provisions will now only apply to information that could compromise Australia's security, defence or international relations, interfere with the investigation of offences, or go to sensitive personal and commercial matters.

Mr Dutton says the amendments aim to clarify the laws so that they "reflect the original policy intent" – to prevent the unauthorised disclosure of information that could cause harm to the national or public interest.

Sensitive information will remain closely protected but "without unnecessarily restricting informed public debate", Mr Dutton said.

"There must be a balance between the competing interests of transparent, open and accountable government with the necessity of protecting certain information from disclosure which would lead to identifiable harm," he said.

Mr Dutton said the original provisions were adapted from the model in place for the former Australian Customs and Border Protection Service but "this model has not kept pace with the developments in the modern border environment".

Once passed through Parliament the changes will be applied retrospectively, meaning people who made disclosures over the past two years that could have been considered an offence under the original rules cannot be prosecuted.

Managing solicitor at the Fitzroy Legal Service, Meghan Fitzgerald, called it "an astounding turnaround" and a clear attempt to avoid the scrutiny that would have come if the case proceeded in the High Court.

"In the time these laws have been in place, workers in immigration detention centres, including doctors, nurses, teachers, counsellors, security guards, lawyers and registered migration agents have lived in fear of speaking out about the shocking conditions refugees and asylum seekers are suffering," she said.

In the past, Mr Dutton has said that describing the provisions as a gag was "factually incorrect and highly misleading". The laws did "not restrict anyone's ability to raise genuine concerns about conditions in detention should they wish to do so through appropriate channels," he said.

<http://www.smh.com.au/federal-politics/political-news/peter-dutton-abandons-detention-centre-secrecy-rules-amid-high-court-challenge-20170812-gxv128.html>

18. Manus Island detention centre demolition must stop – detainees' lawyers

PNG supreme court told work to dismantle centre breaches constitutional rights of refugees and asylum seekers

The Guardian
Helen Davidson
Monday 14 August 2017 16.51 AEST

The demolition of the Manus Island detention centre must stop immediately, lawyers for the detainees have told Papua New Guinea's supreme court.

Work to dismantle the centre, including the shutdown of power and water, breached the constitutional rights of refugees and asylum seekers, the court heard.

Ben Lomai, a PNG lawyer running a compensation case on behalf of detainees, told Guardian Australia they should be allowed to live in the centre freely, and that he had requested a halt on all work until 31 October.

“I told the court my clients are being traumatised with the current actions by the PNG and Australian governments trying to close the centre by the 31st of October,” he said.

“They also disrupt the power supply and the water ... and it has now forced them to reside in conditions which are inhumane.

“I asked that they should be able to give us the undertaking that they will not dismantle the centre.”

Lomai did not make a formal application for an injunction during the hearing – which was called to seek an adjournment on the compensation case – but asked the immigration department to halt the dismantling.

A lawyer for the immigration department, Robert Bradshaw, told Guardian Australia he had put the request to his client for consideration and was awaiting instruction.

Last month authorities began closing down the centre with refugees and asylum seekers still inside. They were told blocks would be systematically shut and all amenities removed, and that people could move to another section or take up residence in the East Lorengau transit facility.

Detainees were threatened with arrest and informed any non-compliance could jeopardise their chances with US authorities under a deal for the country to resettle up to 1,200 people. Those with negative refugee determinations were told to return home.

Escalating protests against the closures have been met with increased security at the centre, as detainees say they will refuse to move into the Lorengau transit centre and community, citing safety fears after a number of violent attacks on refugees. Tensions have continued to rise over a number of issues, including alleged assaults on locals by detainees.

The Australian and PNG governments have said the centre will be closed in line with the supreme court’s ruling that the detention of refugees and asylum seekers was unconstitutional.

But Lomai said that ruling never declared the centre must be entirely shut down, and said Justice Higgins made similar remarks in court on Monday: that the ruling called only for the detainees to be allowed to live freely.

Moves to “open” the centre were inadequate, he suggested.

“They still treat them like prisoners, they still have to sign in and sign out,” he said. “Strictly speaking their constitutional rights continue to be breached.”

Greg Barns, spokesman for the Australian Lawyers Alliance, said the human rights of asylum seekers were more strongly protected by the PNG constitution than by the Australian one, and that the supreme court ruling called for the centre not to be used like a jail.

“Despite the fact the Australian government would have us believe it complied with the court’s orders to open up the centre, the reality is that in practical terms, no asylum seeker is safe outside of that compound because the Australian government has refused to allow any of these men to come to Australia or to go to New Zealand and has refused to provide protection for them within PNG.”

The compensation case has been adjourned until the end of the month. Lomai said he had been waiting to see the final outcome of the class action in Melbourne which resulted in the Australian government agreeing to pay \$70m in compensation to 1,905 men it held there for their illegal detention, and for physical and psychological harm caused by the illegal detention.

Last month a letter signed by some of the 806 men on Manus Island gave Australian officials the same 159-day “countdown” as the centre’s closure to “find a safe country for us and send us out of this country directly from this detention prison, or we are not moving anywhere”.

“You have the army, the police and all of the necessary manpower and equipment. Bring them here and we will line up so you can shoot us to end our misery if you want to force us out.”

<https://www.theguardian.com/australia-news/2017/aug/14/manus-island-detention-centre-demolition-must-stop-detainees-lawyers>

19. PNG tells Australia it can't leave Manus Island asylum seekers behind – report

PNG's attorney general reportedly tells high commissioner Australia can't close camp and leave 'international fugitives' behind

The Guardian
Joshua Robertson
Friday 25 August 2017 20.10 AEST

The new Papua New Guinea government is reportedly refusing to allow Australia to close the Manus Island detention centre, leaving behind hundreds of asylum seekers, by its vaunted deadline in October.

The newly sworn-in attorney general, Davis Steven, has told Australia's high commissioner that his government had not agreed to a 31 October closure, as flagged by Australia before the PNG election, the ABC reports.

Steven said the Australian government had not explained its deadline or what lay ahead for men in the centre, whose prospects of resettlement in the United States under a deal with Australia remain unclear.

PNG was "not going to allow a situation where Australia has withdrawn and leaves behind all these international fugitives who they expect us to carry on our steam", Steven said. "It's not going to happen," he said.

The detention centre's ultimate closure was guaranteed when the PNG supreme court ruled the men inside had been illegally detained.

But Steven said Australia and PNG "really need to come up with a clear understanding on the transition and how we manage the aftermath of the withdrawal".

He also said as the "chief legal adviser to government, I have not sighted a formal document that confirms that date has been mutually agreed".

Australia, which runs the facility – one of two overseas it uses to detain asylum seekers who have tried to reach Australia by boat – had been asked to halt moves to shut it down until the PNG government's next national executive council meeting, Steven said.

About 700 of the men inside have been found to be refugees but it is unclear whether they will be able to resettle in the United States in a "swap" deal with Australia.

The US president, Donald Trump, has promised "extreme vetting" of the asylum seekers detained by Australia.

In a highly publicised phone call with the Australian prime minister, Malcolm Turnbull, Trump was urged to stick to the deal by assessing the asylum seekers but with no obligation to accept them, according to a leaked transcript.

<https://www.theguardian.com/australia-news/2017/aug/25/png-tells-australia-it-cant-leave-manus-asylum-seekers-behind-report>

20. PNG tells Australia it can't shut Manus Island detention centre and leave asylum seekers behind

ABC News Online
By PNG correspondent Eric Tlozek
Friday August 25, 2017

Papua New Guinea's new Government has told Australia it can't shut down the Manus Island detention centre and leave asylum seekers in PNG at the end of October.

Australia is trying to close the centre by October 31, something it said before PNG's recent national elections.

But PNG's newly-appointed Attorney-General Davis Steven summoned Australia's High Commissioner and told him the date had not been agreed with the PNG Government.

"I am the chief legal advisor to Government, I have not sighted a formal document that confirms that date has been mutually agreed," he said.

Mr Steven said Australia would not be allowed to simply close the detention centre and leave.

"The PNG Government is not going to allow a situation where Australia has withdrawn and leaves behind all these international fugitives who they expect us to carry on our steam," he said.

"It's not going to happen."

Mr Steven said the Australian Government has been asked to wait until the matter is discussed at the next meeting of the country's National Executive Council, its equivalent of Cabinet, before taking further action to close the centre.

Both the Australian and PNG governments have said the centre must be closed, after PNG Supreme Court ruled the asylum-seekers inside were being illegally detained.

But Mr Steven said the Australian Government had not explained why it had set the deadline of October 31 and was not saying what would happen to the men inside.

About 700 of them have been found to be refugees and are eligible for resettlement in the United States, depending on whether they make it through an "extreme vetting" process conducted by the US Government.

The men were sent to PNG under a Refugee Resettlement Agreement negotiated under then-prime minister Kevin Rudd in 2013.

Mr Steven said the agreement needed to be formally reviewed before any changes could be made.

He urged Australia to discuss the matter further with the PNG Government.

"I think we really need to come up with a clear understanding on the transition and how we manage the aftermath of the withdrawal," he said.

<http://www.abc.net.au/news/2017-08-25/png-says-australia-cant-shut-down-manus-island-detention-centre/8844082>

21. Manus Island: Family wants refugee death investigated in Australia, not PNG, says lawyer

ABC News Online

By Papua New Guinea correspondent Eric Tlozek

Wednesday 16 August 2017

The lawyer for the family of an Iranian refugee who died on Manus Island has said the Australian Government could avoid responsibility for his death because it is being investigated in Papua New Guinea.

The body of Hamed Shamshiripour was found near refugee accommodation on Manus Island last week.

Police on the island are still waiting for a report from a post-mortem examination in Port Moresby to determine the cause of his death, but suspect it was suicide.

Australian authorities had been told his mental health was getting worse and that he was at serious risk of harm.

Lawyer George Newhouse said the 31-year-old's family wanted the investigation to be in Australia, not Papua New Guinea.

"They fear that the Australian Government will hide behind a foreign jurisdiction and deny the court in PNG the opportunity to cross-examine Australian bureaucrats or even political figures and produce documents," he said.

Australian officials or agencies have investigated other deaths that occurred on Manus Island or were the result of actions there, such as the murder of Reza Barati and the death of Hamid Khazaei.

"Why can't the Australian Government call an inquiry, just as they did in Reza Barati's case?" Mr Newhouse said.

"They don't want to do it in this case because there is a paper trail and it leads quite high up to senior levels in Government."

Australia's Department of Immigration and Border Protection refused to say whether it would be providing documents from its agencies, such as Comcare, to any Papua New Guinean investigation.

"As you correctly assert, the Papua New Guinean authorities are investigating this matter," it said in a statement.

"It would not be appropriate for us to provide comment and your questions should be directed to them."

<http://www.abc.net.au/news/2017-08-16/manus-island-death-investigation-in-png-not-australia/8813816>

22. Sick Iraqi man deported from Australia may not survive long – lawyer

Effort to keep in Australia 58-year-old Saeed, who is sick, illiterate and from a persecuted minority, failed on Sunday

The Guardian
Christopher Knaus
Monday 14 August 2017 11.40 AEST

The lawyer for an illiterate and sick Iraqi man deported from Australia overnight says he may not survive more than a couple of years.

A last-ditch effort to keep the 58-year-old man, known as Saeed, in Australia failed on Sunday night.

Saeed, a member of a persecuted minority, fled Iraq with his brother and arrived in Australia 2012. The brother was granted asylum but Saeed was not, prompting a series of protests.

Saeed's lawyer, Alison Battisson from Human Rights for All, was given no notice before his deportation on Sunday night. Battisson said Saeed is weak, weighing less than 50kg, has no money and is illiterate. He is not from a major city and will have little support upon arrival in Iraq.

Battisson said his prospects were bleak.

"[They are] very, very low. He's not sophisticated, he's from a minority group, he's poor. He's always been very poor," she told Guardian Australia.

"If he's alive in a couple of years, I'd be very surprised."

Saeed had been in detention for four years. A number of arrests were made when activists disrupted an attempt to deport him from Melbourne in March.

Saeed was instead taken to Villawood in Sydney, and went on hunger strike. He has been on hunger strike periodically since the move.

"It's his health which is the main concern, and the treatment that he needs, I just can't imagine will be easily accessible in Iraq," Battisson said. "He's not from the capital, he's not from a major city."

Battisson said she had been preparing one final appeal, directly to the immigration minister, Peter Dutton, to grant Saeed a visa on compassionate grounds. The late-night deportation rendered that appeal useless, she said.

She said immigration authorities appeared to have arranged Saeed's deportation to avoid similar scenes to those in March.

A protester, upon learning of the deportation on Sunday, bought a plane ticket so he could get through immigration and hand leaflets to other passengers on Saeed's flight, she said.

The protester was not able to buy a ticket on Saeed's flight, she said, but encouraged other passengers to delay the trip.

Saeed's application for asylum was rejected on administrative grounds, according to Battisson, who blamed poor legal representation.

She said a recent administrative appeals tribunal judgment had found another man, from the same minority and region as Saeed, had been granted asylum over fears of persecution.

"The process has failed him," she said.

<https://www.theguardian.com/australia-news/2017/aug/14/sick-iraqi-man-deported-from-australia-may-not-survive-long-lawyer>

23. Australian Border Force, Immigration Department face setback in legal battle with CPSU

Canberra Times
August 24 2017 - 9:23PM
Noel Towell

Australian Border Force and the Immigration Department have had a serious setback in a high-stakes legal battle with against their main workplace union, with the Fair Work Commission throwing out much of the department's case.

The result is a spectacular "own goal" that the DIBP's brought upon itself by trying some tough legal tactics, according to the Community and Public Sector Union.

But the department accuses its adversary of a legal ambush that will hurt its workforce by dragging out the proceedings even longer, with hearings set for August and September now pushed back to November and December.

The Department of Immigration and Border Protection's 13,500 public servants are expected to form the backbone of the Coalition's new Home Affairs department but have not had a payrise since 2013.

The majority of DIBP workers have repeatedly rejected offers made under the hardline bargaining policies ushered in by the Abbott government, resulting in three years of bitter industrial stalemate.

The two sides have been locked, since early 2016, in Fair Work Commission arbitration aimed at ending the deadlock.

Lawyers for Immigration made an aggressive move in June to strike out some of evidence in the CPSU's case, arguing the material was covered by Parliamentary privilege.

But the union's legal team responded in kind and the commission agreed, in a decision handed down on August 11, that the same rules should apply to Immigration's case.

The ruling knocked out vast swathes of material taken from budget papers and other government publications.

The CPSU says the department's case has been all but wiped-out by the ruling and that DIBP's legal team faces a substantial rebuilding job.

The union says the department's "legal manoeuvrings" are to blame and CPSU National Secretary Nadine Flood said Immigration's lawyers' "bright idea" of raising Parliamentary privilege has backfired.

"It's an own goal for the Commonwealth," Ms Flood told Fairfax

"The Commonwealth's move has come back to bite them,"

"They just lost the majority of their evidence."

"They should have foreseen that the same test could be applied to their evidence.

"Apparently they didn't.

"But the real issue here is not the legal games played by the Commonwealth's team of barristers but the government's unwillingness to provide a fair fix for DIBP workers who have now gone four years without a pay rise."

A departmental spokesman provided a different version of events to Fairfax, saying the CPSU objected to the DIBP evidence "only days before hearings were scheduled to commence and nearly four months after the department filed it."

"The [commission's] decision means that evidence filed by both the CPSU and the department will need to be reviewed and in some cases, alternative evidence filed," the spokesman said.

"This is the third change to the FWC timetable arising from the timing of CPSU contributions to the arbitration process, including two previous extensions granted to the CPSU to file evidence.

"As a result, the opportunity for arbitration hearings to even commence within the original FWC schedule has been eliminated.

"This further delay is incredibly frustrating for the Department and its staff."

<http://www.canberratimes.com.au/national/public-service/australian-border-force-immigration-department-face-setback-in-legal-battle-with-cpsu-20170823-gy2wqz.html>