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A system of penal abuse: Australia's  
immigration detention experience

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# A system of penal abuse: Australia's immigration detention experience

Michael Grewcock

## **Abstract**

The Australian government has recently announced changes to its policy of mandatory detention for all unauthorised non-citizens. This paper provides a criminological analysis of that policy by providing an overview of the development of the immigration detention complex; the culture of containment that developed as a result of the policy; and the systemic criminalisation and abuse of detainees within the detention system. The article highlights the similarities between the prison and immigration detention systems and argues that immigration detention ought to be an ongoing focus for criminology.

**‘A system of penal abuse: Australia’s immigration detention experience’**

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**Introduction**

On 29 July 2008, Australia’s immigration minister announced that the Australian government would end its practice of indefinitely detaining all unauthorised non-citizens (Evans 2008). In place of a presumption of detention, unauthorised non-citizens will remain in the community pending a decision on their migration status unless the immigration department assesses they pose a risk to the community.

Mandatory detention will remain for all unauthorised arrivals for the purposes of health, identity and security checks; and also for facilitating removal.

These changes represent a significant shift in the tone of government policy and the new arrangements will undoubtedly lead to a reduction in the numbers of long-term detainees.

However, there is no new legislative framework. Instead, the minister announced the policy would operate according to seven values that reflect a ‘risk-based approach to the management of immigration clients’. And while these values explicitly ban the detention of children in immigration detention centres, the first value confirmed that ‘mandatory detention is an essential component of strong border control’.

Much has been written about the mandatory detention policy. From a criminological perspective, the significant issues include the abusive impact of detention on those detained and the role detention plays in entrenching the deviance of illicit migrants.

Mandatory detention is also significant as a measure of state deviance, which criminologists are increasingly defining in terms of organised human rights abuses. An important issue within the criminological literature on state crime is the extent to which it can be understood as an aberration as opposed to something more rooted in routine institutional practices and ideological traditions. In relation to Australia's border policing practices, I argue that state crime derives from the Australian state's capacity to alienate, criminalise and abuse unauthorised migrants and that mandatory detention has been central to these processes.

I therefore want to review the experience of mandatory detention within this framework before returning to consider the new regime and the implications it might have for criminology/penology.

### **The mandatory detention policy**

The mandatory detention policy was introduced in 1992, although it essentially formalised existing practice since 1989. Primarily, the policy targeted unauthorised refugees arriving by boat but it also applied to anyone deemed to be an unauthorised non-citizen.

This policy has been central to the Australian state's systemic exclusion of forced and illicit migrants (Grewcock 2007).

It reinforced the deviance attributed to unauthorised migrants through the state's persistent association of unlawful entry with illegality; the use by unauthorised migrants of people smugglers; the association of people smuggling with transnational organised crime; and the construction of refugees, especially those from Muslim backgrounds, as threatening outsiders.

It further criminalised refugees through their incarceration in prison-like institutions, where the daily imperatives of control and management systematically undermined detainees' decision making capacity; their ability to engage with the wider polity; and their access to proper legal advice, care and protection.

It also invoked systems of punishment. Although detention formally does not exist for that purpose, by definition, a system designed to deter unauthorised entry invests in unauthorised migrants a capacity to make free, calculated choices. According to this logic, those who choose to risk being detained are receiving their just deserts.

Detention also exacted a heavy toll on the physical and well-being of many detainees, often exacerbated by existing vulnerabilities arising from age, histories of torture and abuse, and the stress associated with the indeterminate nature of detention. The serious acts of self-harm, hunger strikes and other forms of protest which detainees have used also illustrate the perverse forms of self-punishment generated by prolonged incarceration.

The notion that unauthorised migrants are so deviant they need to be locked up has driven an elaborate bureaucratic process that blurs the lines of responsibility for indefensible state behaviour such as the unlawful detention of Cornelia Rau and the

psychological damage inflicted upon 7 year-old Shayan Badraie. The government's attempts to explain these episodes as mistakes typified the techniques of neutralisation and denial it deployed in response to critiques of the detention regime. These included straight out denial of allegations, denigration of critics, attributing abusive state acts to lapses in management practice, isolating such lapses to the activities of particular individuals or groups of individuals, and where possible, refusing to accept overall political responsibility.

### **The immigration detention complex**

The current network of immigration detention centres grew out of the mandatory detention policy. Initially, most of those detained under the policy were held in remote locations near Port Hedland and Derby in north Western Australia and Woomera in South Australia. These hastily commissioned centres, surrounded by razor wire, were little more than desert prison camps. They have since closed but have been replaced by a network of purpose built or upgraded centres in Darwin, Perth, Adelaide, Melbourne, Sydney and Brisbane; and a new purpose-built detention centre on Christmas Island.

Construction of the current estate began in the late 1990s when the immigration department was confronted by an increasingly restive, self-harming and often long-term detainee population. The drive to physically control detainees produced new centres modelled on high security prisons. This is typified by the new Christmas Centre, a Guantanamo Bay type institution, where electric fences and microwave probes detect movement; there are camera systems posted under eaves, on roofs and in every room; and the whole camp is linked by CCTV to a remote control room in

Canberra. Detainees must wear electronic identification tags which identify them wherever they are in the centre by locator beacons. There are cameras and microphones in every room, wall mounted behind heavy metal grilles. The doors to the rooms are electric and centrally controlled, requiring detainees to use 'request to exit' buttons. Cars accessing the centre must go through airlock systems and electric doors. Between the multi-layered fence systems there are checkpoints for human guards on patrol and outdoor security cubicles for them to sit, sited at short intervals all around the perimeter of the centre. Each of these security cubicles is wired with duress buttons and microwave probes (Black 2007).

The Christmas Island centre was commissioned by the previous federal government but despite the changes subsequently made to the detention policy, the current government seems intent on retaining it as part of its border policing strategy. Future boat arrivals will be detained at Christmas Island, which will continue to be excised from Australia's migration zone.

Maintaining such large-scale, purpose built immigration detention facilities indicates the government's ongoing adherence to detention as a deterrence mechanism and as a means of physically excluding unauthorised refugees. Moreover, the decision to detain will remain an administrative one, albeit one that must be justified on the basis of risk. But if Christmas Island remains excised, there appears no legal reason why temporary visas will be issued.

The experience of the detention policy also strongly suggests that acceptance of detention as a routine state activity enabled a culture of containment to develop within the immigration department. In the wake of the Cornelia Rau case, a number of

changes were made to the internal procedures within the immigration department but these did not challenge the presumptions of indefinite detention. The new policy indicates that a more rigorous review system will be put in place. The question remains: will it overcome the bureaucratic cultures and fundamentally abusive aspects of detention highlighted by the Rau case?

### **The culture of containment**

The 'discovery' of Australian resident Cornelia Rau in a South Australian detention centre in February 2005 triggered a series of formal investigations into immigration department 'mistakes' that had resulted in the unlawful detention of 247 people during the years 1993 to 2007.

The reports of the various inquiries provided substantial insights into the decision making processes and the culture of containment operating within the department. Because the reports dealt with decisions to detain that clearly were unlawful, the department was forced to acknowledge its errors and in some cases agree to pay compensation, as well as committing itself to amend its procedures.

This process of improvement essentially was designed to refine the detention process, rather than fundamentally alter it. Nevertheless, in highlighting the routine, systemic resort to detention of anyone immediately unable to prove their identity, the reports provided a valuable body of source material on an administrative culture that was generally closed to independent scrutiny.

### *The Cornelia Rau case*

Cornelia Rau was a permanent resident of Australia who was unlawfully detained in March 2004. She spent six months in the Brisbane Women's Correctional Centre

(BWCC) and a further four months at Baxter immigration detention centre before she was correctly identified and released.

Cornelia Rau arrived in Australia with her family from Germany, aged 18 months, in 1967. In about 1996, she began suffering from mental health problems, including psychotic episodes. In March 2004, she disappeared from a Sydney hospital but because this had happened before, she was not reported missing by her family for five months. In late March, she turned up in north Queensland where, having given conflicting accounts of her identity to the police, she was detained at the request of the immigration department and later transferred to the Brisbane Women's Correctional Centre (BWCC).

As a result of her behaviour in prison, Cornelia Rau was transferred to a community hospital for psychiatric assessment. She was returned to prison after six days, after being diagnosed as not suffering from a mental illness. She continued to have difficulty coping at BWCC, where she was placed on four separate occasions in confinement cells used for prisoners who have breached discipline.

On 6 October, Cornelia was sedated, placed in restraints and transferred against her will over 2,000 kilometres to the Baxter detention centre. There, she underwent an erratic series of psychological and psychiatric assessments and eventually diagnosed as schizophrenic. On 3 February she was committed for further assessment under the South Australian *Mental Health Act* but later the same day was identified by her family and released from detention for urgent psychiatric treatment.

During her time at Baxter, Cornelia's behaviour was considered 'disruptive and non-compliant ... and she persisted in the attitude that she had done nothing wrong' (Palmer 2005: 207). She spent only fourteen days in normal 'open' conditions. The rest of her detention was spent in 'behaviour management' units, where she had little privacy; was often under the surveillance of male officers; and restrictions on the regime included limiting time out of her room to four two-hour blocks per day.

The inquiry into the detention of Cornelia Rau (Palmer 2005) triggered inquiries by the Commonwealth Ombudsman into 247 other unlawful detention cases (CO 2006a, 2006b, 2006c, 2007, 2007a, 2007b and 2007c). The common theme of the various inquiries was that the repeated unlawful decisions to detain by individual immigration officers were a product of the internal culture within the immigration department.

In relation to 70 of the cases, the Commonwealth Ombudsman (CO 2007: 20-21) concluded 'that in many of these cases [immigration department] officers did not have an adequate basis on which to form a reasonable suspicion that the person being detained was an unlawful non-citizen'. Such routine resort to detention was principally the product of an organisational culture conditioned by a rigid and exclusionary public policy and the high degree of administrative power conferred on individual immigration officials.

However, despite providing very detailed accounts of the internal culture within the immigration department and associated agencies that gave rise to such acts, the reports fail to draw any systemic link between government policy and the activities of state officials. This creates a conceptual vacuum in which unlawful state acts become the responsibility of errant individuals or unnecessary systems failures.

The culture of containment highlighted by these cases resulted in a significant number of very vulnerable individuals being incarcerated or otherwise physically controlled by the immigration department. The unlawfulness of the department's actions caused a degree of political embarrassment and focused attention on a cohort of detainees who might otherwise have been ignored.

However, perceptions of state deviance arising from such cases should not be shaped by the unlawfulness of the decisions to detain alone. Rather, it is the systemic impact of detention upon those who the state can claim some lawful right to detain that requires us to examine the penal and abusive nature of the immigration detention system.

### **A system of abuse**

Within the official discourses on border protection, the negative impacts of detention on detainees are excused as an unfortunate consequence of a necessary policy. Yet for many, detention meant years of imprisonment. In June 2005, the longest serving detainee was released after seven years in detention. By July 2007, reports tabled by the Commonwealth Ombudsman (2007d) included investigations into four people detained for six years; 12 for five years; 31 for four years; 37 for three years; and 60 for two years or more.

It is clear from the various inquiries into immigration detention and the testimonies of those detained that the indeterminate nature of immigration detention and the prison-like conditions combined to produce a debilitating and disempowering daily routine.

In particular, detainees describe an overwhelming sense of timelessness and

entrapment:

 bepress Legal Repository

Sunsets and sunrises help you ponder what life has in store for you. The present overtakes the past and sadness overtakes the future... Torture from the constant itch of freedom makes the hours tick slower and slower. Isolation from society for a long period, cramped centres and the uncertainty of the detention period result in detainees attempting suicide or acts of self-mutilation. The constant fear of being supervised and mustered makes everyone feel demeaned ('Wasim', quoted Amor and Austin 2003: 35).

Since the moment we arrived in the detention centre, we have forgotten what happiness and laughter means, and scenes of suicides, death and terror make us more depressed. I think the world has forgotten me....

I am talking about a true prison, where thoughts are killed and death is always knocking at the door. The look of the security guards towards a detainee can be exactly compared with the look of a master to a slave, and when a detainee fighting for his self-respect opposes the guard, there is very cruel treatment (Anonymous, quoted Amor and Austin 2003: 38).

The 1998 HREOC report noted that the 'human cost' of detention 'is apparent in the evidence of mental distress such as depression, boredom, sleeplessness, psychotic episodes, self harm and suicide. The high level of physical complaints such as headaches, body numbness, dizziness and stomach and digestive disorders also reflects the degree of mental distress experienced by detainees'. 'In addition', the report continues, 'evidence of violence between detainees, especially within families, as well as between detainees and custodial officers suggests considerable tension created by the regime of control necessary to implement the policy of mandatory detention' (HREOC 1998: 218).

The relationship between detention, mental health disorders and violent and repressive techniques of control was especially highlighted by the inquiry into the unlawful detention of Cornelia Rau (Palmer 2005: 119-158). In addition to the profound lack of proper medical care, the significant issue to arise from Cornelia

Rau's case was the routine use of isolation units for difficult or uncooperative detainees.

Cornelia Rau spent all but two weeks of her detention at Baxter in isolation units designed for ‘behaviour management’. According to the submission lodged on behalf of Ms Rau by her legal team to the Palmer inquiry,

The Management Unit (MU) is a punishing unit. It had conditions that would not be permitted in the prisons in South Australia. The features of the MU are as follows: a mattress on the floor; no window that you can see out of; camera surveillance 24 hours a day that offers no privacy; a shower and toilet area also visible on camera; no shower curtains; no reading material; no writing material; no change of clothes; no personal items; no recreational facilities; locked in the room 20 hours per day; no independent monitoring of the unit; no statutory, contractual or regulatory maximum period – there have been reports of detainees kept for months in these environments; and used for detainees with behavioural problems that could...emanate from a mental illness.

The use of behaviour management techniques against Cornelia Rau reflected both a specific strategy for pacifying her and a general institutional response to those unwilling or unable to comply with a prison regime. In the case of Ms.Rau, this response targeted someone who was already seriously ill when she was forced into the detention system. For many others, the experience of detention either generated mental illness or exacerbated conditions arising from the trauma that many unauthorised migrants had already experienced.

Such reactions to detention were not conditioned by the quality of the facilities.

Psychiatrist Jon Jureidini, one of South Australia’s foremost psychiatrists, who conducted a number of psychiatric assessments at the Woomera and Baxter centres, recalled his first visit to Baxter:

A man I have not met before invites me into his room at Baxter to meet his wife. Baxter was described as an ‘improvement’ on Woomera – en-suites, computers, playing fields. For this man, his wife and three children there were two rooms, each a 3-metre cube, with a bunk bed and just enough space to enter. I have never been in this room before; it is dark and I am disoriented. It

doesn't feel right for a room to be so dark in late morning in the desert. As my eyes adjust, I see the man stooping over the bunk, a woman's face, eyes closed but finally opening at his insistence. She looks around, frightened, and within seconds she is keening, half scream and half moan. It builds and continues unrelentingly. Her husband tries to quiet her, looks to me, appealing, a little challenging...The moaning scream continues...I don't want to compound the harm that has been done to this woman who has not spoken for two years, not walked for two months, who crawls to the toilet, is carried to the shower, screams when anyone but her husband approaches her, keeping even her children away. I leave and she screams on (Jureidini 2007: 150-151).

This single encounter throws light on a world far removed from the bellicose state rhetoric about border policing or the neutralising managerial doublespeak about immigration compliance or contractual obligations to meet immigration detention standards. Like Cornelia Rau, the woman observed by Dr.Jureidini was not an exception produced by administrative failures. In his submission to an Australian Senate inquiry, Dr Jureidini (2005) wrote:

The implementation of immigration detention over the last 5 years has caused severe psychological damage to detainees. I know of no other cohort where such universal mental ill-health has been demonstrated. Parents have been crippled by their experiences to a point that they could not protect their children, and all children have been damaged by having witnessed frightening violence and adult self-harm. Most single men who have been in detention for longer periods of time are grossly damaged. Their characteristic coping methods (eg, working, camaraderie, exercise) collapse after 1 or more years. Gradually protest and self-harm emerge, only to be replaced by withdrawal, with men isolated to their rooms, ruminating unproductively about their misfortune or the future and with grossly disrupted sleep and other bodily functions.

Better mental health services in detention will not help, because the environment is so toxic that meaningful treatment cannot occur. It is not clear to what degree the detainees will recover, but some show significant signs of continued traumatisation a year after release.

Dr. Jureidini's submission was consistent with the views expressed to the Senate committee by the Royal Australian and New Zealand College of Psychiatrists

(RANZCP 2005) and encapsulated the findings of a growing body of research into the impact of detention, which emphasises the systemic link between immigration detention and mental ill health<sup>i</sup>.

The systematic use of confinement techniques within the detention environment also intersected with the widespread resort by detainees to acts of self-harm. The Australian government did little to acknowledge or address the scale of self-harm in immigration detention centres and acts of self-harm by immigration detainees still are not systematically monitored or recorded. However, Chair of Suicide Prevention Australia, psychiatrist Michael Dudley, noted in 2003, 'Men's and women's rates of suicidal behaviours [in immigration detention], while imprecise, are calculated as 41 and 26 times the national average, respectively, and male IDC rates are 1.8 times the male prison rates' (Dudley 2003). Moreover, figures obtained from the department through a freedom of information request in 2005 indicated there were 878 acts or threats of self harm, involving approximately one in 20 people in detention, between July 2002 and June 2005 (Topsfield 2005).

The responsible government ministers consistently argued that such figures misrepresented the extent and gravity of self harm amongst detainees (Topsfield 2005a). In 2001, asked whether he accepted self-harm showed desperation by detainees, the then immigration minister Philip Ruddock declared 'in many parts of the world, people believe that they can get outcomes in this way... [i]n part, it's cultural' (Whitmont 2001).

While not resorting to such unsubstantiated and racist caricatures, Ruddock's successor, Amanda Vanstone, described self-harm as 'a very unattractive type of protest' (Topsfield 2005). But as unpalatable and confronting as it might have been

for the minister, self-harm is a reflection both of the vulnerability of detainees and the limited, if desperate, forms of protest available to them. The stitching of their own lips by detainee hunger strikers, for example, symbolised a lot more than a desire not to be force fed and stands out as one of the most compelling and damning images of the detention process. The dual nature of self harm as both a sign of vulnerability and a desperate form of protest was particularly acute in the case of the children locked up under the mandatory detention policy.

### **Children in detention**

The mass incarceration of thousands of children was arguably the most abusive legacy of the mandatory detention policy, which until 2005 did not discriminate between adults and children. It is clear that many children were seriously damaged as a result of their experiences in detention; and that the treatment they received at the hands of, or as a consequence of the decisions of, the Australian state seriously breached international law and would have constituted serious criminality in any other context. Although many of the adverse effects of detention on children apply to detainees generally, the particular vulnerabilities of children arising from their age and recognised by instruments such as the Convention on the Rights of the Child, made their mandatory detention especially deviant.

The main body of evidence condemning the Australian state's detention practices is contained in the Human Rights and Equal Opportunities Commission report into the detention of children (HREOC 2004). That report considered the detention of 2,184 children during the period 1 July 1999 to 30 June 2003 (HREOC 2004: 9). The ages of this group ranged from children born in detention through to 17. A snapshot of

those detained on 30 June 2001 shows that 144 were aged 0 to 4 years; 210 aged 5 to 11 years; 278 aged 12 to 17 years (HREOC 2004: 73-74).

The incarceration of such young children clearly confronts all social and legal norms. The inquiry found that the detention system was ‘fundamentally inconsistent with the Convention on the Rights of the Child’ and recommended the release with their parents of all children in immigration detention centres and residential housing projects within four weeks.

The federal government immediately rejected these findings and recommendations. On the day the report was published, the immigration minister told journalists: ‘What it says to people smugglers is if you bring children, you’ll be able to be out in the community very quickly, and that is a recipe for people smugglers to in fact put more children on these very dangerous boats and try to bring them to Australia. We think that is a mistake and we won’t be adopting that policy’ (ABC Online 2004).

The minister’s standard juxtaposition of the rights of children and the war on people smugglers was extraordinarily glib given the report’s detailed catalogue of widespread institutionalised child abuse. Had such abuse occurred in any other institutional setting such as a children’s home or school, it would almost certainly have caused a major public and political scandal and may well have led to criminal charges.

This abuse took many forms including referring to children by their number rather than name, verbally abusing them and treating them like adult prisoners. It was experienced in a range of ways from the anxieties produced by indefinite detention in harsh conditions through to serious physical and psychological damage.

Some children were found to be suffering depression and post traumatic stress disorder, either caused or aggravated by ongoing detention.

In addition to the oral testimony of detained children and professionals, primary records confirmed that as result of detention, children exhibited a range of problems including, 'anxiety, distress, bed wetting, suicidal ideation and self-destructive behaviour including attempted and actual self harm' (HREOC 2004: 359). Internal documents disclosed the range of methods considered by 11 Afghan unaccompanied children to implement a suicide pact: 'throwing themselves into razor wire; drinking shampoo or other products they could obtain; slicing skin with razor blades; hanging themselves; banging rocks into their skulls' (HREOC 2004: 408).

A snapshot of self-harm involving children detained at Woomera in January 2002 revealed seven cases of lip-sewing (two children sewed their lips twice); three case of body slashing (one 14 year-old boy who sewed his lips twice also slashed 'Freedom' into his forearm); two cases of ingesting shampoo; one attempted hanging; two unspecified acts of self-harm; and 13 threats of self-harm (HREOC 2004: 408-409). A quoted report on Woomera by the South Australian Department of Human Services in August 2002 noted, 'Since January 2002, a total of 50 reports of self-harm have been raised on 22 children, ranging from 7 to 17 years...60 percent of these reports related to children 12 years or less' (HREOC 2004: 410).

#### *The Shayan Badraie case*

Perhaps the most extreme example of the damage inflicted by detention is the case of Shayan Badraie, an Iranian boy detained at the age of five, who was diagnosed with acute post traumatic stress disorder as result of his experiences in the Woomera and

Villawood detention centres between March 2000 and January 2002 (HREOC 2002 and 2004: 343-348).

His symptoms at Woomera included 'bed wetting; sleep disturbance, including waking at night crying and at times gripping his chest and saying "they are going to kill us"; repeatedly drawing fences with himself and his family portrayed within them; social withdrawal; nail biting; and more aggressive behaviour at school' (HREOC 2004: 344).

Having been diagnosed as suffering from post traumatic stress disorder, Shayan was transferred with his family to Sydney's Villawood detention centre in March 2001 but after witnessing further fights and self-harm incidents became increasingly withdrawn and mute. After three days, Shayan was admitted for the first of eight occasions to Sydney's Westmead hospital, where the Head of the Department of Psychological Medicine noted that 'his symptoms recur if he is returned to the environment that he has found traumatic' (quoted, HREOC 2004: 347). In total, 'Shayan was seen 70 times by the Villawood detention centre medical services and...between March and August 2001, ACM health staff and Westmead Hospital specialists wrote 13 letters setting out the seriousness of Shayan's case and urging the Minister and the Department to remove Shayan from the detention environment in order to prevent further harm' (HREOC 2004: 348).

Eventually, in August 2001, Shayan was transferred into foster care, while his family remained in detention. His mother and sister were released in January 2002 before his entire family were finally recognised as refugees and granted temporary protection visas in August 2002. The Human Rights and Equal Opportunities conducted a separate investigation into Shayan's case in 2002 and recommended that the

immigration department formally apologise and pay compensation to the family (HREOC 2002). The department refused to do this but in a landmark decision in March 2006, the New South Wales Supreme Court ordered that the department pay the family, who by that stage had been granted permanent residence, \$400,000 dollars in damages (AAP 2006).

The shocking facts of the Badraie case and the HREOC report's overwhelming body of evidence about the damaging effects of detention helped ensure that the detention of children remained a focus within parliament for those campaigning to change or overturn the government's mandatory detention policy. In June 2005, in response to pressure from sections of its own back-bench, the federal government announced changes to the *Migration Act* designed to ensure that children should only be detained as a measure of last resort; and that all families with children in detention would be placed under community detention arrangements (Phillips and Lorimer 2005: 10).

The detention of children highlighted the systemically abusive nature of immigration detention. The findings of the Human Rights and Equal Opportunities Commission demonstrated that abuse is fundamentally not the result of bureaucratic errors, aberrant behaviour by staff or administrative processes in need of fine tuning or reform.

But while the systemic impact of detention on children is severe, children should not be viewed as a special case; rather their experiences need to be viewed alongside those of the adults detained with them. The uniformly abusive nature of the detention regime and the shared experiences of detention require a unitary approach.

**So where to from here...**

The experience of mandatory detention revealed how the state exercises its power and authority over detainees in complex, often highly devolved ways that blur the lines between individual and political responsibility. Nevertheless, institutionally, detention centres uniformly have been sites of organised abuse.

This abuse can be measured by egregious breaches of international human rights standards and a range of social norms, especially relating to the care and protection of children. It has also been sustained by organisational cultures, shaped by political policies that reduce interactions between unauthorised migrants, immigration officials and detention centre staff to imperatives of control.

That control is maintained by the physical restrictions detention entails, the necessarily regimented regime, and the ability to 'restore order' through overwhelming force. It is also maintained by the state's control over migration and the refugee determination process and the mechanisms for formal inclusion into civil society.

The main question we are left with is: does the new policy represent a substantial break from this experience?

Potentially, the answer to this is no. The legal and much of the policy infrastructure remains intact, especially the focus on policing smuggling and illicit entry, and where possible enforcing off-shore processing. The real test will be how the government responds to a new cycle of unauthorised arrivals and how the immigration department determines issues of risk. At present, most of those detained are not refugees who can

more easily be marginalised by associations with terrorism, especially if they come from regions such as the Middle East or from Muslim backgrounds. Given the Christmas Island centre is to be retained, it remains to be seen whether an Indian Ocean solution replaces the Pacific Solution.

For criminologists, Australia's border policing strategies ought not be consigned to history. The continued use of administrative detention; the constructions of deviance attached to illicit migration; and Australia's role in legitimising abusive forms of border policing remain important subjects for those of us who argue that human rights should be a central focus of criminology.

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<sup>i</sup> See, for example, Dudley (2003); Silove and Steel (1998); Steel (2002); Steel et al (2004); and Sultan and O'Sullivan (2001).

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