I spoke to Norman recently. I pushed hard for the construction of a new house for his family over six months ago when I was working with him, and was told that the Office of Aboriginal and Torres Straight Islander Affairs had listed this as a priority.

Norman told me that although he had been promised one earlier this year, nothing has yet come and that there is no longer any talk of a new house. He's not disappointed, he just resigns too easily to the reality of the situation - the only thing that an aboriginal man can do. And he says his house is not dissimilar from the way all the other blackfellas live out in this country. At least he's got a paid job.

Whilst every politician is howling hysterically about child sexual abuse, the only fundamental change that Brough has introduced is the incredible disempowerment of aboriginal people.

Aboriginal men have been labeled as pedophiles. Parents have been labeled as neglectful. Land rights have been forcefully removed.

What will extra policing bring except more black men in prison? What will the army be able to achieve in a 12-month stint? It's not even a start in the right direction. You don't empower people by firstly disempowering them.

When I spoke to Norman recently, I asked him how the army had been received when they visited Utopia a few months back. Norman recounted how all the old people listened to the man in the khaki suit, a very similar outfit to the local police, interested in what he was saying about their children's health and welfare. When it came to the point about land requisition however there was outrage.

The true agenda of Mr. Howard's profoundly racist agenda is clear to the people of Utopia. When I spoke to Norman, I was at first taken aback by his casual analysis of what is happening. But they've all seen it before and are powerless to prevent what most see as nothing but a land grab - it's just another chapter in the white mans invasion.

Memories from the Dark Side

By Barbara Rogalla

Barbara Rogalla has been a member of DCI for seven years, since she first publicly condemmed the open-ended and mandatory detention of child refugee applicants. She has recently completed her PhD at RMIT University in Melbourne. Barbara is now seeking to further engage with debating the influence of political process on the law and public policy.

There seems to be a "dark side" to the generous side of protection. It becomes apparent when a government decides that a person does not belong. Then, the element of protection degenerates into a display of vicious persecution.

Just ask Tony Tran, a refugee who was locked up in an immigration detention centre for more than five years even though he had a valid visa and was lawfully in Australia. After Tony was locked up without cause or due process in 1999, the Department of Immigration and Multicultural Affairs (since January 2007 euphemistically called the Department of Immigration and Citizenship) put his son into state care and even changed the child's name to make it easier to send the boy to South Korea. These actions are deliberate and go beyond the "bureaucratic bungling" that served as departmental excuses to explain the detention of Cornelia Rau and the deportation of Vivian Alvarez. Yet the detention of neither these women nor of Tony Tran or the two hundred other people, who were also inappropriately detained under immigration law, is officially deemed "illegal".

This article takes us to the dark side of protection and winds back the calendar to the beginning of the 21st century, to a time of lies and half-truths peddled at the highest level of government: the time of the un-thrown children and the Khaki election in November 2001 when a documented human need of refugees was cleverly framed as a national emergency and a threat to Australia's sovereignty. It was a time of assurances that locking up refugee

children with their parents was the decent and humane thing to do in order to preserve the family unit.

At that time, I was colloquially known as "the Woomera nurse" — admired by some and despised by others because after practicing nursing for three months at the Woomera detention centre in the year 2000, I became an outspoken critic of the policy of the mandatory detention of refugees. My attempts to make sense of events that still stimulate Australia's political debates today led me to focus on the dark side of refugee protection under the Howard government. Eventually, my thoughts became PhD material, with government accountability emerging as a central theme in the thesis. The research identified a unique pattern of legal rationality; legal rationality with a rhetorical and ideological edge. In the thesis, I have called this pattern "legal rationalism", as the research identified a string of practices that differed considerably from what may be expected from an ordinary understanding of legal rationality.

Some DCI members may recall the defining moments of the Howard government's refugee policy between 1999 and 2003 that so badly impacted on refugee children: the arrival of the *Tampa*, mandatory detention in desert outposts and, as a special part to the dark side, the mandatory detention of children. On the surface, it was all about the delivery of a humane refugee policy, about border protection, law and order and legal rationality. Senior members of the Howard government said so on numerous occasions. Something about these policy justifications continued to intrigue me long after I left Woomera. For instance, the Flood Inquiry confirmed my assertions that local management of Australasian Correctional Management, the private contractor at the Woomera site, had suppressed an investigation into allegations of child sexual abuse at that centre.

Yet senior figures behind the formulation and delivery of refugee policy were not held accountable. Riots, occasionally breakouts, were the order of the day between August 2000 until the de-commissioning of the Woomera detention centre in April 2003 and the opening of the high-tech security facility at Baxter 200 kilometres to the south. The government diligently reported these instances to the media and promised that the perpetrators would be charged. There was even a special website with explicit photographs of the property damage sustained during these riots.

To my mind, something was missing from the actions of a government that was concerned with law and order and legal rationality. The diligence seemed one-sided, where the government only displayed a willingness to follow up with equally harsh measures when detained refugee applicants were the culprits. These observations came after my first-hand experience of the reluctance of the government to create a safe environment for children inside the detention centres, and vilification of those who eventually spoke with the media after the government had failed to act appropriately. There was also frequent writing and re-writing of legislation, at times even as the direct consequence of the outcome of some court cases that the government disapproved of, to guard against a similar "finding" in future cases. The law-and-order approach seemed empty rhetoric and the recourse to legal rationality was, at best, one-sided.

The "legal rationalism thesis" addressed this one-sidedness through an analysis of how the Howard government justified its refugee policies from 1999 to 2003. The research identified that the Howard government justified its refugee policies by making recourse to the law, either at symbolic or at concrete level, as the source of authority that justified a course of action. That is, the authoritative claim derived from legal rationality: the rules and procedures of the law and their institutionalisation within the structure of the state. However, the pattern of recourse had a rhetorical edge, with the effect that the actual recourse was not to legal rationality *per se*, but to something else. This "something else", or "legal rationalism" as it was called in the thesis, placed overriding emphasis on the rules and procedures of the law without necessarily having concerns for consistency or continuity. Legal rationalism elevated the rules and procedures to centre-stage in refugee policy, as if these rules and procedures were the reason for conducting these policies in the first place.

It is arguable that children bore the brunt of this fetishism with legal rationality, perhaps in part because they could not be reasonably held responsible for the circumstances of their arrival to Australia. The Howard government's rhetorical justification for the incarceration of child refugee applicants between 1999 and 2003 placed children in a special relationship with the law. Unlike the parents and adults, children were not framed as having broken Australia's laws. Instead, Philip Ruddock blamed the parents.

In a strange version of contorted logic, the government justified the detention of children on its *Women and Children in Immigration Detention* website as follows. Not the actions of the government, but the

action of the parents, resulted in the detention of children. Detention could end at any time, as soon as parents agreed to co-operate with authorities, relinquish their refugee rights and ask to be sent to another country. As a special "humanitarian" gesture, the government offered financial incentives and free airfares. In reality, the choices for many refugee applicants were very limited, with one option being to return to a persecuting country. Those who did not take up the offer, the government argued, were responsible for their own detention and that of their children. The government, according to the argument, merely detained children so they would not be separated from their parents. This is but one of the many examples of the strange mix of rhetorical recourse to legal rationality that justified the policy of the detention of children.

The longer the period of detention, the worse it was for children. The full story of what went on inside the detention camps may never become known, because the Howard government tightly controlled the information behind the tall razor wire fences. Neither the company that managed the detention centres, nor its employees were allowed to speak publicly about these matters without written permission from the Department and Immigration and Multicultural Affairs.

It stands to reason that information that did not match the official government line would leak from "unofficial" channels, or not at all. As Australia's immigration detention centres were filled to bursting point and profits of the private contractor run at a record high, these unofficial channels gave an insight of what life was like for the children to grow up behind razor wire. Regardless of the truth-value of the information, the government sought to discredit each of these "unofficial" sources.

After more than ten years since the enforcement of the policy of mandatory detention, there was no child protection policy that operated uniformly across all detention centres. The government said it worked closely with child experts and relied on their advice, so the children would come to no harm. Yet it implemented a Memorandum of Understanding between Family and Youth Services in South Australia that crippled the investigative powers and advice that child protection experts were authorised to give to government.

In contrast with the powers of child protection experts who are mandated by state legislation, there was no requirement, perhaps not even an expectation that the government acted on such advice. It was a carefully orchestrated political exercise that prevented information from being placed on record. Investigations by the Auditor-General, the Human Rights Commissioner and by the Ombudsman — organisations that have a statutory mandate to contribute to public policy being conducted in accountable manner, were either delayed or their findings ridiculed. When the full picture emerged, the information was generally released long after the political saliency of the issue had subsided.

The incarcerated refugee children who were locked up between 1999 and 2003 have since been released. To a large extent, this came about after the release of the HREOC report *A last Resort?* in 2004, followed by the sterling efforts of former Human Rights Commissioner Sev Ozdowski to embarrass the Howard government to implement the chief recommendation of that report.

On average, a child was locked up for 18 months, with a record time of five years for one child. These days, the dark side has been removed from sight, largely because the detention centres that are financed by the Australian government operate abroad and in secrecy, far away from the jurisdiction of statutory bodies that are mandated to hold governments accountable. The legacy of legal rationalism has removed the initial purpose of the legislation; the purpose to protect those who are vulnerable. This requirement was replaced with a massive enhancement of the powers of the state over the rights of the individual.

Many of the children of Australia's immigration detention centres have grown up to attend Australian schools and now speak with Aussie accents. Some have exercised, for the first time, their citizens' rights to determine the fate of the nation by voting at the 2007 federal election. As they celebrate Australia day with us, will they recall the temperatures of up to 50 degrees centigrade without air conditioning in their crowded living quarters?

Will they remember queuing for food outside the "mess", the khaki-clad guard at the door who scanned people with a metal detector before they could leave the dining room? Or are their sights set on the backyard barbeque, where the dark side is only a distant memory?