

# Mohammed Saleh and Australia's First Coronial Inquest into the Death of an Asylum Seeker



By Elizabeth Lacey, Kimberley Land Council (formerly of Minter Ellison)

**Junior solicitors at Australia's largest firms do not often work on human rights cases. However, last year I was privileged to be instructing solicitor in a pro bono team representing the family of Mohammed Saleh, in Australia's first coronial inquest into the death of an asylum seeker.**

The tragedy of Saleh's story, the manner in which the inquiry was handled by those who owed Saleh (as a detainee under the *Migration Act 1958* (Cth)) a duty of care and the limitations on the Coroner's powers to investigate the death of a detainee, are compelling aspects of this extraordinary case.

## Saleh's story

Saleh fled to Australia from a refugee camp in Syria, where he had allegedly been imprisoned and tortured for six months. He reached Australia in October 2000 and was taken to the Port Hedland Immigration Detention and Reception Facility ("Port Hedland"), where he applied for refugee status. He remained in Port Hedland until 5 April 2001, when he was moved to Hollywood Private Hospital in Perth to be treated for depression. There it became apparent that he had a stomach tumour requiring surgery. The surgery and psychiatric treatment Saleh received were excellent, but a rare complication developed 13 days after the stomach operation and on 23 June 2001, Mohammed Saleh died. He was 41.<sup>1</sup>

## Circumstances of detention

In January 2001 there was a riot at Port Hedland following which 23 men, including

Saleh, appear to have been isolated in 'Juliet Block' for 13 days.<sup>2</sup> Through witness statements and three Federal Members of Parliament, the legal team became aware of the conditions in Juliet Block. Colin Hollis, Roger Price and Brian Harradine, part of the Parliamentary Human Rights Subcommittee, attended Port Hedland to consider detainee conditions. They were horrified by Juliet Block. Cells were tiny, dark and the windows were blacked out, and they stank because detainees were forced to defecate in them when guards failed to answer their requests to go to the toilet.<sup>3</sup>

Saleh shared his cell with two others and the pro bono legal team understands that for the first five days they were locked up 24 hours a

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day. After that they were allowed out for up to an hour a day. Saleh's cellmates stated that he fainted three times in the first five days, but received no medical attention and that although some in Juliet Block were involved in the riots Saleh was not.<sup>4</sup>

## The 'Detention Agreement'

While Saleh was in Juliet Block, the management of Australian detention centres was contracted out by the Department of Immigration and Multicultural and Indigenous Affairs ("DIMIA") to the Australasian Correctional Management ("ACM"). The contract between them states that "prolonged solitary confinements... punishment by placement in a dark cell... sensory deprivation and all cruel, inhuman or degrading punishments are not

used"<sup>5</sup> and that the health care needs of detainees are "regularly monitored".<sup>6</sup> DIMIA was aware from 18 October 2001 that Saleh claimed that he had been imprisoned and tortured in Syria. Surely then, placement in a facility like Juliet Block would have been contrary to his apparent health care needs.

The detention agreement also states that "collective punishment is not used".<sup>7</sup> Yet 23 men<sup>8</sup> – none of whom were ever charged<sup>9</sup> and some of whom were not involved – were placed in isolation after a riot<sup>10</sup> and, in a written statement noted in the Report of the State Coroner, DIMIA's Detention Centre Services Manager, Mr Greg Kelly, stated: "Saleh presented no behavioural management difficulties while in Immigration Detention."<sup>11</sup>

Given what the pro bono legal team understood of the circumstances in Juliet Block, it appeared to us that some breaches of the contract – not to mention human rights – may have occurred. In numerous freedom of information requests made by members of the pro bono legal team and in requests made by the Coroner's court staff in the nine months following Mr Saleh's death, DIMIA were asked to respond to

questions such as why Mr Saleh had been held in Juliet Block? What were the conditions in which he was held? What medical treatment was provided to Mr Saleh while he was in the isolation facility? What did medical records created during his confinement in Juliet Block show? And did his time there appear, on analysis of those records, to relate to his death?

## Freedom of Information ("Fol") requests

Fol requests were commenced by Saleh's friend, Asem Judeh, and progressed by Charandev Singh, the linchpin of our legal team with a wealth of Fol experience. After nine months, we received an undated and unsigned piece of paper that stated that there were no notes on the file "due to a riot at the

centre".<sup>12</sup> Evidence was given at the inquest by DIMIA's Business Manager that documentation relating to incarceration of a detainee in an isolation facility would have been in various places in Port Hedland, and reproduced and sent to Sydney, Canberra and Perth.<sup>13</sup>

## The inquest

For the pro bono legal team, the inquest was enormously frustrating. Key documents were unavailable, essential DIMIA witnesses were unable to be called, and most people detained with Saleh in Juliet Block had been repatriated.<sup>14</sup>

Although Saleh was a *Migration Act* detainee when he died, such detainees do not fall within the definition of a "person held in care" under the *Coroner's Act 1996* (WA). Section 25(3) of that Act compels the Coroner to make comments in relation to the circumstances of a deceased's detention only where the deceased was a "person held in care."

Saleh's detention made the case analogous to those involving a "person held in care." However, under s 25(2) of the *Coroner's Act* the Coroner's power to comment is limited to matters "connected with the death" and does not confer general powers of inquiry or detection (per *Harmsworth v State Coroner* [1989] VR 989; *WRB Transport and Others v Chivell* [1998] SASC S.7002).

DIMIA's position during the inquest was that Saleh's time in Port Hedland was not connected with his death, and accordingly the Coroner's power to inquire into Saleh's death was limited. The Coroner did note that it was "an unsatisfactory situation where detainees claim that the deceased was in Juliet Block and that his period in that block affected his health, while DIMIA cannot now even determine whether he was placed there at all."<sup>15</sup> He noted the visit by the MPs to Port Hedland and said it was "remarkable that DIMIA has not been able to locate a single document relating to the deceased's placement in Juliet Block."<sup>16</sup>

## Conclusions

Those who knew Mohammed Saleh before Juliet Block depict a positive man focused on his family. They say that he emerged from Juliet Block "shattered", deeply clinically depressed, suicidal and unable to function.<sup>17</sup> In light of the terrible change in their loved one after his detention in Australia, the Saleh family's instructions were straightforward: Tell us what happened to our husband and father in Australia, and ensure that it cannot happen again.

The pro bono legal team has failed to comply with those instructions, since, as outlined above, the details required to complete the first requirement are not available, or have not been made available to us by DIMIA. The team's frustration is compounded by the conditions Saleh appears



# In the Witness Box

with Claire Mahon

### What do you do?

Second year lawyer in Corporate at Corrs Chambers Westgarth. I've just returned to Corrs after a 6-month pro bono secondment to Peninsula Community Legal Centre.

### What book are you reading?

Just finished *Anna Karenina*, and now, to relieve the stress of returning to the world of billing and timesheets, I'm finding comfort in my old security blanket - *Winnie-the-Pooh*.

### Who would be your ideal housemate?

I have the ideal situation now - no housemates to get annoyed at my bad habits, but lots of international and interstate friends who visit regularly.

### What is your favourite film?

*Amélie* - c'est un film magnifique and watching it is a good way of pretending I'm doing my French homework!

### What was your least favourite law subject?

Equity and Trusts - I had a timetable clash with an international law subject that I actually enjoyed, so E&T always missed out. But 51% is enough to not have to go back for more.

### And your favourite law subject?

Jessup Moot - a brilliant experience, but also more hard work than I ever did in any other subject.

### Who do you admire in the legal profession?

Lawyers who act on behalf of those who don't have a voice in the legal system, like refugees, and community legal centre and legal aid lawyers who don't get paid nearly enough for the great work they do. But it is relatively easy to be a lawyer in Australia, and my real admiration goes to those in countries where being a lawyer who defends human rights is a dangerous profession.

### If you weren't a lawyer, what would you be doing?

Travelling the world? Writing a book? Working in a refugee camp in Africa? Realistically, I'd probably be a management consultant or something equally as boring as a lawyer, as I presume the rent would still have to be paid somehow!

to have endured, and the fact that every attempt to receive a response from DIMIA as to what had occurred while Saleh was in Juliet Block, at least up to the time of writing, has failed.

The Australian government's policy of mandatory detention is, in part, imposed because asylum seekers arrive on our shores without their papers. As the Coroner found, it is "remarkable" that DIMIA is now without its papers. ●

<sup>1</sup> Report of State Coroner, Alistair Hope, "Record of investigation into death of Mohammed Yousef Saleh, reference no 27/02", (5 October 2002), pp 1-13.

<sup>2</sup> Note 1 above, pp 16-20.

<sup>3</sup> These details are gathered from the Report of the State Coroner at note 1 above, pp 18-19, conversations between the author and Mr Roger Price, and witness statements received by the Coroner's Court during the inquest hearings.

<sup>4</sup> See detainee witness statements contained in the Coroner's Court

Brief and referred to at note 1 above, pp 16-17.

<sup>5</sup> Detention Agreements between the Commonwealth of Australia and Australasian Correctional Services Pty Ltd, dated 27 February 1998, Schedule: Immigration Detention Standards, p 7 at 7.8.9.

<sup>6</sup> Note 5 above, p 10 at 8.3.

<sup>7</sup> Note 5 above, at 7.8.2.

<sup>8</sup> See detainee witness statements in the Coroner's Court Brief at note 1 above, p.18. It is noted that the number varies in different documentation provided by DIMIA and other witnesses per note 1 above, p 18.

<sup>9</sup> As confirmed by the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Phillip Ruddock, in an interview with SBS Insight's Sophie McNeil, SBS Insight program, 7 May 2003.

<sup>10</sup> Note 1 above, p 18.

<sup>11</sup> Note 1 above, p 18.

<sup>12</sup> Undated and unsigned document reproduced in the Coroner's Court Brief and referred to at note 1 above, p 19.

<sup>13</sup> Evidence given by Ms Di Miller at the inquest on 27 August 2003.

<sup>14</sup> Note 1 above.

<sup>15</sup> Note 1 above, pp 26-27.

<sup>16</sup> Note 1 above, p 19.

<sup>17</sup> See medical reports and letters of consultant psychiatrist, Brendan Jansen, and detainee witness statements contained in the Coroner's Court Brief, referred to by the Coroner per note 1 above, p 17.