

Australia: Refugee detained for two years on false intelligence

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It was reported this month that the Australian Security Intelligence Organisation (ASIO) was belatedly forced to pay about \$200,000 compensation to a refugee it falsely classified a national security risk, causing him to be detained without trial for nearly two years. Nearly five years after being finally set free in late 1999, the traumatised Kuwaiti man obtained the payment—hardly sufficient to make up for his wrongful imprisonment—only through the strenuous efforts of lawyers.

The entire saga is another indictment of the police state-style powers that the Howard government has given its security and intelligence agencies, including ASIO. The asylum seeker's ordeal illustrates how these agencies operate in complete secrecy and with total legal impunity. It also highlights the draconian character of Australia's refugee detention regime, which not only automatically locks up all asylum seekers for many months but also hands the government extraordinary powers to selectively incarcerate political refugees on the flimsiest pretexts.

Not surprisingly, the person directly responsible was former immigration minister Philip Ruddock. He denied the man—who now wishes to be identified only as Mohammed—a protection visa on ASIO's advice. Ruddock is currently Attorney-General, in charge of implementing the even greater powers afforded to ASIO and other agencies since 2001 in the name of fighting terrorism.

Mohammed's story finally came to light in the *Melbourne Age* on November 10. He arrived in Australia seeking asylum in early 1997, and was initially found eligible for refugee status by Ruddock's immigration department, subject to an ASIO security check. He had been living in Kuwait when Iraq invaded it in August 1990. In May 1991, he was arrested by the Kuwaiti monarchy's police and later deported to Iraq. Eventually he fled to Australia via Jordan and Syria.

However he remained in Melbourne's Maribyrnong detention centre for two years because ASIO classified him as "directly a risk to Australian national security". He was released and granted a protection visa only after ASIO admitted that its security assessment was based solely on unverified information provided by the secret police who persecuted him. An ASIO internal review found that the country involved "has been assessed as having a poor human rights record".

Anonymous intelligence sources told the *Age* that the information came from the Kuwaiti intelligence, but a report on the case by a Brisbane law firm said the Iraqi secret police of Saddam Hussein's Baathist regime were responsible. Whichever version is true, it is clear that through ASIO, Canberra has maintained intimate working relations with repressive governments that are, or were, regarded as allies.

For two years, ASIO blocked Mohammed's efforts to appeal against its security assessment in Australian tribunals and courts, insisting that to reveal the source and nature of the information to his lawyers would jeopardise its relationship with a foreign intelligence agency.

In August 1998, after four months of hearings and procedural manoeuvres in the Administrative Appeals Tribunal, ASIO appealed to the Federal Court against the tribunal's ruling that part of its security assessment be released to Mohammed. The tribunal directed that two key paragraphs of the assessment be amended or kept confidential in order to keep secret the source of the information. But ASIO objected to anything being released that could indicate the thrust of the allegations.

Mohammed filed a cross-appeal, arguing that he had been denied procedural fairness by not being given access to the evidence and a proper hearing necessary to challenge the security assessment. He also said the tribunal had failed to adequately consider the public interest issues at stake.

When the case got to the Federal Court in December 1998, lawyers for the Director-General of Security told Justice Ross Sundberg that ASIO had received "a written response from the overseas agency refusing to agree to the disclosure of the material". Ruddock, as immigration minister, joined the case on ASIO's side.

In an extraordinary judgment, Sundberg accepted ASIO's contention that the tribunal had no jurisdiction to review a visa decision based on an adverse security assessment by "the competent Australian authorities", that is, ASIO. As long as the immigration minister was "satisfied" that an adverse security assessment existed, the tribunal could not review that assessment.

In effect, the judge ruled that ASIO was above the law—that its security reports could not be questioned by the tribunal that hears appeals against the denial of visas on "bad character" grounds.

Not only that, the judge ordered that Mohammed's application to the tribunal be dismissed as "frivolous or vexatious" and ordered Mohammed to pay the legal costs of ASIO and the minister, which would have amounted to many thousands of dollars.

Sundberg's ruling, while particularly blatant, was in line with the approach consistently taken by the Australian High Court. While denying that ASIO is beyond judicial scrutiny, it has refused to call into question ASIO's assessment of what constitutes a threat to security. In the best known example, in 1982 the court rejected an attempt by the Church of Scientology to challenge ASIO's assessment that the church presented a possible threat to security.

As a last resort, Mohammed's lawyer complained to the Inspector-General of Intelligence and Security, a small agency in the prime minister's department that is meant to scrutinise the operations of

ASIO and the rest of the spy network. By this stage, it seems that the lawyer had become aware of the dubious source of the allegations against Mohammed. If the identity of the foreign police involved—whether Iraqi or Kuwaiti—had become known publicly, it would have proven highly embarrassing for ASIO and Ruddock.

Once Inspector-General Bill Blick decided to launch an investigation, ASIO quickly withdrew its claim that Mohammed was a security risk. An internal ASIO review, later quoted by Blick in his 1999-2000 annual report, discovered “substantive defects in the assessment process”.

According to the internal review, the advice received from the overseas agency had been “internally inconsistent” and ASIO had taken no action to corroborate its allegations. Furthermore, ASIO had no reasonable grounds to disbelieve Mohammed, and had failed to give him any opportunity to refute the allegations.

Blick found that ASIO had breached its guidelines by accepting “the foreign service’s version of events without corroboration or serious question”. As a result, Mohammed had been denied a protection visa for about 18 months after the date on which he would probably have been granted one. Blick therefore recommended that Mohammed be compensated.

Despite these damning reports, listing extremely serious breaches of basic rights, ASIO stalled the compensation until earlier this year. And it is continuing to do everything possible to cover-up its abuses. Mohammed’s case was not mentioned in ASIO’s annual report, released this month. When an *Age* reporter asked for an explanation, a spokeswoman for ASIO Director-General Dennis Richardson replied: “The director-general does not wish to comment on your questions.”

Refugee advocates have made the obvious point that by relying on information supplied by foreign agencies, ASIO can only assist the regimes from which asylum seekers are fleeing. Independent Council for Refugee Advocacy president Marion Le observed: “Many people are fleeing torture and political oppression in their own country. It stands to reason that the governments will then provide information to assist the Australians handing them over if they want them back for any reason.”

Ruddock, however, has defended ASIO. He insisted that its systems were not flawed and claimed that the complaints procedure was functioning as it should. Only one defective security assessment had been identified among “tens of thousands,” he argued. “The reason we have the Inspector-General of Intelligence and Security is to enable people who have complaints to be able to bring them forward and have them investigated,” he said.

It apparently matters little that Mohammed and his lawyers fought unsuccessfully against ASIO and Ruddock himself for two years in the Administrative Appeals Tribunal and the Federal Court. Nor that it took a further five years for Mohammed to be partially compensated for his unlawful incarceration. According to the *Age*, Mohammed has been left severely distressed and concerned for his security.

Moreover, Mohammed’s ordeal is almost certainly the tip of a large iceberg. As Ruddock stated, ASIO conducts thousands of security assessments every year. They cover not only asylum seekers but all migration visa applicants, as well as public service appointees and people seeking various government licences. Acting on ASIO’s advice, the foreign minister can strip citizens of their passports—a power that has been used against a number of Muslim men in the past year.

Selective victimisation of refugees by ASIO and its predecessor agencies has a long history in Australia. In his 1989 book *Sanctuary!*

Nazi Fugitives in Australia, Mark Aarons documented how Australian authorities had allowed between 150 and 200 Nazi collaborators into the country in the late 1940s and 1950s and that a number had occupied influential posts in displaced persons camps and migrant centres. Their work consisted of helping other ex-Nazis to enter Australia, while ensuring that left-wing migrants were deported.

These powers, like every other aspect of ASIO’s activities, have been extended relentlessly over the past three years as part of the “war on terrorism”. Now that ASIO has the right to detain and interrogate anyone without charge or trial, simply because they might have information relevant to terrorism, it can even object to detainee’s lawyers on security grounds.

Far from curtailing ASIO’s powers in the light of Mohammed’s treatment, Ruddock has moved swiftly since the government’s election victory to expand their scope. As soon as parliament resumed this month, he introduced National Security Information Bills that will allow courts, on request from ASIO and the government, to conduct terrorism, espionage, treason and other “national security” trials behind closed doors.

The bills will allow ASIO to deny security clearances to lawyers, excluding them from secret sessions, and possibly forcing accused people to appear unrepresented.

On the same day, Ruddock produced another bill to amend the ASIO Act to widen the agency’s ability to undertake security assessments as part of a new national licensing regime for regulating access to explosive and hazardous materials.

Since its establishment in 1949, ASIO has been used by successive governments, Labor and conservative alike, to monitor, disrupt and harass a wide range of political opponents, including Labor Party members, trade unionists, anti-war activists, students and socialists.1

Under the banner of the “war on terrorism” these operations are being legitimised and deepened. As is often the case, the most vulnerable members of society—such as asylum seekers—have been selected as the initial targets for measures that are designed to be used more broadly against those expressing political dissent. The reprehensible detention of Mohammed, and the contemptuous response of Ruddock and ASIO to its exposure, is another warning of the methods being prepared for future use.



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