

Finding Freedom

by Sr Aileen Crowe

This is a talk I gave during Refugee Week regarding the book I published last year.

The theme of this year's Refugee Week (in June 2023) is important for all of us because we as a nation, won't find freedom until we recognise the need for recognition of the First Nations Peoples in the coming referendum; and, until we reject the cruel and inhumane policies that have affected not only the First Nations Peoples but also the people coming to our land seeking freedom from persecution – seeking the freedom and luxury of living in a reasonably functioning democratic country.

I wrote *Acts of Cruelty* partly because I want Australians to know about our repressive immigration decision making systems and, so that we can connect with all those people in Australian society who want policies that prioritize fairness and justice, according to our International standards. The book tells stories of the survival of a number of people – some families, some single people; and their difficult journey to freedom through an impervious, resistant immigration decision-making system.

Acts of Cruelty is not about the terrible traumas experienced by people seeking freedom who arrive by boat. Nor is it about the horrors experienced in detention camps funded by we taxpayers, where freedom in Australia ashamedly seems inconceivable. But rather the disturbing experiences of people seeking freedom who arrive by plane on legitimate visas who are in need of protection. It documents how successive Australian governments have implemented fluid regressive laws and policies that endeavour to block people fleeing persecution, from sharing our freedoms. It also reveals the techniques I exercise as these people embark on our legal merry-go-round of tribunal and court appeals and requests for ministerial intervention. We are similarly confronted with the techniques departmental officers engage, - in order to make a case for refusing protection.

Some departmental and tribunal decision-makers were devious. Decisions presented incorrect information, withheld information, or ignored information, copied and pasted incorrect information. Decision-makers manipulated the material to allow them to refuse a protection application. In his *Inquiry into the Circumstances of the Immigration Detention of the Australian resident, Cornelia Rau*, Palmer called it 'a culture preoccupied with process and quantitative, rule-driven operational practice'

Acts of Cruelty thrusts us into the intrigues of the Refugee Tribunal (RRT), now the Administrative Appeals Tribunal, (AAT) and demonstrates how appeals are cynically rejected and the decision maker under pressure, regarding their renewal of tenure. After reading a number of Annual Reports I became suspicious of the consistent number of unsuccessful appeals. I consulted the late Bruce Haigh, a former diplomat and later, RRT decision maker who read this chapter of my thesis. Having agreed with what I had written he also revealed how there was an unwritten expectation that he was to pass 20% of appeals and reject 80% which was consistent with the data in the aforementioned reports. He did the opposite, passed 80% and Subsequently he claimed he was no longer notified of staff meetings and his tenure was not renewed.

In not questioning unfair decisions we must take responsibility for the consequences. – Following a negative decision, one person mentioned in the book was admitted to the psychiatric ward of a major hospital.

The court appeals often fail because our government legislated that judges could not make a decision on the merits of the person's claim but can only examine whether or not the Tribunal decision maker made an error in law. Furthermore, if perchance one is successful this only means that the Tribunal gets to have another look at the decision. This can result in another negative decision and another court appeal. The fluidity of the law enables changes to prevent a positive outcome from happening again! All the while these frequent and inevitable negative decisions play havoc with the minds and emotions of the person at the receiving end. It is harrowing, it is frightening, and it often triggers further trauma.

But finding freedom could still be a possibility.

The God power, according to one Minister, allows for the Minister to intervene. The case for the intervention is scrutinized by the public servants who decide which requests are worthy of consideration and which ones will not make the grade. They submit a brief advising the Minister, who makes the final decision. The Department of Home Affairs was instructed in 2016 to refrain from referring requests to the Minister if officers assessed a matter does not present 'unique or exceptional circumstances'. In a recent High Court judgment the majority ruled that these assessments cannot be delegated.

Acts of Cruelty recognises similarities between the way we treat both First Nations and people who seek refuge, in our exclusionary legal system. These are actually discriminatory because such laws do not affect us, the broader Australian community. No-one can lock up an Australian citizen without first being charged, let alone indefinitely. *Acts of Cruelty* also presents some useful ideas that we, as a Nation could consider in bringing about fairer, more just systems. This should include a Human Rights Act/Charter; despite the present government not believing there is an appetite for this, 90 organisations have already signed up for a Human Rights Charter or Act with the Human Rights Law Centre.

Before closing I present an example of one family's demanding road to freedom to give you an idea as to how people found me, and the arduous journeys many embarked upon.

On the train one day, a woman overheard a conversation in her own language. She asked the ladies for the name and contact number of the Catholic nun they had been speaking about. They obliged. With a friend interpreting, she rang me, and we arranged to meet in a shopping mall close to her home. She arrived weighed down by a huge bundle of papers. I listened and observed. The lady was afraid. She and her family didn't have a legal visa. Her husband didn't want her to tell anyone about their situation, fearing trouble.

I read her papers and we met again at her home, her friend again interpreting. Her husband was at work and the older children at school. The house was an unkempt weatherboard home next to a service station. It was dark inside. Her husband was so frightened about being caught without a visa that he had blackened the windows. The children weren't allowed to play outside. It was freezing cold in winter and extremely hot in summer. They couldn't afford electricity. Her husband worked in the construction industry, cash in hand, sometimes. Sometimes the mother worked as a cleaner in the early hours of the morning. She'd arrive home in time to wake the children for school.

Our public servant refused their application for protection and our Tribunal decision-maker made an unfavourable review. Our Minister turned down their request for intervention. They went to our High Court without legal representation. The judge remitted their case back to our Federal Court. Our Federal Court judge dismissed the case with costs. Departmental officers' decisions resulted in a number of unsuccessful requests for the minister's intervention and the family lived in the community without legal status with a \$12,339.57 debt to the government hanging over their heads.

I needed to speak with the husband. If they were to make another request to our minister, he had to know because they first needed to get temporary visas. He was very nervous, very suspicious. It took time to persuade him this was the only means to gain a permanent visa.

He agreed to come along to the compliance office. It was difficult to keep him inside long enough to present the necessary identity documents, let alone get him to return and sign the children's visa papers.

A wonderful psychiatrist prepared a thorough psychological assessment, pro bono, the basis for the necessary 'new information' that allowed for another ministerial request.

We wrote to Minister number 2 for all five people in the family. I say 'we' because each family member was closely involved in the preparation of these letters. They needed to feel part of the process, helping themselves to get through this terrible situation. They told their story. I took notes and researched their files.

While the request was being considered there was a change of government.

With a different Prime Minister we now have Immigration Minister number 3. The parents and oldest child received permanent humanitarian visas ten years after first applying for protection. The two younger children weren't included in the application. Our new Minister found a way of legally granting them protection. Free at last.

In conclusion, historical cruelty inhibits First Nations people's continual efforts to find freedom, just as contemporary cruelty inhibits access to freedom for people seeking protection, a privilege we the broader Australian community take for granted.

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<https://linktr.ee/actsofcruelty>

Acts of Cruelty: Australia's Immigration Laws and experiences of people seeking protection after arriving by plane. Forward by Michael Kirby AC CMG, published by Palaver, 2022.