



Women's Electoral Lobby Australia Inc.

Contact Eva Cox,

Submission from WEL Australia to the Inquiry into Immigration Detention in Australia by the Joint Standing Committee on Migration

Prepared by Eva Cox for Women's Electoral Lobby Australia

In 2005, Eva Cox and Terry Priest were funded by The Pamela Denoon Trust to undertake a study of Women in Immigration Detention for the Women's Electoral Lobby, Australia. In August that year the report was completed and sent to the Minister and other possible interested parties. It was started when there were many more women in Detention Centres, often with children. During the research the then government changed their policies and most women with children were released from centres into Community Detention, which removed some of the issues that had stimulated the original study. Our final report, however, was submitted as many of the problems raised with us would, we assumed, continue to affect the women still in detention. These issues primarily arose because there were always a minority of women in facilities designed for mainly male detainees and there was little evidence that gender issues were being recognised, let alone addressed.

Therefore we are asking that this issue be considered by the Review, although not specified in the terms of reference. The questions would relate to the design of future contracts and questions on reasons and time in detention. The gender balance is still badly skewed. July 2008 figures show women are around 10% of detainees (38/390). Most (27) of these women were still in Detention Centres, with 4 in residential housing and 7 (with children) in community detention. So there were 27 women out of 272 in detention Centres at that date. The bulk of these were from China (22). It is not clear how long they had been there nor the basis of their detention.

As we had no response to our original submission, we do not know what, if any changes were made to make the services safer and more appropriate for the minority of women in the Centres. We note that the original contractors are apparently still operating under the 2003 criteria and contracts and that a process was commenced last year for new contracts. The quotes below from the DIAC websites indicate good intentions but whether these are reflected in changes to procedures and programs, we do not know.

The following set of recommendations comes essentially from the earlier report. They have been edited so some of the recommendations arising from the detention of Cornelia Rau and the deportation of Vivian Solon have been deleted under the hopeful assumption that these have been addressed. However, those dealing with internal processes have been retained and even expanded to cover some material on detained sex workers that has arisen since. We have also included the entire original report, as an appendix, so the Committee can read the evidence we based the recommendations on.

Conclusions and recommendations from 2005 *plus*

Note italics are current edits/additions.

The following paper details some of the ways in which Immigration Detention Facilities (IDFs) are administered and how the system can cover up abuses of the basic rights and needs of detainees. Any closed system can be mismanaged, even where there is good will and no wrong intentions. This is particularly likely where the population mix are particularly vulnerable, where the leadership offers problematic political messages, where the operations are subject to conflicting views and where there are ineffective external and independent forms of official and unofficial scrutiny.

Women are a minority in IDFs, making them vulnerable to failures in recognising their needs. Apart from the well publicised case of Cornelia Rau, it is likely those who have been ‘legitimately’ detained share the same problems, as there is no evidence that standards and scrutiny are specifically set up in ways to effectively minimise the possibility of abuse and exploitation.

The following recommendations for change have largely been developed on the basis of the material collected by the Government’s own internal critics. The (*earlier*) condemnation of the Department of Immigration and Indigenous Affairs (DIMIA) regime by the Australian National Audit Office (ANAO), Federal Court judgements and the Palmer Report, are powerful indicators of the flaws in the system.¹ These all recorded some of the problems that suggest it is reasonable to treat all detainees as being at risk of both the malfunctioning culture of service delivery and systems failures in reporting and monitoring. These official sources have been validated by and validate the material that we have collected from many workers and advocates, which make surprisingly similar points.

Many questions arose while conducting our research and we can now see why there are relatively few satisfactory answers to our question, does being a woman put those tangling with DIMIA (*DIAC*) at extra risk? The two women *who were then* in public view were noticed

¹ Quotes and references from the *Palmer report* have been used throughout this document. A full copy of this report can be found at www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf

Quotes and references from the *ANAO report Part B* have been used throughout this document. A full copy of this report can be found at www.anao.gov.au

because they were mistreated despite being Australian residents/citizens but not because internal systems revealed their problems. This suggests that much more can be hidden if there is not further external scrutiny, as the current inquiries and actions have only taken place because of the effect of external revelations of flawed actions. There are aspects of these cases that raise general questions about the treatment of women by DIMIA that need more information and debate on the possible additional risks for women in these facilities.

We need to ensure that the women are not are not subjected to extra risks in facilities that have been seriously criticised for bad management practices. Women face similar issues to the men in detention, but may face *additional problems*, such as assumptions about gender appropriate behaviours, prejudices, specific needs relating to contraception, reproduction, mothering, healthcare and possible harassment and violence.² There were relatively few women in immigration detention in mid July (2005), (106 with 45 children and 575 men) and those with children were released on special visas or placed in residential determination arrangements within the community at the end of July. We do assume however that there will still be a number of women detained and that new ones will join them³. Therefore, we need to ensure that those women in detention are not subject to additional risk through the extreme gender imbalance that this will create.

This paper should be used to put some serious questions on the public agenda about the care of women in IDFs, and the particular risks they face. While we hope women will no longer be held in immigration detention at all, we recognise that this is likely. So we would prefer IDFs that can meet the particular needs of women that are open about how these needs are met, and are subject to formal, independent processes of scrutiny. The Women's Electoral Lobby (WEL) *hoped this paper would be* the starting point for debate about the need for a more open, honest, accountable and transparent system. *However, we had no direct response on the questions we raised, and therefore are concerned that the problems as possibly still curren .*

Recommendations for change

Possible points for the new contract

The Palmer and ANAO reports contain many useful and detailed recommendations that would improve the operation of IDFs. In particular the ANAO criticisms of the contract processes with the service provider, Global Solutions Limited, Australia (GSL), reinforced in the Palmer report, could be used to improve the formal processes of administration and internal information flows.

What neither report deals with specifically is the problems that emerge from the limitations of external scrutiny and the limited capacity of any external groups to compel DIMIA to improve or change their processes. Even the new provisions only involve

reporting to backbenchers, but again without power to make changes without Ministerial or Departmental concurrence.

We propose that a two part strategy should be implemented as a matter of urgency. The first part is to set up forms of external and independent scrutiny with power to intervene to ensure that the general standards of care are appropriate and the particular needs of women are both recognised and met; the second is to add some specific women centred Immigration Detention Standards (IDS) and review the inadequate measures and monitoring of these.

There needs to be an external review process that can look at particular issues for detainees that are more likely to affect minority groups within the system. These include:

- a. Be able to order release of any detainee where they are deemed to be not a risk to the public and are being negatively affected by detention.
- b. Investigate any complaints of harassment or other forms of gender based assault that is not pursued by police to see if a protection order or some other action would be appropriate.
- c. *The Government should implement a scheme with official visitors, including 1/3 women, who are independent of government bodies, who have weekly open sessions in facilities and a defined process of public reporting to Parliament. One woman visitor in each facility should be specifically allocated and identified to female detainees as a contact point for specific gender related complaints.*
- d. *Any detainee committee should include female representation*

The Immigration Detention Standards should be expanded to cover the following:

1. Clear guidelines on privacy and internee access to female guards and other female workers in the facilities at all times.
2. Clothing needs and particular modesty requirements as part of routine provisions; on offer and not requiring special consideration.
3. Direct access and referral to specialist and general medical practitioners and other paraprofessionals

In addition (2008)

4. *There should be training for the AFP on issues of trafficking and sex slavery versus unfair and legitimate work contracts before brothel raids are undertaken to avoid wrongful detention.*
5. *There be privacy protocols developed that can protect any women but particularly those who are picked up as sex workers in brothel raids. Some of these are on student and other visas and may be working legitimately but are frightened to oppose deportation because their families may find out how they were paying expenses; others are stigmatised by staff and other detainees by the publicising of their pick up point which also affects their ability to defend their status or retain their dignity in detention.*

The following quotes from the DIAC website were all we could find that may have relevance to our recommendations. However, apart from one mention of gender, there is no indication that women may have particular issues, as shown in our first report, in mainly male environments, and should have specific attention paid to their needs.

Core Operational Principles

What is involved?

There are clearly defined Core Operational Principles for onshore detention arrangements and the department will ensure that these principles are applied by staff and reflected in operational procedures and practices.

The principles are:

1. Immigration detention is mandatory administrative detention, it is not indefinite or correctional detention.
2. People in detention must be treated fairly and reasonably within the law.
3. Detention service policies and practices are founded in the principle of duty of care.
4. Families with children will be placed in facility-based detention only as a last resort.
5. People in facility-based detention are to be provided with timely access to quality accommodation, health, food and other necessary services.
6. People are detained for the shortest practicable time especially in facility-based detention.
7. People are carefully and regularly case-managed as to where they are to be located in the detention services network and the services they require.
8. The assessment of risk factors underpins operational decision making.
9. Detention service operations are subject to continuous improvement and sound governance.

Standard of Care

There are immigration detention standards developed by the department in consultation with the Commonwealth Ombudsman's office and the Human Rights and Equal Opportunity Commission and agreed to by the department and the Detention Services Provider.

Outlined within the standards is the level of care being made available to people in immigration detention and the requirement for the provider of services to take into consideration individual needs such as **gender**, culture, health and age.

See: [Provider of Services](#)

A Detainee Representative Committee is formed at each facility so people in immigration detention can make a constructive contribution to the running of the facility. They are given, for example, the opportunity to provide input into the formulation of culturally appropriate meal menus.

people our business