

## **Additional Comments**

### **Greens Senator Kerry Nettle**

The Australian Greens Senators acknowledge the committee's findings and are in agreement with its recommendations. The Australian Greens also acknowledge the work of Mr Palmer, Mr Comrie and the Commonwealth Ombudsman's office and are in agreement with their findings and recommendations, while noting the limited terms of reference they were given by the government.

The Australian Greens conclude that the unlawful detention and deportation of Ms Solon, her treatment in the care of the Department of Immigration and the negligent lack of response after the error had been discovered, are indicative of a Department that is out-of-control and failing the Australian public.

The committee received evidence about, and Mr Palmer uncovered a series of system failures. However, the case of Vivian Solon indicates more than a series of system faults. It is clear that the prime contributor to the unlawful detention and deportation of Vivian Solon was the system of mandatory detention that sees people locked up first and then somewhere down the track questions may be asked about their detention later. The other significant contributing factor was the culture of suspicion and lack of discretion and regard for human welfare within the compliance branch of the Department of Immigration.

Mr Comrie summarised this culture, concluding:

“It is difficult to form any conclusion other than that the culture of DIMIA was so motivated by imperatives associated with the removal of unlawful non-citizens that officers failed to take into account the basic human rights obligations that characterise a democratic society.” (page 31)

The Australian Greens note that the Department of Immigration has agreed to implement the recommendations of the Palmer and Comrie Reports and is attempting cultural change. However, we believe the culture that produced the frightful case of Vivian Solon, and numerous other scandals that have come to light, is the result of Departmental officials wanting to implement the wishes of the Howard Government, which is to be ‘tough on illegals’. Until the culture of the Government and the policy of mandatory detention and related policies change, the Australian Greens are not convinced that the attempt at cultural change will be successful.

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The Australian Greens are in agreement with the recommendations of the committee's report, but believe that they do not go far enough. The Australian Greens recommend that regulations and legislation should be altered to ensure proper independent oversight of the decisions of departmental officials.

The powers of arrest, detention and deportation vested in Department of Immigration officers are equivalent of state police forces, yet the oversight of these powers is virtually non-existent. State police officers must bring a detained person before a court within hours to gain consent to continue to detain a person. The validity of the decision to detain or deport by a Department of Immigration official is not tested by an authority outside the Department of Immigration and a detainee may be detained indefinitely under current legislation.

Various Crimes Acts detail a series of minimum standards of treatment of prisoners and the rights of prisoners that police must follow. The standard of treatment and rights of detainees is not detailed in the Migration Act.

### **Additional Recommendations:**

- 1) That the conclusion of paragraph 2.17 be upgraded to a formal recommendation: “The committee recommends that the checks undertaken to determine a person's identity, the evidence that they are an unlawful non-citizen, and other necessary actions prior to removal must be carried out diligently and properly documented, attached to the file and cross referenced with the removal checklist above.”
- 2) The Australian Greens believe that the committee’s recommendation 3 should be strengthened to ensure that the right to legal assistance (as well as other basic rights) be legislated similar to the rights of people placed under arrest by state police forces and the Federal Police are legislated under the relevant Crimes Acts. Therefore the Greens propose to replace recommendation 3 in the main committee report with: “The committee recommends that basic rights, such as the right to legal assistance, be legislated similar to the rights legislated by Part IC Division 3 Crime Act 1914 (Cth) ‘Obligations of investigating officials’.
- 3) In relation to section 189 of the Migration Act, Mr Comrie noted that:  
“properly based exercise of discretion in the determination of ‘reasonable suspicion’ constitutes the only protection in the section against indefinite arbitrary detention.”(page 65)

The Australian Greens believe that Section 189 of the Migration Act must be amended to ensure that unlawful detention can not happen again.

The Australian Greens recommend that Section 189 of the Migration Act be amended to end the practice of mandatory detention, we believe this would be the best way to ensure unlawful detention does not occur again and to ensure that an element of humanity is injected back into the immigration system.

Falling short of this solution, The Australian Greens recommend that Section 189 of the Migration Act be amended to compel the Department of Immigration to seek the consent of a court to continue to detain before the expiration of a set time period. This form of judicial review, which is

similar to the requirements for state police forces and the Federal Police, would ensure that the evidence on which the knowledge or reasonable suspicion that a person is an unlawful non-citizen (and therefore must be detained) is tested by transparent and fair methods and is found to be proper.

The Australian Greens believe that if the decision to detain Vivian Solon or Cornelia Rau had been brought before a court, the evidence and basis of the Department's suspicion would have been found lacking.

- 4) The Australian Greens believe that detainees should be informed of the reasons for any medical examination and that all medical examinations should be conducted with the overt consent of the detainee. Any associated risks regarding early notification can be accommodated by DIMIA. Avoiding such a risk is not a valid reason for conducting non-consensual medical examinations or deceiving the examinee. If a detainee does not consent then following medical advice, DIMIA may still apply to a relevant authority for non-consensual medical examination and treatment.
- 5) The Australian Greens recommend that the explanation of rights regarding the medical examination, including the right to refuse an examination and the right to be informed of the reasons for an examination, be included in a relevant checklist and in regulations as discussed in recommendation 4.
- 6) The callous disregard for Vivian Solon after she was deported from Australia is perhaps the most shocking aspect of her story. The recent revelations about long-term permanent residents having their visa cancelled under Section 501 of the Migration Act and being detained and deported to countries they do not know has also highlighted a disturbing practice. The case of Robert Jovicic raises some parallel issues about the Department of Immigration's disregard for human welfare in executing deportations and the interaction of the Department of Immigration with the Department of Foreign Affairs and Trade.

The Australian Greens are also aware and are concerned about reports of cases of failed asylum seekers being deported to the countries they have fled, or third countries, who have faced renewed persecution and abuse on their return.

The Department of Immigration has stated on record that it does not monitor people it has deported.

The Australian Greens recommend that the Department of Immigration investigate the possibility of identifying deportees at risk after deportation and instituting a system where the welfare of these deportees is monitored – either directly by Australian Government agencies or through third parties (such as the Red Cross).

- 7) The Australian Greens recommend that DFAT and DIMIA establish a protocol, including notification and a division of responsibilities between departments, to deal with DIMIA operations that involve the deportation or

removal of people who are or were Australian citizens, permanent residents or other persons facing potential risk.

I met with Vivian on her return to Australia. Her sad and yearning eyes showed the sadness and pain of her experience. Her story should be a warning to us all that human rights and human welfare should always be the priority. Conferring the title of ‘unlawful non-citizen’ on a person does not excuse any bureaucracy or individual from their responsibility to respect other people’s human rights. When the Parliament makes laws it must not infringe on the human rights and dignity of Australian citizens.

Borders and citizenship are an artificial construction. We must never forget we are all human beings.

**SENATOR KERRY NETTLE**  
**AUSTRALIAN GREENS**