

Appendix 4

Recommendations of the Ombudsman's Report and relevant recommendations from the Palmer Report

Ombudsman's report: inquiry into the circumstances of the Vivian Alvarez matter

Recommendation 1 - The Inquiry recommends that the Secretary of DIMIA take all necessary steps to:

- Redress the negative culture in the Brisbane Compliance and Investigations Office—as demonstrated by the failure of a number of officers to take action on becoming aware that an Australian citizen had been unlawfully removed from Australia.
- Ensure that the problems and deficiencies identified in relation to the Brisbane Compliance and Investigations Office do not exist in other regional offices and in related areas in DIMIA head office.
- DIMIA response - agreed

Recommendation 2 – the Inquiry recommends that the Secretary of DIMIA instruct staff to comply with the requirement of Migration Series Instruction 267 that a compulsory checklist be completed to record the actioning of a removal and that the actioning of a removal be approved by a senior compliance officer—the Officer in Charge of Compliance. The checklist should be attached to every compliance file.

DIMIA response - agreed

Recommendation 3 – The Inquiry recommends that the formal interview of detainees be constructed in such a way as to require that, where necessary, responses from a detainee be further investigated. The interview process should be dynamic and designed to elicit information useful to the making of decisions about detention and removal.

DIMIA response – agreed.

Recommendation 4 - The Inquiry recommends that as an urgent priority, DIMIA commission a thorough, independent review and analysis of its information management systems. The review should be carried out by an experienced, qualified IT systems specialist and should aim to do the following:

- Identify the real organisational policy and operational information management requirements—particularly requirements for interconnectivity, compliance management, functionality, and growth
- Explore the potential for single-search entry to all DIMIA databases

- Formulate an implementation plan for consideration by the DIMIA executive.

DIMIA response - agreed

Recommendation 5 - The Inquiry recommends that DIMIA commission a thorough, independent review and analysis of the IT training requirements for the Border Control and Compliance Division and the Unlawful Arrivals and Detention Division. The review should identify the requirements for the various functional responsibilities within the divisions.

DIMIA response - agreed

Recommendation 6 - The Inquiry recommends that in the training program for compliance and investigations officers there be a focus on objectivity in decision making and a strong warning that false assumptions will contribute to poor decisions. Further, all staff at DIMIA should be reminded of the need for great care in the spelling and recording of names in files and records.

DIMIA response - agreed

Recommendation 7– The Inquiry recommends that DIMIA institute a review of the operations of contact centres, to determine more effective procedures for dealing with information those centres receive.

DIMIA response - agreed

Recommendation 8– The Inquiry recommends as follows:

- That compliance staff be trained to exercise greater caution in performing their duties – including verification of information—where it is known or suspected that a possible unlawful non-citizen may have mental health problems
- That any training programs developed as a result of the Palmer report and this report include a component to better equip compliance offices to deal with people with known or suspected mental health problems.

DIMIA response - agreed

Recommendation 9– The Inquiry recommends as follows:

- That DIMIA take all necessary action to ensure that appropriate standards for health and care needs are developed and introduced for situations involving detainees in transitional detention.
- That, where it is necessary or appropriate to conduct a medical examination to determine the fitness to travel of an unlawful non-citizen, DIMIA officers make all reasonable efforts to ensure that the medical practitioner concerned receives the medical history and record

of the unlawful non-citizen and that the medical practitioner—who, if possible, is someone who has previously treated the patient—is advised of the factual circumstances, including the behaviour of the unlawful non-citizen, that have led to the need for the medical examination.

DIMIA response - agreed

Recommendation 10 - The Inquiry recommends that the Secretary of DIMIA take all necessary steps to ensure that email business records are kept in accordance with the requirements of the *Archives Act 1983*.

DIMIA response – agreed

Recommendation 11– The Inquiry recommends that the Minister for Immigration and Multicultural and Indigenous Affairs write to Mr Robert William Young to commend him for his diligence in pursuing the matter of Vivian Alvarez and bringing it to the attention of the Australian Government.

DIMIA response – agreed

Recommendation 12– The Inquiry finds that the conduct of officers A,B and C, as described in this report, might constitute a breach of one or other of the requirements of the Australian Public Service Code of Conduct as detailed in s.13 of the *Public Service Act 1999*. The Inquiry recommends that this opinion be brought to the attention of the Secretary of DIMIA, in accordance with s. 8(10) of the *Ombudsman Act 1976*.

DIMIA response – Noted. It has been determined that an investigation is needed and will commence as soon as possible.

Relevant recommendations from the inquiry into the circumstances of the immigration detention of Cornelia Rau

Recommendation 3.1.

The inquiry recommends that DIMIA:

- Design, implement and accredit—for all compliance officers and other staff who might reasonably be expected to exercise and power to detain a person under s. 189 (1) of the Migration Act 1958—a legislative training package that provides the officers with the requisite knowledge, understanding and skills to fairly exercise their power
- Ensure that the training comprehensively covers the use of DIMIA and other agencies' databases and search capability and the conduct of searches to support investigations
- Restrict the authority to exercise the power to detain a person under s.189 (1) to staff who have satisfactorily completed the training program

and who are considered to be otherwise sufficiently experienced to exercise that power

- Ensure that a component on 'avenues of inquiry' be included in the Certificate IV in Government (Statutory Investigation and Enforcement) Training Program delivered to DIMIA officers.

Recommendation 3.4

The Inquiry recommends that DIMIA create a dedicated Identity and Immigration Status Group to ensure that, where the identity or immigration status of a detainee remains unresolved after initial inquiries have been completed, frequent follow-up reviews are conducted. The Identity and Immigration Status Group should:

- Review the continued validity of 'reasonable suspicion' based detention on a regular basis—and at least every month—against the background of accumulating information
- Be staffed by people who have wide experience in compliance and detention policy and operations, are familiar with the associated Commonwealth and state and territory legislation and arrangements, and have skills in investigation and analysis
- Have the authority, responsibility and accountability for conducting and /or overseeing all necessary inquiries to establish the identity and immigration status of unidentified detainees
- Report monthly to executive management on the status of individuals still in immigration detention, the reason why they are being detained, what is currently being done to resolve the situation, and the expected date for resolution.

Recommendation 5.1

The Inquiry recommends that the DIMIA Secretary:

- Commission and oversee a review of departmental processes for file creation, management and access
- Take a leadership role in implementing the major changes that will probably be necessary as a result
- Ensure that staff receive training in effective file management practices and the reasons for them
- Make executive management personally accountable for ensuring that sound file management practices are followed

Recommendation 5.2

The Inquiry recommends that the DIMIA executive ensure the preparation for staff of a checklist to be used as a minimum standards template for conducting identification

inquiries. The checklist should provide a menu of avenues of inquiry, specify a sequential order for investigations, be included as an attachment to the DIMIA Interim Instruction of Establishing Identity in the Field and in Detention, and form part of the personal investigation file. The DIMIA executive should also:

- Formalise the Interim Instruction together with the checklist attachment as soon as practicable
- Ensure that suitable training modules are developed and delivered to all staff—including managers—who might be involved in identification inquiries
- Institute management arrangements to ensure that such inquiries are linked as appropriate to the Identity and Immigration Status Group.

Recommendation 5.3

The Inquiry recommends that, as a matter of urgency, the Commonwealth Government take a leadership role with state and territory governments to develop a national missing persons policy to guide the development of an integrated, national missing persons database or capacity. Initial policy developments could be carried out under the guidance of the Australasian Police Minister's council, with the output submitted to governments for consideration and agreement.

Recommendation 5.4

The Inquiry recommends that, on the basis of an agreed national missing persons policy, the Commonwealth Government take a leadership role with state and territory governments in developing and implementing a national missing persons database or capacity that will provide an effective national recording and search capability under both names and biometric data. Discussions in this regard should be informed by reporting on the progress and success of the Minimum Nationwide Person Profile project to the Australasian Police Ministers Council.

Recommendation 5.5

The Inquiry recommends that DIMIA reassess its position in relation to privacy in all its public policy operations associated with immigration detention. In revising its practices, it should:

- Seek advice from the Privacy Commissioner and the Minister
- Take immediate steps to increase awareness and understanding on the part of relevant DIMIA staff—including executive staff—of the principles and provisions of the Commonwealth *Privacy Act 1988*
- Revise and strengthen procedures relating to identity in immigration detention, to ensure that the wider options potentially created by this approach are considered.

Recommendation 5.6

The Inquiry recommends that DIMIA establish for inquiries about immigration detainees a 'hotline' facility that can deal with those inquiries as a 'one stop shop'. DIMIA should ensure that the contact officer position is continuously staffed, regardless of the absence of any officer, and that all embassies and high commissions are advised of the details of these arrangements and ask their consular officials to direct all immigration detention inquiries to the nominated DIMIA contact officer in the first instance.

Recommendation 5.7

The Inquiry recommends that DIMIA ensure that:

- Fingerprints and other biometric data collected from individuals in immigration detention are stored on a national database to facilitate investigations by Commonwealth and state and territory and other law enforcement agencies
- Appropriate liaison arrangements are made with CrimTrac
- Any DIMIA decision in relation to the collection and storage of biometric data are consistent with strategies being pursued by CrimTrac in response to guidance by Australian governments

Recommendation 7.1

The Inquiry recommends that DIMIA develop and implement a holistic corporate management system that ensures every immigration detention case is assessed comprehensively, is managed to a consistent standard, is conducted in a fair and expeditious manner, and is subject to rigorous continuing review.

Recommendation 7.2

The Inquiry recommends that DIMIA critically review all Migration Series Instructions from an executive policy and operational management perspective with a view to:

- Discarding those that no longer apply in the current environment
- Where necessary, rewriting those that are essential to the effective implementation of policy, to ensure that they facilitate and guide effective management action and provide real guidance to busy staff
- Ensuring that up-to-date, accurately targeted training is delivered to staff who are required to implement the policy guidelines and instructions
- Establishing regular management audits that report to executive management, to ensure that the Migration Series Instructions are up to date and DIMIA officers are adhering to them.

Recommendation 7.3

The Inquiry recommends that the Minister commission the Secretary of DIMIA to institute an independent professional review of the functions and operations of DIMIA's Border Control and Compliance Division and Unlawful Arrivals and Detention Division in order to identify arrangements and structures that will ensure the following:

- DIMIA's compliance and detention functions are effectively coordinated and integrated
- The desired outcomes of these functions and the necessary resources—including the number and the skills profile of staff—are clearly identified before a decision is made on the structure that will best enable effective and equitable service delivery
- The restructuring accommodates these requirements and ensures that arrangements are made to monitor and manage the high-level risks to the Commonwealth inherent in immigration detention
- The aims and objectives of the Government's immigration detention policy are fairly and equitably achieved and human dignity is demonstrably respected.

Recommendation 7.4

The Inquiry recommends that DIMIA:

- Review the current training programs for compliance and detention officers to ensure that induction and in-service programs convey an accurate and contemporary picture of DIMIA operations and adequately prepare operational and management staff for all aspects of the work they will be expected to do
- Ensure that such training particularly deals with the consultation, coordination, reporting and management requirements of compliance and detention operations and shows how to manage the risks inherent in the performance of these functions
- Immediately develop and implement a policy that requires that every decision to detain a person on the basis of 'reasonable suspicion of being an unlawful non-citizen' is reviewed and assessed within 24 hours or as soon as possible thereafter.

DIMIA should incorporate this policy of 24-hour review in all relevant training programs and operational guidelines to ensure that compliance officers understand the need to:

- Objectively determine the reasons and facts upon which a decision to detain is made

- Verify the validity of the grounds of 'reasonable suspicion' and the lawfulness of the detention
- Take immediate remedial action as necessary and report the circumstances of any unresolved matter to the Identity and Immigration Status Group.

Recommendation 8.3

The Inquiry recommends that DIMIA:

- Develop, for all immigration detention and compliance executives and managers, a briefing program that clearly explains the need for a decision to be made to remove from Australia a person reasonably suspected of being an unlawful non-citizen and the responsibilities associated with exercising that power
- Ensure that the central factors relating to removals and the implications for identity investigations and the exercising of detention powers are included in departmental training programs for compliance and removals officers
- Ensure that the implications of all aspects of identity checking, detention and removals are included in the checks and balances exercised by the Identity and Immigration Status Group.