

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(55) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 59) asked:

Provide a copy of the agreement between DIMIA and the *Daily Telegraph*.

Answer:

A copy of the standard 'Deed of Agreement' between the Commonwealth of Australia represented by the Department of Immigration and Multicultural and Indigenous Affairs and news organisations is attached. The agreement may vary a little from time to time.

DEED OF AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

represented by

Department of Immigration, Multicultural and Indigenous Affairs

AND

[Company Name]
ACN [### ### ###]

in relation to the accompanying of DIMIA compliance officers when undertaking investigations on unlawful non-citizens and those in breach of their visa conditions.

THIS DEED is made on day of *[month]* *[year]*

BETWEEN

THE COMMONWEALTH OF AUSTRALIA represented by the Department of Immigration and Multicultural and Indigenous Affairs ('**the Commonwealth**')

AND

[COMPANY NAME], ACN *[### ### ###]*, *[Address]*

RECITALS:

- A. [Company Name] approached the Department with a view to *[producing televisual footage/ writing newspaper articles and photographs]* from compliance operations.
- B. The Department has agreed to the proposal, subject to certain terms and conditions.
- C. The Parties wish to record in this Deed the terms and conditions on which the Commonwealth has agreed to co-operate with [Company's] proposal, and on which [Company Name] has agreed to accept the Commonwealth's co-operation.

IT IS AGREED:

1. INTERPRETATION

[Audio recordings – Means any electronic recording of any sound made under the Terms of this agreement.]

[Company Trading Name] - Means the legal trading entity of [Company] as identified above, and all employees of, and contractors to, [Company]

Department - Means the Department of Immigration and Multicultural and Indigenous Affairs.

Departmental Officer - Means any employee of the Department.

[Photographs – Means any recording of any pictures (whether in video or still format) made under the terms of this agreement.]

[Televisual Footage - Means any footage of visual images and audio recordings made under the terms of this agreement.]

Compliance Operations - Means activities undertaken by Department officers enforcing the Migration Act 1958.

2. TERM OF DEED

- 2.1 This Deed commences on the date first appearing above as the date on which it is made.

3. ASSISTANCE AND FACILITATION BY THE COMMONWEALTH

- 3.1 The Commonwealth agrees to provide assistance and facilitation to [Company Name] in producing *[televisual footage/ writing newspaper articles/photographs]* about compliance operations, to the extent that the Commonwealth in its sole discretion considers to be reasonable, appropriate and legally operationally and administratively consistent with the duties and functions of the Department.

3.2 Provision of assistance and facilitation by the Commonwealth to [*Company Name*] for the production of the [*proposed footage/ newspaper article/ photographs*] will be at the sole discretion of the Commonwealth and may include, but will not necessarily be limited to:

(a) allowing access to Commonwealth premises (including Commonwealth vehicles), where access can be granted by Officers of the Department, for specified purposes including but not limited to recording the planning, background and execution of compliance operations;

(b) granting to [*Company Name*] a licence to use material (for example surveillance photographs) of which the Commonwealth is the owner of the intellectual property, on such terms and conditions as are set out by the Commonwealth in the particular licence.

3.3 Provision by the Commonwealth of any assistance or facilitation under this clause 3 is subject to the terms and conditions set out in this Deed and agreed to by [*Company Name*], and further subject to the conditions that:

(a) any permission given by the Commonwealth may be withdrawn at any time at the sole discretion of the Commonwealth and without the Commonwealth having to give any reason either orally or in writing;

(b) any permission given by the Commonwealth is subject to the person or persons to whom the permission is given observing and fully complying with any direction given by a departmental officer, and in particular any direction in respect of security procedures, policies and requirements; and

(c) permission to take any [*footage/Photographs*] does not and will not include permission to record the number plate of any departmental compliance vehicle or of the private vehicle or any other vehicle used by any departmental officer.

4 ACKNOWLEDGMENTS BY [*COMPANY NAME*]

4.1 [*Company name*] acknowledges that it has no authorisation from the Commonwealth under this Deed or on any other basis to act for or on behalf of the Commonwealth, and it will not represent itself as having authorisation from the Commonwealth to act for or on behalf of the Commonwealth.

4.2 [*Company Name*] acknowledges that officers of the Department act in accordance with their authorisation under the laws of the Commonwealth, and in particular under the *Migration Act 1958* (Cth), and that authorisation does not extend to [*Company Name*].

4.3 [*Company Name*] acknowledges that it is [*Company Name*]'s own and sole responsibility to obtain legal authority for, and to ensure the lawfulness of, its own activities in the producing [*televisual footage/ writing newspaper articles/photographs*], and in particular to ensure the lawfulness of [*Company Name*]'s entry onto any private property and of any activities carried out thereon.

5 INDEMNITY

5.1 [Company Name] agrees to indemnify the Commonwealth from and against any:

- (a) liability incurred by the Commonwealth;
- (b) loss or damage to property of the Commonwealth; and
- (c) loss or expense incurred by the Commonwealth in dealing with any claim against it including legal costs and expenses on a solicitor/ own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth;

arising from any act or omission by [Company Name] in connection with the agreement recorded in this Deed, irrespective of whether there was fault on the part of [Company Name] or the person whose conduct gave rise to that liability, loss or damage, or loss or expense.

6. USE OF MATERIAL

6.1 [Company Name] agrees that copies of all footage made for the purpose of the proposed [televsual footage/ newspaper articles/photographs] will be provided to the Department.

6.2 [Company Name] agrees to provide the Department with a viewing of the proposed [televsual footage/ newspaper articles/photographs] before being [aired/ released/ published]. [Company Name] agrees to amend or delete any of the material as requested by the Department, before [aired/ released/ published].

6.3 Any [televsual footage/ newspaper articles/photographs] made under the agreement recorded in this Deed will not be [aired/ released/ published], either in [Company Name] or in any other place at any time in the future, without the written consent of the Commonwealth.

6.4 [Company Name] grants to the Commonwealth a permanent, irrevocable, royalty-free, exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit all footage made as a result of the agreement recorded in this Deed

7 PERSONAL INFORMATION

7.1 [Company Name] warrants that it is a media organisation as defined in section 6 of the *Privacy Act* 1988 (Cth) ('the Privacy Act') that is exempt for the purposes of paragraph 7(1)(ee) of that Act because of subsection 7(4).

7.2 [Company Name] agrees to comply with the Information Privacy Principles ('the IPPs') contained in the Privacy Act, to the extent that the content of the IPPs apply to the activities of [Company Name] in producing [televsual footage/ newspaper articles/photographs], as if [Company Name] were an agency as defined in the Privacy Act.

8. VARIATION

8.1 No variation of this Deed will be binding unless it is agreed in writing between the Parties.

9. ENTIRE AGREEMENT

9.1 This Deed constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings whether verbal or in writing.

SIGNED AS A DEED ON THE DATE FIRST ABOVE THE WRITTEN

SIGNED, SEALED AND DELIVERED)
for and on behalf of the)

COMMONWEALTH OF AUSTRALIA)
by:)
)
)

in the presence of:

Signature of Witness
(print name and address)

SIGNED SEALED AND DELIVERED)
by:)
)
[Company Name])
[ACN ### ### ###])
)
)

in the presence of:

Signature of Witness
(print name and address)

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(56) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 60) asked:

How many times would a raid of that size- 50 immigration officers- have been contemplated by the Department in the last 12 months?

Answer:

The number of specific occasions on which around 50 or so people were involved in operations is not readily available. However, particularly where there are joint operations dealing with complex arrangements, this is not unusual for NSW.

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BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(57) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 60) asked:

- (a) In the past 12 months, how many locations did the department visit throughout New South Wales?
- (b) How many of those companies had received departmental warnings previously?

Answer:

- (a) From July 1 2003 to 17 June 2004, the Department visited over 6,000 locations in NSW.
- (b) Approximately 24 companies in NSW had previously been issued Illegal Worker Warning Notices.

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BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(58) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 61) asked:

In relation to the answer to part (14) of question no.54 from the February 2004 hearing, provide a breakdown of the 42 companies that received a further warning notice.

Answer:

From 1 July 2003 to 31 January 2004, 42 companies received further Illegal Worker Warning Notices.

Breakdown by Industry of companies issued IWWN's in 2003-2004 that were issued further IWWN's for repeat offences.	
INDUSTRY	NUMBER OF FURTHER IWWN'S
Property and Business (excluding Employment)	4
Accommodation, Cafes and Restaurants	9
Transport and Storage	2
Construction	1
Manufacturing	7
Personal and Other Services (Sex Industry)	12
Agriculture, Forestry and Fishing	4
Education	1
Retail Trade	2
TOTAL:	42

Source- Integrated Client Services Environment (ICSE) data as at 31 January 2004

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BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(59) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 61) asked:

Provide a short synopsis of where an employer has been charged under the Criminal Act for employing illegal foreign workers.

Answer:

A joint DIMIA Investigations/Compliance/ATO operation, involving the execution of a Migration Act search warrant and a Crimes Act search warrant on 12 March 1999, resulted in an employer being charged under the Crimes Act for employing illegal foreign workers.

The employer pleaded guilty to 15 counts under section 5 of the Crimes Act and was convicted and fined \$15,000.

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BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(60) Output 1.3: Enforcement of Immigration Law

Senator Bartlett (L&C 67) asked:

“Is the MOU between DIMIA and FAYS public and, if so, provide a copy.”

Answer:

The Memorandum of Understanding (MOU) between the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and the South Australian Department of Human Services (DHS) is considered public. It is attached for information.

Memorandum of Understanding (MOU) between the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and the South Australian Department of Human Services (DHS) relating to Child Protection Notifications and Child Welfare Issues pertaining to children in immigration detention in South Australia

THIS MEMORANDUM OF UNDERSTANDING is made on this Sixth day of December 2001

BETWEEN

THE DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS (DIMIA) whose principal office is located at Chan Street, Belconnen, ACT, 2615

AND

THE DEPARTMENT OF HUMAN SERVICES (DHS) whose principal office is located at 11 Hindmarsh Square, Adelaide, SA, 5000

RECITALS

- A. The Department of Immigration and Multicultural and Indigenous Affairs and the South Australian Department of Human Services agree to:

Ensure appropriate notification and referral of all cases of possible child abuse or neglect which occur at places of immigration detention in South Australia to the DHS.

Provide a framework for services offered by DHS to DIMIA in relation to minors including unaccompanied minors in immigration detention in South Australia.

Provide a framework for the delivery of training by DHS on child welfare issues.

NOW THE AGENCIES HAVE AGREED AS FOLLOWS

1. Introduction

This Memorandum of Understanding (MOU) sets out the mutual obligations between the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and the South Australian Department of Human Services (DHS) in relation to the notifications of possible child abuse or neglect and child welfare issues pertaining to children in immigration detention in South Australia.

2. Interpretation

2.1 In this MOU, unless the contrary intention appears:

‘Agency’ means either DIMIA or DHS depending on the context in which it appears.

‘*Children’s Protection Act*’ means the South Australian *Children’s Protection Act 1993*.

‘Chief Executive’ means the Chief Executive of the Department of Human Services.

‘Department of Human Services’ means the South Australian Department of Human Services or another Department performing the statutory functions under the South Australian *Children’s Protection Act 1993* and the *Family and Community Services Act 1972*.

‘Department of Immigration and Multicultural and Indigenous Affairs’ means the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs or another Department performing the statutory functions under the Commonwealth *Migration Act 1958*.

‘Family and Community Services Act’ means the South Australian *Family and Community Services Act, 1972*.

‘Mandated Officers’ means people nominated under the *Children’s Protection Act* who must notify the DHS if they suspect a child is being abused or neglected.

‘CARL’ means Child Abuse Report Line.

‘CRACAS’ means Crisis Response and Child Abuse Service in DHS, responsible for the Child Abuse Report Line (CARL).

‘Detention facility’ means an immigration detention centre established under S.273 of the *Migration Act*.

‘DIMIA Manager’ means the senior DIMIA officer employed or usually present at a detention facility or another officer appointed to perform these functions by DIMIA.

‘Immigration Detainee’ means a person detained under the provisions of the *Migration Act*.

‘IRPC’ means Immigration Reception and Processing Centre.

‘*Migration Act*’ means the Commonwealth *Migration Act 1958*.

‘SAPOL’ means South Australian Police.

‘Secretary’ means the Secretary of DIMIA.

‘Officer’ as defined in the *Migration Act 1958* means:

- “ (a) an officer of the Department, other than an officer specified by the Minister in writing for the purposes of this paragraph; or
- (b) a person who is an officer for the purposes of the Customs Act 1901, other than such an officer specified by the Minister in writing for the purposes of this paragraph; or
- (c) a person who is a protective service officer for the purposes of the Australian Protective Service Act 1987, other than such a person specified by the Minister in writing for the purposes of this paragraph; or
- (d) a member of the Australian Federal Police or of the police force of a State or an internal Territory; or
- (e) a member of the police force of an external Territory; or
- (f) a person who is authorised in writing by the Minister to be an officer for the purposes of this Act; or
- (g) any person who is included in a class of persons authorised in writing by the Minister to be officers for the purposes of this Act, including a person who becomes a member of the class after the authorisation is given.”

‘Tier 1’ notification means a notification that children are in immediate danger or risk from major injuries, alleged intra-familial sexual abuse, alleged severe physical abuse or life threatening neglect.

‘Tier 2’ notification means a notification that children are primarily at risk of immediate or significant harm from serious physical, sexual or emotional abuse or neglect.

‘Tier 3’ notification means a notification that children are primarily in need with low risk in the short term from minor physical abuse, some neglect or emotional abuse or some recent abuse where the perpetrator no longer poses a threat.

'Notifier concern' (NOC) means the notifier believes there are reasonable grounds to believe that a child is at risk but the information provided does not raise a reasonable suspicion that abuse or neglect has occurred.

'No Grounds for Intervention' (NGI) means where a report is clearly a child protection matter, but there is no reason for DHS involvement at the time.

'Extra-familial' (EXF) means the alleged abuse has been perpetrated by a person outside the child's family.

'Intra-familial' (IF) means the alleged abuse has been perpetrated by a family member.

2.2 The attachments and schedules to this MOU form part of this MOU.

3. Basis of this Agreement

3.1 The role of DIMIA is to manage the movement of people into and out of Australia, in accordance with the *Migration Act 1958*. The *Migration Act* requires all unlawful non-citizens be detained (S.189) and removed as soon as is reasonably practicable (S.198). Immigration detention is administrative detention and all immigration detention facilities operate as low to medium security environments.

3.2 The function of DHS is to provide support and assistance to those experiencing disadvantage or who are in need of care and protection in the community in accordance with the *Children's Protection Act* and the *Family and Community Services Act*.

3.3 In the immigration detention environment, DHS provides services to assist families and children at risk of abuse or neglect in accordance with the *Children's Protection Act*.

4. Roles and Responsibilities

4.1 DIMIA maintains the ultimate duty of care for all immigration detainees. That is, the ultimate responsibility for the welfare of unlawful non-citizens in immigration detention remains with DIMIA. The day to day operations of detention services have been contracted out by DIMIA to a private detention services provider.

4.2 DHS has a legal responsibility to investigate child protection concerns for children in immigration detention in South Australia. However, any interventions undertaken to secure the care and protection of detainees must be actioned by DIMIA. DIMIA will consider carefully DHS recommendations to ensure that the best interests of the child are protected.

5. Activities Outside of the Scope of this MOU

5.1 Activities which are outside of the scope of this MOU include the following:

- (a) the processing and decision making in relation to applications for visas from persons in immigration detention and any merits or judicial review related to such decisions;
- (b) the conduct of negotiations with foreign governments and international agencies on questions related to the removal from Australia of foreign nationals;
- (c) the interpretation of international agreements to which Australia is a party, which might impact on the delivery of Australia's immigration detention functions and policies.

6. Contact Officers

6.1 The primary points of contact in relation to provision of information under this MOU shall be the DIMIA Director, Detention Operations and the DHS Manager, Operations, Country, Family and Youth Services as set out in this MOU. Contact details are set out in Attachment 1.

7. Notification of Child Protection Issues

7.1 Under S.11(2) of the *Children's Protection Act 1993* certain classes of people have been designated as Mandated Notifiers and have an obligation to report any allegations of abuse or neglect to DHS. A Mandated Notifier is any person acting in the course of paid or voluntary work, or carrying out official duties, and includes:

- Doctors
- Nurses
- Dentists
- Psychologists/Counsellors
- Police
- Probation Officers
- Social Workers
- Teachers
- Pharmacists/Chemists
- Family Care Workers
- Any person employed, to provide health, welfare, children, child care or residential services wholly or partly for children.

- 7.2 DIMIA staff employed at detention centres in South Australia, or staff of the detention services provider performing functions in detention centres in South Australia, shall, for the purposes of this MOU, comply with the provisions of S.11 of the *Children's Protection Act* as if they were members of a class of persons covered by S.11(2) of that Act.
- 7.3 Therefore all DIMIA officers and all staff employed by the detention services provider working in South Australia forming a suspicion on reasonable grounds that a child in immigration detention in South Australia is, has been or may be abused or neglected, are required by this MOU to notify DHS in accordance with subsection 11 (1) and (2) of the *Children's Protection Act 1993*.
- 7.4. Notifications given in accordance with this part will be made to the Child Abuse Report Line on 13 14 78 (24 hours).
- 7.5 Notifications will be entered on the Client Information System by DHS and will be assessed using the DHS initial assessment procedures.
- 7.6 CRACAS will advise the DHS Manager, Operations, Country, Family and Youth Services of any notifications received in relation to immigration detainees in South Australia, regardless of the outcome of the initial assessment.
- 7.7 The DHS Manager, Operations, Country, Family and Youth Services will liaise with the DIMIA Director, Detention Operations at the time of receiving the notification, regardless of the result of the initial assessment regarding any action to be taken over the notification. If the matter is to be taken further, they will confirm the investigation plan and negotiate an appropriate time for the investigation to take place at the immigration detention facility. The DIMIA Director, Detention Operations must be notified in writing of the identity of the child or young person who will be interviewed, prior to the investigation taking place.
- 7.8 The DHS Manager, Operations, Country, Family and Youth Services will inform the DIMIA Director, Detention Operations of all notifications, orally, within the following timeframes:
- Tier 1 notifications – immediately
 - Tier 2 notifications – within 4 hours
 - Tier 3 notifications or notifier concerns – within 24 hours.
- 7.9 All oral notifications will be confirmed in writing to DIMIA by DHS within 48 hours of DIMIA being informed.

8. Investigations

- 8.1 Investigations of notifications will take place according to DHS standard procedures.
- 8.2 The names of the DHS and SAPOL staff involved in the investigation must be forwarded to the DIMIA Director, Detention Operations for the purpose of granting entry to the immigration detention facility. The DIMIA Director, Detention Operations will provide designated DHS and SAPOL staff with permission to enter the immigration detention facility for the purposes of child protection investigations.
- 8.3 The DIMIA Director, Detention Operations will liaise with the relevant DIMIA Manager regarding this approval and the date of the proposed visit will be confirmed with DHS.
- 8.4 In relation to specific notifications the names of the notifiers will not be released pursuant to Section 13 of the South Australian *Children's Protection Act 1993*. This section only allows for the release of the name of the notifier by DHS if:
- It is in the course of official duties to another person acting in the course of official duties; or
 - It is made with the consent of the notifier.
- 8.5 The DHS Manager, Operations, Country, Family and Youth Services will liaise with the DIMIA Director, Detention Operations regarding recommendations of the investigation. The DIMIA Director, Detention Operations will consider any urgent action, on advice from DHS based on the principles of South Australian child protection legislation which may be required including:
- Interim separation of a child or young person from the alleged perpetrator while further investigations of the matter occur; and/or
 - Any medical attention that may be required.
- 8.6 The action described in clause 8.5 above will be followed up in writing by DHS, as will any recommended action which is not considered urgent.
- 8.7 In relation to Tier 1 investigations, DIMIA agrees to inform DHS in writing of action taken.

9. Notifications Regarding Detainees who have been Released from Immigration Detention

9.1 If:

- (a) a person is granted a visa and released from a detention facility; and
- (b) after that date, a DIMIA officer or detention services employee forms a reasonable suspicion that either:
 - (i) that person committed acts of abuse or neglect while in the detention centre; or
 - (ii) that person (being a child) suffered abuse or neglect while in detention;

the same notification requirements as set out in Part 7 of this MOU apply.

9.2 CRACAS will assess each notification on a case by case basis. CRACAS will forward these notifications to the DHS Manager, Operations, Country, Family and Youth Services.

9.3 The DHS Manager, Operations, Country, Family and Youth Services will seek in writing from DIMIA Director, Detention Operations the last known address of the family involved and forward the concerns to the appropriate DHS District Centre or an appropriate interstate authority for action.

10. Minors in Immigration Detention in South Australia

10.1 DIMIA and DHS agree to work together in a cooperative and collaborative manner to ensure that the best interests and welfare of all children in detention are met.

10.2 The agencies agree that on request from DIMIA, DHS will provide:

- (i) advice on care concerns for children in immigration detention; and
- (ii) assessments on specific cases where a notification is made, including where parental neglect is suspected.

11. Unaccompanied Minors

- 11.1 In immigration detention facilities there may be detainees who are minors, who have arrived in Australia without any family support. Any allegations of abuse regarding unaccompanied minors are to be dealt with in accordance with the general principles outlined in this MOU. However, unaccompanied minors often have special needs and the requirement for special support services.
- 11.2 The agencies agree that on request from DIMIA, DHS will provide advice and assessments on appropriate care arrangements for unaccompanied minors in immigration detention in South Australia. A request for such services will be made by the DIMIA Manager of the relevant immigration detention facility in South Australia, after consultation with the DIMIA Director, Detention Operations.
- 11.3 DIMIA, in considering if an unaccompanied minor meets the criteria for the grant of a Bridging Visa, will take into consideration any assessment by DHS regarding the best interests of the child. In the event that DIMIA makes a determination that it would be in the best interests of the unaccompanied minor to be released from immigration detention, DHS agrees to ensure appropriate arrangements are in place for the care and accommodation of the minor.
- 11.4 DHS will liaise directly with the relevant DIMIA Manager at the detention facility in South Australia regarding arrangements for the care of the child.

12. Training

- 12.1 DHS agrees to provide training to DIMIA officers and persons employed by the detention services provider at the detention facility on the requirements of the South Australian *Children's Protection Act 1993*. This training will include but not be limited to the following issues:
- Recognition of possible cases of abuse;
 - The circumstances under which staff may intervene in family life when there are reasonable grounds to believe that a child is at risk of abuse or neglect. This may include:
 - A child tells a staff member that they have been maltreated;
 - Someone tells a staff member a child has been maltreated;
 - A staff member observes a child's condition or behaviour and it leads them to believe a child has been maltreated; and/or
 - A staff member sees a child being maltreated.
 - How to provide appropriate care and protection for children in detention;

- How to assist families to carry out their responsibilities to care for and protect their children;
- Correct reporting/notification procedures;
- The role of mandated notifiers;
- Treatment of unaccompanied minors.

12.2 In addition DHS agrees that DIMIA may request training to detainees at the immigration detention facilities in South Australia as set out in subsections 8 (f) and (g) of the *Children's Protection Act 1993*. Such training would be provided on a negotiated cost recovery basis and may include but is not limited to:

- Parenting skills;
- Awareness training (eg stranger danger).

13. Handling of Media Inquiries

13.1 DHS agree to refer all media inquiries concerning immigration detainees or the services under this agreement to DIMIA.

13.2 DHS agrees not to issue any information, document, or article in respect of the services under this agreement to the media without consultation with DIMIA.

13.3 The DHS agrees to take into account the following factors when issuing a media statement in relation to immigration detainees:

- The contribution and input of all participating agencies;
- The obligations placed on public sector agencies in South Australia by the *Information Privacy Principles (Cabinet Administrative Instruction 1/89)*, restricting disclosure of personal information;
- The obligations placed on the Commonwealth by the *Privacy Act 1988* and the *Freedom of Information Act 1988* (Commonwealth); and
- Impact of any current or pending court action.

14. Confidentiality

14.1 DHS and DIMIA agrees that all and any information, documentation or material relating to DHS, DIMIA or any detainee or any aspect of the execution of the services under the agreement must remain confidential. Such information must not be disclosed by DHS to any third party, except for the purposes of giving effect hereto or taking legal advice or instituting or defending legal proceedings hereby or as otherwise required by law.

15. Subpoena

- 15.1 If either agency is served with a subpoena or a summons to produce documents relating to any material, document or information provided, the agency will, as soon as practicable, notify the other agency prior to production of the material.

16. Disputes

- 16.1 A party to the Agreement, claiming a dispute has arisen in relation to the Agreement, shall give notice to the other party. In this notice it will designate as its representative in negotiations relating to the dispute, a person with authority to settle the dispute. The other party shall designate a person with similar authority to be its representative in negotiations relating to the dispute within 10 days of receiving notice from the first mentioned party.
- 16.2 The designated persons shall, within 10 days after both parties have designated a representative (as required by clause 16.1) seek to resolve the dispute. Both parties may make whatever investigations they deem appropriate within this 10 day period.
- 16.3 If the dispute is not resolved within 10 days of the commencement of negotiations (or a further period agreed by the representatives) the parties will seek to resolve the dispute by mediation, facilitated by a mediator appointed by agreement between the parties.
- 16.4 Either party can terminate the mediation process 45 days after the appointment of the mediator.

17. Notices

- 17.1 The agencies agree that any notice to be given in relation to this MOU shall be in writing and addressed to the contact officers specified in clause 6.1 of this MOU.
- 17.2 Notices shall be served on the other agency by hand delivery, delivery by mail or facsimile transmission at the addresses or contact numbers or electronic mail addresses set out in Attachment 1 of this MOU.
- 17.3 Each Agency shall notify the other whenever a change relevant to the operation of this MOU occurs, including the contact details of contact officers, operational officers and persons authorised to resolve disputes.

18. Costs

- 18.1 Each agency is responsible for its own costs in meeting its statutory obligations under its respective legislation. Where cost recovery applies, as in paragraph 12.2 of this agreement, any costs to be paid by DIMIA will be paid by reimbursement under Commonwealth terms of trade, which are paid 30 days after the receipt of a correctly rendered tax invoice.

19. Variations

- 19.1 It is agreed that this MOU shall remain in force unless varied or modified by mutual consent between the agencies. Any variation or amendment of this MOU must be in writing and formally agreed by both the agencies.
- 19.2 Any officer of the DHS or DIMIA to whom reference is made in this MOU may be substituted by another officer of the DHS or DIMIA performing the same functions under this MOU without need for formal amendment under part 19.1.

20. Review

- 20.1 This MOU will be reviewed jointly by the agencies on an annual basis, to evaluate its effectiveness and the extent of compliance with the commitments set out in the MOU.

21. Termination

- 21.1 This MOU may be terminated at any time by the giving of a written notice of termination to the other agency, served in accordance with part 17 of this MOU. Where a dispute has arisen in relation to the Agreement, a notice of termination may not be given until after the dispute resolution process in part 16 has been followed. The termination of the MOU will take effect 31 days after the date of the notice, unless a further period has been agreed under part 16.3 of this MOU.

22. Entire Agreement

- 22.1 This MOU represents the entire agreement between the agencies in relation to the purposes set out in the recitals clause and supersedes all prior agreements whether oral or in writing.

23. Effective Date

23.1 The MOU shall be effective as and from the date it is signed by both agencies.

Signed by.....

Date 6 December 2001

Date 6 December 2001

Philippa Godwin
First Assistant Secretary
Detention Task Force
Department of Immigration and
Multicultural and Indigenous Affairs

Christine Charles
Chief Executive
Department of Human Services

Schedule 1

Definitions of Abuse

The *Children's Protection Act 1993* contains the following definitions:

"Abuse or neglect" in relation to a child means:

- (a) sexual abuse of the child; or
- (b) physical or emotional abuse of the child, or neglect of the child, to the extent that:
 - (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's well being;
 - or
 - (ii) the child's physical or psychological development is in jeopardy;

Definitions for Differential Response

This model provides for distinctly different responses to child protection notifications. It differentiates between:

- Children in immediate danger (Tier 1)

These include those children where there are reports of imminent danger or risk, major injuries, alleged severe physical abuse of young children, alleged current intra-familial sexual abuse and life threatening neglect or lack of supervision.

Tier 1 cases warrant an immediate response from DHS, participating in a thorough investigation with Police and the Child Protection Service (CPS).

- Children primarily at risk of significant harm (Tier 2)

These cases will involve children at risk of immediate or significant harm – serious physical, sexual or emotional abuse or neglect of young children and young people at high risk.

Tier 2 cases will be investigated, possibly involving other key agencies.

- Children primarily in need with low risk in the short term (Tier 3)

Cases which primarily involve minor physical abuse (eg one off incident, excess discipline), some neglect and emotional abuse (especially of older children) or some serious recent abuse where the perpetrator no longer poses a serious threat. Those cases where there may be high needs in the family but fairly low risk to children in the short term.

DHS will respond in a less intrusive manner, seeking to engage the family via an invitation to attend a family meeting and collaborate with them to address needs which impact on the care of the children.

Other Response Classifications

- Notifier concerns (NOC)

If the notifier is of the belief that reasonable grounds exist, but it appears to the intake worker that the information does not raise a reasonable suspicion that abuse or neglect has occurred, the notifier will be informed that the matter will not be referred for Departmental intervention.

The information may be:

- Too vague (very imprecise concerns, no clear allegation of abuse)
- Too peripheral (the allegation involve behaviour which at worst might be considered to be poor quality parenting but cannot be seen to be indicative of abuse per se)
- Anonymous, mischievous or of low credibility in other ways, in addition to either of the above

The matter will be recorded on the client information system (CIS) as notifier concern (NOC).

Notifier may be given information which may assist the child and family.

- No Grounds for Intervention (NGI)

Where the report is clearly a child protection matter, but there is no reason for DHS involvement at the time, it will be recorded on the client information system (CIS) as No Grounds for Intervention (NGI) in the outcome screen.

Examples

The incident of abuse occurred months previously or the abuse was perpetrated by a person who no longer has contact and the parents are protective, or other agencies are appropriately dealing with the matter.

- Extra-familial (EXF)

When the alleged abuse has been perpetrated by a person outside the child's family, the matter will be assessed as extra-familial (EXF).

This assessment is determined by the relationship the alleged abuser has with the child.

The type of response depends on a number of factors including the type of abuse alleged and whether or not the parents are protective.

- Intra-familial (IF)

When the alleged abuse has been perpetrated by a person within the child's immediate family, the matter will be assessed as intra-familial.

Attachment 1

Contact Details

DIMIA

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Department of Human Services

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QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(61) Output 1.3: Enforcement and Immigration Law

Senator Bartlett (L&C 69) asked:

In relation to migration cases in the High Court, how many have actually been heard and reserved?

Answer:

As at 18 June 2004 there are six matters before the High Court which have been fully heard and had judgment reserved.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(62) Output 1.3: Enforcement of Immigration Law

Senator Bartlett (L&C 71) asked:

In relation to the Migration Legislation Amendment Bill (No. 1) 2002, is there any risk to do with the status of children born in detention if that legislation does not pass?

Answer:

The amendments at Schedule 1 of the Migration Legislation Amendment Bill (No. 1) 2002 do not have any affect on children born in detention.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(63) Output 1.3: Enforcement of Immigration Law

Senator Kirk (L&C 78) asked:

In relation to the construction of the detention facility on Christmas Island, provide a copy of the submission that was provided to the Public Works Committee.

Answer:

The Public Works Committee submission for the respecified Christmas Island detention facility was submitted by the Department of Finance and Administration. The report is available from the Department of Finance and Administration or from the Public Works Committee web site at <http://www.aph.gov.au/house/committee/pwc/reports.htm>.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(64) Output 1.3: Enforcement of Immigration Law

Senator Buckland asked:

It is reported to me by persons who regularly visit the Baxter Detention Centre that a detainee has applied to DIMIA for a student visa so he can take up the offer of a bursary at an Adelaide College of Divinity.

The young man involved made his application many weeks ago and to date he has received no response.

I have many other reports of detainees in Baxter writing to DIMIA management on a range of issues not getting responses from the department.

(1) Are you aware of the case of the man seeking a student visa I refer to?

If yes:

(a) Where is the application up to?

(b) How long will it be before the applicant is advised of the success or otherwise of his application?

If no:

(a) How long should this man be expected to wait for acknowledgment that his application has been received by DIMIA?

(b) What is the average time for a detainee to wait for advice their application has been received?

(c) Why would this detainee not receive acknowledgment that his application had been received?

(2) Who is responsible for responding to letters to DIMIA from detainees?

(3) Is it a part of the process that the Ministers office or an officer of DIMIA is obliged to reply to all letters from detainees?

(4) What is an acceptable time for a response to be sent?

(5) Can the gentleman in Baxter waiting for a response to his application for a student visa and the other folk in Baxter awaiting a response to their applications ever expect to get an acknowledgment that their application has been received?

(6) What do you think no response or a long wait for a response does for the detainees self esteem and morale?

(7) Is the lack of response a form of punishment?

(8) Do you think it might be seen as a form of punishment?

(9) What happens to the applications that are received by DIMIA?

(10) Do the applications ever get lost or misplaced?

(11) Are applications made by detainees prioritised in order of their nature?

If yes:

- (a) Who does the prioritising?
- (b) What is the order of priority?
- (c) Has the Department done an audit of Baxter detainee's skill levels?
- (d) Does the Department provide a facility to allow detainees to prove their competencies?
- (e) Has DIMIA ever tried to match the skills of Baxter detainees with the skill shortages in Australia's industries?
- (f) Do you know if such a matching has been done?.

Answer:

- (1) The Department has made a number of inquiries but is unable to identify the detainee at the Baxter Immigration Detention Facility (IDF) who has applied for a student visa so he can take up the offer of a bursary at an Adelaide College of Divinity. Further inquiries can be undertaken if more information about this detainee's identity is provided, such as a full name, date of birth and date of application.
 - (a) There is insufficient information available to conclude that any student visa application has been lodged by a detainee at the Baxter IDF.
 - (b) See (a) above.
 - (c) See (a) above.
- (2) Overwhelmingly, contact between the Department and detainees is verbal, either formally in an interview, or through informal discussions with detention facility staff. The responsibility for replies to the small volume of correspondence from detainees depends upon where the correspondence is received and the type of information of issues to be covered in the reply. Where correspondence from detainees can not be answered by departmental staff in IDFs, the correspondence is referred to appropriate areas of the Department for reply.
- (3) The Department endeavours to respond to all correspondence from detainees, including, at times, on behalf of the Minister. Where correspondence is of an abusive nature, a reply may not be provided.
- (4) The Department seeks to respond to any correspondence, including that from detainees, within 28 working days of receipt. However, a response may take longer, depending on factors such as the nature of the inquiry, workloads and availability of staff. However, departmental staff at IDFs respond immediately to many enquiries initiated by detainees.
- (5) See 1 (a) above.
- (6) The Department makes every attempt to ensure detainees receive a response to their correspondence or inquiries as soon as practicable. Where this takes some time, IDF staff will seek to keep the detainee informed of progress.
- (7) The Department does not punish detainees.
- (8) See (7) above.

- (9) All visa applications from detainees received by the Department are referred to the appropriate operational area for processing according to law.
- (10) If a detainee lodges any visa application with departmental staff at an IDF, a record of that application is entered into the Department's client service computer system, the Integrated Client Service Environment (ICSE), and can be taken by the detainee to have been received. If they choose to, the detainee can request a written acknowledgement that the application was received. In these circumstances the advice that the application has been received is immediate.

In addition, departmental staff at IDFs can assist with advice to detainees on developments in the processing of their visa applications. Detainees have frequent contact with departmental staff and can be kept informed about the progress of their application. The progress of an application is recorded in ICSE.

- (11) All visa applications are treated equitably. They are processed according to the legislative requirements of the Migration Act 1958 and Migration Regulations (1994). Under the Migration Act, the Minister may consider and dispose of applications for visas in such order as she or he considers appropriate.

If a detainee makes a valid application for a bridging visa there are statutory time limits (2 working days or 28 days depending on the circumstances). Protection Visa applicants and merits review applicants who are in detention have higher priority.

(a) See (11) above.

(b) See (11) above.

(c) The Department has not audited the skill levels of Baxter IDF detainees and is not required to do so.

(d) The majority of detainees at Baxter IDF have had applications for protection visas refused. Such a refusal means that they are ineligible to apply for skilled migration while physically in Australia. Applications may be made offshore. However, an applicant would need to have his or her skills assessed by an approved assessment authority prior to lodging the application. As detainees are not generally applicants for skilled migration, the Department sees no need for detainees to prove their competencies.

(e) No. There is no valid reason for matching the skills of Baxter detainees with the skill shortages in Australia's industries. Those people wishing to have their skills assessed in relation to a visa application, need to make a valid application for the relevant visa (see (d)).

(f) No. The Department is not aware of any skill matching of detainees.