

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(188) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

1. When Ms Rau was transferred to Brisbane Women's Correctional Facility was there paperwork from the Department stating the reasons why she was held?
2. When Ms Rau was transferred to GSL custody at Baxter, was there paperwork from the department to GSL stating that Ms Rau was lawfully in detention? Does this state the reasons for her detention? Can this be provided to the committee?

Answer:

1. Yes.
2. Yes. A copy of this document with certain personal information deleted as appropriate is attached.

TO: Detention Services General Manager
CENTRE: Baxter IDF

FROM: DIMIA Officer: [Redacted]
Signature: [Redacted]
Date: 05/10/04
Telephone No: 5709

Case Responsibility (Please circle one)
Sydney / Parramatta / SKSA / VIDC / ACTRO / Adelaide / Perth / Melbourne / BIDF

REQUESTED ACTION

You are requested to detain the following person on the basis that they are an unlawful non-citizen.

DETAINEE DETAILS: Name: Ann Brotmeier

Nationality:

I am requesting you, or another Detention Services employee who is also an officer under section 5 of the Migration Act 1958, to

(Tick Relevant)

collect located detainee from: Whyalla Airport at 1425 hrs Wednesday 6 October 2004 - O'Connor Air Lines. Could 2 escorts be provided, one a female

admit and hold in detention at (place): Baxter IDF

escort detainee to:

release detainee due to visa grant: _____

effect the departure of the detainee from Australia by departing, removing or supervising their departure

on Date _____ Time _____ Flight No _____

DIMIA Cost Centre No.: _____

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(189) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

1. Was the prison psychiatrist's report of 10 August (p.18 Rau submission) forwarded to the department?
2. Was this report discussed in the Queensland Detention Review Report of the 31 August 2004?
3. If so, what action was taken?
4. Did this trigger a review of the basis for continuing to hold Ms Rau in detention?
5. If so, who made this decision?

Answer:

1. A copy of the clinical notes was forwarded to Baxter IDF on 7 October 2004.
2. The Queensland Detention Review Report of 31 August 2004 notes the following:
"Psych report being prepared pending move to Baxter. Report now expected early September."
3. Ms Rau's case remained under review pending receipt of the report.
- 4.-5. Ms Rau's case remained under review throughout the ongoing investigations to verify her identity and status in Australia.

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(190) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

1. Was DIMIA consulted or informed of the transfers of Ms Rau to solitary confinement?
2. Did DIMIA approve of such transfers?

Answer:

1.-2. Immigration detainees are not held in solitary confinement at immigration detention facilities. However, on occasion a detainee may be housed in a more restrictive environment such as the Management Support Unit (MSU) or Red One compound.

GSL, the Detention Service Provider, makes the decision to house a detainee in a more restrictive environment.

GSL consults with DIMIA on a decision to house an immigration detainee in such a more restrictive environment, however, the final decision rests with the GSL centre manager.

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) was represented at the Management Unit Review Team meetings at which Ms Rau's (Anna Brotmeyer aka Schmidt) transfers to the MSU was regularly reviewed.

While detained at the Brisbane Women's Correctional Centre (BWCC), Ms Rau was housed from time to time in the Detention Unit. DIMIA was not consulted prior to these transfers.

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(191) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

1. The German Ambassador, Dr Klaus-Peter Klaiber, had the consulate ring and write to the Department on January 24 about possible human rights violations in the case of Ms Rau. What was the Department's response?
2. Was it approved by the Minister?
3. When was the response sent?

Answer:

1.-3. The Department received email correspondence from the German Consul General on 24 January 2005. This correspondence contained copies of email correspondence the German Consulate in Melbourne and German Embassy in Canberra had received from individuals detailing their concerns on the treatment of 'a German citizen' detained at Baxter Immigration Detention Facility.

The Department did not formally respond to this correspondence as the correspondence was referred to the Department for information/consideration only. The concerns raised in the correspondence attached to the correspondence from the German Consul were from third parties and addressed to the German Consul. The German Consul did not directly raise these concerns with the Department in this correspondence.

As the matters raised by the German Consul did not require ministerial consideration, they were not brought to the Minister's attention.

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(192) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

(1) How many forced removals, including from the "offshore processing centres", have happened in the past 4 years? Provide a breakdown by nationality.

(2) Is the department aware of any cases where a failed asylum seeker removed from Australia has been returned to a dangerous situation or renewed persecution or have been killed, including as a result of information provided by non-government organisations? If so, please provide information

(3) Does the Memorandum of Understanding between Australia and Iran contain provisions for Australia to monitor or otherwise assess the safety of deported asylum seekers? Is there a guarantee from the Iranian government that these people will not be persecuted? Is there a guarantee from the Afghan government that these people will not be persecuted?

Answer:

(1) Statistics for this period regarding persons removed from Australia are not recorded with a distinction between those who have left on a voluntary basis and those who were removed involuntarily. The Department can report the number of total removals and the number of voluntary reintegration packages accepted.

There have been no forced removals from offshore processing centres over the past four years.

(2) The Department is not aware of any case where an asylum seeker has been removed from Australia in breach of Australia's protection obligations under the Refugees Convention, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), or the International Covenant on Civil and Political Rights (ICCPR). People in any country can face dangers, disadvantages and uncertainty. Australia is not responsible for all aspects of the future well-being of a person in their homeland because at some stage they spent time in Australia.

(3) The Memorandum of Understanding on Consular Matters with Iran was negotiated on the basis that its provisions would remain confidential.

Australia does not remove people from Iran or Afghanistan in need of protection under the Refugee Convention and other relevant human rights instruments.

Australia does not monitor persons removed from Australia.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(193) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

1. Has the department prepared an internal response to the Deported to Danger report? If not, why not? Can this be provided?
2. Is it true that the Department of Immigration has removed some people and left them without documentation of identification, as claimed in the Deported to Danger report?
3. Is it true that the Department of Immigration removed stateless people to third countries with only temporary (eg. 3month) visas for these third countries?
4. How does the department respond to evidence that asylum seekers who were denied refugee status by DIMIA and RRT have then been deemed to be legitimate refugees by other nations?
5. The Deported to Danger outlines 5 independent cases of deportees arriving in Sri Lanka, Syria and Angola to be met by officials possessing information provided by DIMIA or ACM employees about the deportee, leading to imprisonment upon arrival in 4 of the 5 cases. What is the current practice of DIMIA in providing information to authorities regarding the refugee claims of failed asylum seekers?

Answer:

1. An internal response to the document has not been drafted. However, the Department has investigated two cases which it was able to identify from the Edmund Rice Centre's draft report released in 2003. The investigation was to establish whether there was any unlawful or unethical behaviour or breach of procedures by departmental staff or contractors in working with detainees to gain travel documentation in order for the detainees to leave Australia. The investigation did not reveal any inappropriate behaviour by staff or contractors. The Department does not generally make public the findings of internal investigations reports.
2. No.
3. In circumstances where a person appears to be stateless and/or cannot return to their country of former residence, that person may voluntarily obtain temporary visas for third countries through their own efforts and travel voluntarily to those countries. This occurred in some cases.

4. The Department is not aware of such evidence. It is aware that such claims are made on occasion, but generally without sufficient information being made available to verify such claims. In one known instance sufficient information was available and checks with the relevant government in that case indicated that no person of that name had been granted refugee protection. In any event, decisions made at some future time in another country about an individual's refugee status reflect their claims and the situation in their home country at that time. These may have little or no relevance to the issues raised for consideration in some earlier Australian process. Overall, Australia's refugee approval and refusal rates are unexceptional when compared to those in the range of European and North American countries.

5. The Department provides sufficient information to destination countries to allow for the provision of a travel document and entry to that country. Information related to a person's protection claims is not provided.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(194) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

- (1) What is the process involved to declare a person "immigration cleared"? Can someone in detention be processed to become immigration cleared? If not, why not?
- (2) How can someone born in detention become immigration cleared?

Answer:

- (1) Immigration clearance is the process defined in section 172 of the *Migration Act 1958*, to regulate the entry of people to Australia and to ensure that those who enter have authority to do so, that they are who they claim to be and that they provide other information if required to do so (eg a passenger card).

Under this process, a clearance officer at the border examines a person's travel document and their authority to enter Australia (either the person is an Australian citizen, a visa holder or a person eligible for the grant of a visa in immigration clearance). Once these details are confirmed and everything appears to be in order, the clearance officer formally immigration clears the person for entry to Australia.

- (2) A person in detention can become immigration cleared under specific circumstances. Under section 172(1)(c) of the *Migration Act 1958*, a non-citizen who has been refused clearance or who has bypassed immigration clearance can be cleared if they are granted a substantive visa onshore. Alternatively a person in detention could be immigration cleared if they departed and met the requirements of section 166 on re-entry to Australia.

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(195) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

Do current reporting procedures between the Department and relevant service providers provide for the Department to be informed on the diagnosis of an immigration detainee as suffering from a high level psychiatric disorder, according to the criteria in the DSM-IV (such as Post Traumatic Stress Disorder or Major Depressive Disorder or schizophrenic-type disorders), whether such psychiatric disorder developed in immigration detention or not?

Answer:

Current reporting procedures provide for the provision of health related reporting, including reporting on psychiatric conditions. Reports cover all people in an immigration detention facility rather than detailed individual reports. However, the Department may request detailed reports where required.

Where emergency medical attention is received by a detainee either on-site or off-site or where a detainee has threatened, attempted or engaged in self harm, current reporting procedures require that the Department be notified locally and also at Central Office of the specific event and the individual concerned.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(196) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

(1) How far up the GSL and DIMIA chain of responsibility did the memo regarding Cornelia Rau's citizenship status (doubts that she was unlawful and suspicion she may be an Australian) go?

(2) What actions were taken in response to this memo and the suspicion she may be Australian? Who was responsible for these actions? What was the result?

(3) Were the grounds for the reasonable suspicion reviewed at this point in time? If not, why not? If so, who made the decision to continue to detain Ms Rau?

(4) Was the memo and suspicion ever raised during correspondence with the Minister or during meetings with the Minister's office where Ms Rau was discussed?

(5) Was Ms Rau's citizenship or visa status questioned at a MURT meeting at any stage during her time at Baxter detention centre? Who raised this matter? Provide the minutes of this meeting.

(6) Provide a list and details of all occasions when officers within the department of immigration, or other authorities involved in the detention and care of Cornelia Rau, raised their suspicion that Ms Rau could be an Australian citizen or lawful resident?

(7) Did detainees at either the Queensland prison or Baxter detention centre ever raise concerns that Ms Cornelia Rau was in fact an Australian citizen or permanent resident? If so were these concerns followed up?

(8) I visited Baxter detention centre on March 22 2005, after Cornelia Rau's identity had been revealed. When I was there I met with a GSL staff member, Shirley Ellison, a case manager, who was introduced to me as the person responsible for Red One and a member of the Management Unit Review Team. Shirley said to me that she thought Cornelia Rau was Australian whilst she was in Baxter detention centre. She said she had formed this belief because in her conversations with Cornelia it became clear to her that Cornelia knew the geography of Australia well. When she talked to Cornelia about where she was going on holidays and where her family lived Cornelia knew all the towns she mentioned and where they were even though most of them were small towns that you would not expect a tourist or a recent arrival to know, especially one who said she had arrived in far north QLD 2 weeks before she was detained in QLD, especially since the places mentioned were not all in QLD. Shirley said that she had raised these

concerns at Management Unit Review Team meetings. Is there a record of these concerns being raised? Please provide a copy of any such records and the relevant part of minutes of the MURT meetings relating to Cornelia Rau during the period in which Cornelia was in Baxter?

(9) Does the internal DIMIA memo discussed on ABC radio's AM program on Friday June 3 detail Shirley's view that Cornelia was Australian or is it based on similar views of other GSL or DIMIA staff?

Answer:

(1) The message referred to is a departmental email message. DIMIA officers at the Director level (Section head level of management) were copied into this message. GSL were not copied in to this particular email.

(2) Attempts to identify Ms Rau (Anna Brotmeyer aka Schmidt) were ongoing at the time that this email was sent. Further assistance was sought from external agencies (Births, Deaths and Marriages; Centrelink; Medicare; Missing Persons Unit) as well, further checks of departmental records were undertaken.

The document is in no way definitive and the statement was speculation on the part of the officer concerned and not based on anything that Ms Rau (Anna Brotmeyer aka Schmidt) had actually said or done. Further, the theory was inconsistent with any direct comments made by Ms Rau (Anna Brotmeyer aka Schmidt).

(3) Inquiries with Australian agencies, Australian representatives overseas and the German Consulate were ongoing in an effort to verify Ms Rau's (Anna Brotmeyer aka Schmidt) identity and status in Australia.

(4) Departmental records do not indicate that this message was raised with the Minister or her office.

(5) The purpose of the MURT meetings is to discuss the welfare, behaviour of and incidents involving detainees in the Management Support Unit; its purpose is not to discuss a detainee's immigration status. In this context, a GSL Case Manager raised the possibility that Ms Rau may be Australian with German parentage.

The extract of the meeting minutes from 24 November 2004 read as follows,

"The Case Manager informed the MURT team that she had doubts as to whether (sic) or not Anna was a German citizen but believe it could be possible that she is an Australian Citizen of German parents, suggested that DIMIA look into missing persons."

The extract of the meeting minutes from 25 November 2004 read as follows,

"The Case Manager suggested DIMIA stop looking in Germany for her parents as she believes Anna is an Australian of German parents."

The extract of the meeting minutes from 26 November 2004 read as follows,

“The Case Manager also believes that Anna is not German but born of German parents in Australia.”

(6) Searches on departmental databases were not able to verify Ms Rau’s (Anna Brotmeyer aka Schmidt) identity or status in Australia.

As a result, the search was broadened to any line of inquiry that was considered relevant to the circumstances of the case. This included checks with a range of Australian Government agencies, such as Centrelink, DFAT and the Health Insurance Commission, and state based agencies such as police, registration and licensing authorities. Based on the information that Ms Rau (Anna Brotmeyer aka Schmidt) provided to DIMIA, it was not possible to eliminate or confirm any suspicions.

(7) Departmental records do not indicate that such concerns were raised by detainees at either Brisbane Women’s Correctional Centre or Baxter IDF.

(8) Please refer to part (5) of this question.

(9) The document reflected a summary of discussions at the MURT meeting from 24 November 2004, in which the Case Manager first raised her view.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(197) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

- (1) Who was the specialist health advisor on the Management Unit Review Team (MURT) during the time Cornelia Rau was kept in the management unit?
- (2) What is the average length of time that detainees are kept in the Management Unit?
- (3) What is the longest period of time a detainee has been kept in the Management Unit?

Answer:

- (1) Trained and qualified psychologists, counsellors, registered nurses and staff from the detention service provider and DIMIA participate in Management Unit Review Team meetings.
- (2) Over the twelve months to the end of June 2005, the average time spent in the management unit has been 2.6 days.
- (3) The longest period spent in the management support unit at Baxter IDF is 59 days, which occurred in 2003. It should be noted that for a significant proportion of this period the individual concerned refused to leave the management support unit of his own volition and had an open door policy, which included no restrictions on his visits and attendance at centre activities.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(198) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

- (1) How many detainees are currently on the SASH watch at Baxter detention centre?
- (2) How many detainees, on average, have been on the SASH watch over the past two years?
- (3) Was Cornelia Rau ever placed on the SASH Watch?
- (4) When a detainee is placed on SASH Watch are they automatically referred for psychiatric assessment? If so, how soon after such a referral are they seen by a psychiatrist?

Answer:

- (1) As at 21 June 2005, one (1) immigration detainee at Baxter Immigration Detention Facility (IDF) is on Suicide and Self Harm (SASH) watch.
- (2) Between 19 January 2004 (the date Global Solutions Limited commenced as Detention Services Provider at Baxter IDF) and 31 December 2004, there were 257 recorded SASH placements. From 1 January 2005 to 22 June 2005, there have been 72 recorded SASH placements. It should be noted that these figures represent the number of SASH placements, not the number of individual detainees involved.
- (3) Yes. Ms Cornelia Rau was placed on SASH watch on 6 October 2004 to 7 October 2004, 8 October 2004 to 12 October 2004 and 19 October 2004 to 20 October 2004.
- (4) Once an immigration detainee is placed on SASH watch psychologists participate with staff from the detention service provider and the Department. Through a joint consultation process the ongoing management of detainees in the SASH watch is monitored and therefore decisions regarding the appropriate treatment, placement and management of individual detainees are decided jointly. These decisions may include referral to a general practitioner, psychiatrist or other specialist. Since the placement of mental health nurses in Baxter IDF on 26 May 2005, they have also participated in the SASH process.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(199) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

According to the Finn judgement at 34, in the contract with GSL - Schedule 2 section 7.1.3 "...Where a detainee is admitted to a hospital, the Department will be responsible for the costs. However, this will be considered on a case-by-case basis, having regard to protocols that are being developed, and in some circumstances the Services Provider may be responsible for the costs of hospitalisation."

What does case-by-case basis mean in this clause? Against what criteria are these cases judged? Please provide a copy of the protocols referred to in this section?

Answer:

Clause 7.1.3 of Schedule 2 of the Detention Services Contract seeks to clarify whether the Department or GSL is responsible for paying the cost of hospitalisation of detainees.

The full clause reads:

"The Services Provider will be responsible for costs associated with medical treatment within a detention facility, at a day care facility, at hospital outpatients and for referral to specialists. Where a detainee is admitted to hospital, the Department will be responsible for the costs. However, this will be considered on a case-by-case basis, having regard to protocols that are being developed, and in some circumstances the Services Provider may be responsible for the costs of hospitalisation. The Services Provider must protect Commonwealth interests by ensuring that detainees get proper preventative and remedial primary health care to the extent possible and that hospitalisation only occurs in appropriate cases."

"Case-by-case" in this context means that a decision would be made on the basis of the individual circumstances and medical evidence pertaining to each case. Essentially the Department would ordinarily cover the costs of hospitalisation. However, there may be some circumstances in which it is appropriate for the Detention Services Provider to bear some or all of the cost due to its actions or decision making on place of treatment. These circumstances include:

- any medical procedures and treatment provided to detainees at a hospital when they are not admitted to the hospital as an inpatient in accordance with hospital guidelines;
- any medical procedures and treatments provided to detainees as hospital outpatients or at a day care facility, where the patient has not been admitted for an overnight stay except where there has been prior Departmental approval;

- any specialist services provided to a detainee at a hospital, except where those services are provided while the detainee is admitted to the hospital as an inpatient and the Department is already accruing the hospital costs.

The Protocols which set out the criteria on which these decisions are made are not yet finalised. When the Protocols are finalised, the Department will make them available.

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(200) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

(1) What contingency plans are in place to replace the Baxter psychiatrist, Dr Frukacz, if he is unable to visit for a substantial amount of time, or urgent assessment by a psychiatrist is needed?

(2) Does the department consider the frequency of Dr Frukacz visits to Baxter adequate given he only visits every 6 to 8 weeks and is able to see only half his case load of patients each visit? Is a psychiatric consultation every 3 to 4 months adequate in the view of the Department?

Answer:

(1) International Health and Medical Services (IHMS) has access to other psychiatrists, who can visit Baxter IDF in lieu of Dr. Frukacz when required. If urgent psychiatric assessment is required outside visiting times, the clinical pathways established with SA Mental Health are followed.

(2) The provision of mental health services at Baxter IDF has been increased. However, it is important to note that the Department does not rely solely on psychiatrists to provide mental health care to immigration detainees. Health services, including mental health services, are provided in accordance with the Detention Service Contract by trained and qualified health professionals, in line with community standards and taking into account the special needs of detainees.

Since 28 May 2005 a psychiatrist has been visiting Baxter IDF fortnightly or more regularly as required.

On 26 May 2005 two new psychiatric nursing positions were established at Baxter IDF to achieve seven day coverage, and on-call arrangements.

In addition to psychiatrists and mental health nurses, mental health care at immigration detention facilities is delivered by psychologists and counsellors.

DIMIA is currently implementing procedural changes and service delivery enhancements, including improved access to care outside detention facilities and reviewing its monitoring and oversight arrangements for health care services. The Department is accessing further specialist medical expertise to assist it in these processes.