

## QUESTION TAKEN ON NOTICE

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(206) Output 1.3: Enforcement of Immigration Law**

Senator Nettle asked:

1. Who is the relevant officer(s) involved in Cornelia's detention?
  - a. Which officer(s) formed a 'reasonable suspicion' that Cornelia was an unlawful non-citizen?
2. What was the basis of that officer(s) suspicion?
3. Which officer(s) detained Cornelia pursuant to s. 189? Was this the same officer(s) that formed a 'reasonable' suspicion in relation to Cornelia? If not, then which officer(s) detained Cornelia pursuant to s. 189 and did this officer(s) form a 'reasonable suspicion' that Cornelia was an unlawful non-citizen and, if so, what was the basis of that officer(s) suspicion?
4. What procedure did the officer(s) follow?
5. What documents or other material are in existence which cast light on the facts and circumstance surrounding Cornelia's original detention?
6. Who, if anyone, was consulted at the time of the original detention and what oral and written communication between them occurred?
7. What policies, procedure or guidelines were available to such officer(s) at such time?
8. What information were police given concerning Cornelia prior to and at the time of detention?
9. Was such information in and of itself capable of supporting or casting doubt on suspicions that she was an unlawful entrant?
10. What if any observations did police themselves make about Cornelia prior to and at the time of detention? Were such observations capable of supporting or casting doubt on suspicions that she was an unlawful entrant?
11. What if any observations were made to police about Cornelia by others prior to and at the time of detention? Were such observations capable of supporting or casting doubt on suspicions that she was an unlawful entrant?
12. What if any observations were made by police about Cornelia to those persons reporting to or informing police or other officials in relation to Cornelia prior

to and at the time of detention? Were such observations capable of supporting or casting doubt on suspicions that she was an unlawful non-citizen?

13. What, if any, checks and inquiries did police and immigration officials make in relation to Cornelia before they detained her?

14. On the basis of Goldie, what, if any, checks and inquiries might police and immigration officials reasonably have been expected to make before detaining her?

15. Assuming that Cornelia gave officials a false name and a fictional account of her background before and at the time of her detention was it reasonable for officials to rely simply on what she told them? If so it would follow that s.189 provides little or no protection "for those prone to inventing stories about themselves, whether because of mental illness, old age or for some other reason." Instead authorities are required to make 'due inquiry' at their own initiative before placing a person into detention.

16. What if any inquiries were made in relation to missing persons by police and immigration officials prior to or at the time of Cornelia's detention?

17. What, if any, inquiries in relation to missing persons by police and immigration officials prior to or at the time of Cornelia's detention was it reasonable to make?

18. What, if any, results would have been achieved if any such inquiries were made?

19. Does the Migration Act 1958, as a matter of constitutional law and/or statutory construction authorise the detention of a person who is a citizen or lawful non-citizen in the kind of circumstance applying in Cornelia's case?

*Answer:*

1. The DIMIA Compliance Manager, Cairns Office, Queensland.

2. All cases of 'reasonable suspicion' are based on the circumstances of the individual case. In this case, the DIMIA Compliance Manager relied on the information provided to police and DIMIA by Ms Rau (Anna Brotmeyer aka Schmidt) and his subsequent checks of DIMIA records.

3. The DIMIA Compliance Manager, Cairns Office, Queensland.

4. Reasonable suspicion is determined on a case by case basis. General guidance is available to officers for establishing a person's immigration status depending on the circumstances of the individual case.

It is further stated in Migration Series Instruction number 321: *Detention of Unlawful Non-Citizen* that officers must not make assumptions based on a person's English language proficiency or ethnicity in establishing his or her immigration status. Officers must ensure that knowledge or reasonable suspicion about a person's

status as an unlawful non-citizen is based on objective evidence such as: information held in Departmental records; credible information from third parties; the person's inability to provide satisfactory evidence of being a lawful non-citizen and a lack of a credible explanation for this; and the person evading or attempting to evade officers.

5. Please refer to Question 52 from the February 2005 Senate Estimates hearings for the record of interview of the 01 April 2005.

Please refer to Question 44 from the February 2005 Senate Estimates hearings for the record of system checks undertaken at the time of her original detention.

6. Departmental records indicate that on the day the decision to detain Ms Rau (Anna Brotmeyer aka Schmidt) was made, oral and written communication was occurring between DIMIA Officers, Queensland Police and Ms Rau herself.

7. A practical guidance to officers on what constitutes reasonable suspicion in the context of section 189 of the Migration Act is found in Migration Series Instruction number 234: *General Detention Procedures*.

Further instructions are contained in Migration Series Instruction number 321: *Detention of Unlawful Non-Citizens*.

8. The Department issued Queensland Police with a Request to Detain. This form requested that Queensland Police detain Anna Brotmeyer on the basis that she was known or reasonably suspected to be an unlawful non-citizen.

9. Information provided to the Department at the time of detention supported the suspicion that Ms Rau (Anna Brotmeyer aka Schmidt) was an unlawful non-citizen.

10. The email from Queensland Police alerting DIMIA to Ms Rau's (Anna Brotmeyer aka Schmidt) circumstances is at attachment A.

11. For information provided by the Queensland Police, please refer to the answer to part 10.

12. Please refer to the answer to part 10.

13. Please see excerpt from the chronology provided as part of the February Senate Estimates answer to Question on Notice 44 to Senator Ludwig.

Date	Office	Action
30/03/2004	DIMIA Cairns	Queensland Police notify DIMIA of a suspected unlawful citizen.
31/03/2004	DIMIA Cairns	<ul style="list-style-type: none"><li>• Departmental ICSE records searched for Anna Brotmeyer DOB: 1970</li><li>• Departmental system movement records searched for Anna Brotmeyer DOB: 1970 (name given by person of interest)</li><li>• Movement records searched for Anna</li></ul>

		<p>Schmidt and Anne Schmitz (name given by person of interest; Anna Brotmeyer and Anna Schmidt were the two names given to the QLD Police by the person of interest)</p> <ul style="list-style-type: none"> <li>• ICSE records and movements searched in the name of a passport which was found in Ms Rau's (Anna Brotmeyer aka Schmidt) property. Owner of passport subsequently contacted.</li> <li>• Two other names were searched on the Department's movement system because they appeared in her belongings.</li> <li>• Documentation faxed to QLD Police in Coen requesting Ms Rau be taken into custody as a suspected unlawful non-citizen</li> <li>• Documentation faxed to QLD Police in Coen requesting Ms Rau be transferred to Cairns watch house.</li> </ul>
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14. Refer to Senate Estimates Question on Notice 185.

15. Departmental officers must establish knowledge or reasonable suspicion of a person's status as an unlawful non-citizen based on evidence such as information provided by the person of interest, information held in Departmental records and credible information from third parties.

16. The Missing Persons Unit in QLD was contacted by the Department on 29 April 2004. Photographs as well as names, aliases and dates of birth provided by Ms Rau (Anna Brotmeyer aka Schmidt) were forwarded to the unit.

17. Initial inquiries made by the Department focused on appropriate investigation into her status in Australia and attempts to verify the information provided by Ms Rau (Anna Brotmeyer aka Schmidt).

18. It is difficult to speculate on what results would have been achieved if such inquiries were made prior to or immediately at the time of Ms Rau's (Anna Brotmeyer aka Schmidt) detention.

19. Section 196(2) of the Migration Act, by providing that section 196(1) does not prevent the release from immigration detention of a citizen or a lawful non-citizen, clearly contemplates that a citizen or lawful non-citizen might be detained under s 189.

From: [REDACTED]  
10:00:23 PM

To: [REDACTED]  
cc:

Subject: German Woman

OK here are her details:

Anna BROTMAYER  
21/03/1970

Is on a travelling holiday from Germany. Refused to state how long she has been in Australia and very agitated by police presence.

Is travelling alone, and is happy just to camp with the local aborigines. Stated she had no family or persons who would know she was missing or report her as such.

A bit messed up in the head.

Ta mate,

[REDACTED]

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