

# RECOMMENDATIONS

## Recommendation 1

**1.37** The committee recommends that the terms of reference for any future independent inquiries into the administration of the Migration Act provide the authority for the investigation to include both the Minister and the Minister's office.

## Recommendation 2

**2.48** The committee recommends that the Minister ensure all statements tabled in Parliament that relate to protection visa applications and review applications that take longer than 90 days to decide contain sufficient information to ensure effective parliamentary scrutiny of the visa and review determination process.

## Recommendation 3

**2.63** The committee recommends that the Migration Act be amended to require that onshore protection visa applicants be given at least two weeks notice of the intention to make a negative decision with respect to an application. In addition, it is recommended that DIMA provide a summary of its reasons for its intention to make a negative decision and the applicant be given the opportunity to respond.

## Recommendation 4

**2.64** The committee recommends that DIMA conduct an interview with all onshore applicants unless they are to be approved on the papers.

## Recommendation 5

**2.65** The committee recommends that DIMA review the application forms and information sheets provided to offshore humanitarian visa applicants to ensure that they provide applicants with comprehensive and detailed information on the relevant visa criteria and assessment process.

## Recommendation 6

**2.73** The committee recommends that the Government make training of interpreters a priority and establish a planned, comprehensive training programme to address the development and ongoing needs of interpreting services provided by or on behalf of DIMA.

## Recommendation 7

**2.74** The committee recommends that a quality assurance process be developed and implemented to monitor and to report to Parliament through the Department's Annual Report on the quality of interpreting services provided by or on behalf of DIMA (including the RRT and MRT).

## **Recommendation 8**

**2.109** The committee recommends that the Migration Act and Regulations be reviewed as a matter of priority, with a view to establishing an immigration regime that is fair, transparent and legally defensible as well as more concise and comprehensible.

## **Recommendation 9**

**2.110** The committee recommends that the review of the Migration Act and Regulations be undertaken by the Australian Law Reform Commission.

## **Recommendation 10**

**2.111** The committee recommends that the review of the Migration Series Instructions, announced as part of the Government's response to the Palmer report, ensure that the Instructions accurately and clearly reflect and comply with the Migration Act and Regulations.

## **Recommendation 11**

**2.112** The committee recommends that DIMA's approach to case management of protection visa applications be reviewed.

## **Recommendation 12**

**2.113** The committee recommends that, as part of its new National Training Strategy, DIMA review the training methods and approaches for officers responsible for the processing and assessment of protection visa applications, with a view to establishing a planned and structured comprehensive training programme.

## **Recommendation 13**

**2.114** The committee recommends that the Government expand the responsibilities of its recently established College of Immigration Border Security and Compliance to include provision of training for officials responsible for the processing and assessment of protection visa applications.

## **Recommendation 14**

**2.115** The committee recommends that the ANAO commit to a series of rolling audits to provide assurance that humanitarian and non-humanitarian visa applications are being correctly processed and assessed.

## **Recommendation 15**

**2.140** The committee recommends that the Migration Series Instructions include a requirement that case officers treat 'dob-in' information with the upmost caution, particularly if the information is provided anonymously, and ensure that such information is provided to applicants and their legal representatives.

## **Recommendation 16**

**2.160** The committee recommends that the quality indicators for DIMA's offshore humanitarian program and onshore protection visa processing be

amended to include qualitative performance measures other than timeliness (such as the number and outcome of review applications and appeals).

**Recommendation 17**

**2.219** The committee recommends that visa applicants' legal representatives be accorded the right to participate in primary interviews conducted by DIMA.

**Recommendation 18**

**2.220** The committee recommends that the Government institute and fund a duty solicitor scheme for all persons held in immigration detention (not solely protection visa applicants).

**Recommendation 19**

**2.221** The committee recommends that DIMA cease its practice of interpreting section 256 of the Migration Act narrowly which, in practice, limits access to lawyers. Detainees should be advised of their right to access lawyers, and lawyers should have ready access to detainees with the minimum possible restrictions.

**Recommendation 20**

**3.198** The committee recommends that DIMIA and the Department of Finance and Administration review the RRT and MRT current funding levels and systems in light of the current and expected workloads of both Tribunals.

**Recommendation 21**

**3.12** The committee recommends that the Migration Act be amended to provide that the MRT and RRT can, in appropriate circumstances, grant an extension of time in which to lodge applications for review.

**Recommendation 22**

**3.1** The committee recommends that the *Migration Act 1958* be amended to provide an entitlement to legal representation at Tribunal hearings for applicants and an entitlement to call and examine witnesses at hearings.

**Recommendation 23**

**3.200** The committee recommends that the Commonwealth legal aid guidelines be amended to provide for assistance in migration matters, both at the preliminary and review stages, subject to applicants satisfying means and merit tests, and that necessary funding be provided to meet the need for such services.

**Recommendation 24**

**3.201** The committee recommends that applicants have a right to be provided with copies of documents the contents of which Tribunal members propose to rely upon to affirm the decision that is under review.

**Recommendation 25**

**3.202** The committee recommends that RRT incorporate into its Practice Directions specific guidelines on its approach to credibility.

### **Recommendation 26**

**3.203** The committee recommends that the MRT and the RRT be included in the training and development initiatives and strategies being developed by DIMIA as part of the response to the Palmer report.

### **Recommendation 27**

**3.204** The committee recommends that the RRT incorporate into its Practice Directions specific guidelines on the weight to be given to expert medical reports, especially those detailing a claimant's history of persecution with a clinical assessment of their current psychological condition.

### **Recommendation 28**

**3.205** The committee recommends that the RRT be able to sit as a single member body and as a panel of up to three members as appropriately determined by a Senior, or the Principal Member. Members would be drawn from people with appropriate backgrounds for considering refugee and humanitarian applications.

### **Recommendation 29**

**4.122** The committee recommends that coverage of the Immigration Application Advice and Assistance (IAAAS) scheme be extended to enable applicants for Ministerial intervention to obtain an appropriate level of professional legal assistance.

### **Recommendation 30**

**4.123** The committee recommends that each applicant for Ministerial intervention be shown a draft of any submission to be placed before the Minister to enable the applicant to comment on the information contained in the submission. This consultative process should be carried out within a tight but reasonable time frame to avoid any unnecessary delay.

### **Recommendation 31**

**4.124** The committee recommends that all applicants for the exercise of Ministerial discretion should be eligible for visas that attract work rights, up to the time of the outcome of their first application. Children who are seeking asylum should have access to social security and health care throughout the processing period of any applications for Ministerial discretion and all asylum seekers should have access to health care at least until the outcome of a first application for Ministerial discretion.

### **Recommendation 32**

**4.125** The committee recommends that the Minister ensure all statements tabled in Parliament under sections 351 and 417 (which grant the Minister the discretionary power to substitute more favourable decisions from that of the Tribunals) provide sufficient information to allow Parliament to scrutinise the use of the powers. This should include the Minister's reasons for believing intervention in a given case to be in the public interest as required by the legislation. Statements should also include an indication of how the case was

brought to the Minister's attention by an approach from the visa applicant, by a representative on behalf of the visa applicant, on the suggestion of a tribunal, at the initiative of an officer of the department or in some other way.

#### **Recommendation 33**

**4.126** The committee recommends that the Migration Act be amended to introduce a system of 'complementary protection' for future asylum seekers who do not meet the definition of refugee under the Refugee Convention but otherwise need protection for humanitarian reasons and cannot be returned. Consideration of claims under the Refugee Convention and Australia's other international human rights obligations should take place at the same time. A separate humanitarian stream should be established to process applicants whose claims are in this category, including a review process.

#### **Recommendation 34**

**6.15** The committee recommends that the use of detainee labour should be subject to independent investigation by the Ombudsman or HREOC and re-examined as part of the review of the immigration detention services contract.

#### **Recommendation 35**

**6.34** The committee recommends that the use of behavioural management techniques and restrictive detention be re-examined as part of the government's proposed review of the immigration detention contract. The committee further recommends that HREOC and the Royal Australia and New Zealand College of Psychiatrists and other stakeholders be consulted during the process.

#### **Recommendation 36**

**6.35** The committee recommends that the 'management units' be closed. In the alternative, their use should be limited for short periods not exceeding twenty-four hours in cases of emergency.

#### **Recommendation 37**

**6.36** The committee recommends that all measures which constitute a further deprivation of liberty within a detention centre be established by law, the grounds and procedural guidelines should be specified and procedural safeguards enforceable in the general courts.

#### **Recommendation 38**

**6.44** The committee recommends that the forthcoming review of the detention services contract include specific examination of internal complaint processes including, among other things, mechanisms for confidential complaints and protection from victimisation.

#### **Recommendation 39**

**6.45** The committee recommends that the Migration Act be amended to provide HREOC with an express statutory right of access to all places of immigration detention;

#### **Recommendation 40**

**6.46** The committee recommends that a system of regular official visits by an independent complaints body be instituted and this function be performed cooperatively by HREOC and the Commonwealth Ombudsman.

#### **Recommendation 41**

**6.58** The committee recommends that the review of the immigration detention services contract include a review of the Immigration Detention Standards, Migration Series Instructions and Operational Procedures and ensure that rules relating to access to detainees are consistent with international standards.

#### **Recommendation 42**

**6.59** The committee recommends that the Migration Act be amended to give effective recognition to the right of detainees to have access to lawyers and other visitors, including medical and religious visitors.

#### **Recommendation 43**

**6.60** The committee recommends that restrictions on access to lawyers and other visitors imposed for disciplinary or behavioural management purposes should be expressly prohibited.

#### **Recommendation 44**

**6.134** The committee recommends that there be a presumption against the imposition of a liability to pay the Commonwealth for the cost of detention, subject to an administrative discretion to impose the debt in instances of abuse of process or where applicants have acted in bad faith.

#### **Recommendation 45**

**6.145** The committee recommends that the Migration Act be amended to permit the mandatory detention of unlawful non-citizens for the purpose of initial screening, identity, security and health checks and that the initial period of detention be limited to up to ninety days.

#### **Recommendation 46**

**6.146** The committee recommends the continuation of detention for a specified limited period should be subject to a formal process, such as the approval of a Federal Magistrate, on specified grounds and limited to situations where: there is suspicion that an individual is likely to disappear into the community to avoid immigration processes; or otherwise poses a danger to the community.

#### **Recommendation 47**

**6.147** The committee recommends release into the community on a bridging visa with a level of dignity that allows access to basic services, such as health, welfare, housing and income support or work rights.

#### **Recommendation 48**

**7.132** The committee recommends that, as a fundamental overarching principle, direct responsibility for the management and provision of services at immigration detention centres in Australia should revert to the Commonwealth.

#### **Recommendation 49**

**7.133** The committee recommends that the detention services contract between DIMIA and GSL be redrafted immediately to incorporate all relevant suggestions and recommendations from the Palmer Report, the Hamburger Report and recent ANAO performance audit reports, particularly in relation to performance measures, outcomes, service quality and risk management.

#### **Recommendation 50**

**7.134** The Committee recommends that a statement of detainees' rights and conditions be established within the Migration Regulations, including clear provisions for the making of complaints to a third party, and third party powers to make rectification orders.

#### **Recommendation 51**

**7.135** The committee recommends that an independent body be established with ongoing responsibility for monitoring the operation and management of immigration detention centres and the detention services contract.

#### **Recommendation 52**

**8.34** The committee recommends that the Temporary Protection Visa regime be reviewed. Specifically, the review should consider the possible abolition of the '7 day rule', and that all TPV holders be given the opportunity to apply for permanent protection visa after a specified period.

#### **Recommendation 53**

**8.68** The committee recommends that all holders of Bridging Visas Class E should be given work rights.

#### **Recommendation 54**

**8.70** The committee recommends that if the Commonwealth Government rejects the proposal that all Bridging Visa holders have work rights, the Committee recommends that the current '45 day rule' be doubled to 90 days to give people more time to apply for a protection visa.

#### **Recommendation 55**

**8.115** The committee recommends that, in the light of increasing numbers of refugees from Africa, DIMIA should reassess its resettlement programs to ensure that services are relevant, and that sufficient budget appropriation is made to cover all the costs of implementing those programs.

### **Recommendation 56**

**9.28** The committee recommends that the Migration Act be amended to require a comprehensive pre-removal risk assessment to ensure no 'refoulement', humanitarian or welfare concerns exist.

### **Recommendation 57**

**9.29** The committee recommends that the Migration Act be amended to require that all prospective removees be provided with reasonable notice.

### **Recommendation 58**

**9.85** That the committee further review the operation of section 501 and the report of the Commonwealth Ombudsman investigation into the administration of the cancellation of visas on character grounds. Further, the committee recommends that, as per the Ombudsman's recommendations, the use of Section 501 to cancel permanent residency should not be applied to people who arrived as minors and have stayed for more than ten years.

### **Recommendation 59**

**9.119** The committee recommends that, in order to comply with its 'non-refoulement' obligations and to ensure the welfare of persons removed or deported from Australia, the Commonwealth continue to enhance the scope of its informal representations to foreign governments, encourage monitoring by Australian overseas missions, and continue to develop strong relationships with local and overseas-based human rights organisations.

### **Recommendation 60**

**9.120** The committee recommends that the Commonwealth Government review and clarify its removal and deportation processes to ensure that formal and proper procedures for welfare protection are in place for the reception of persons being removed or deported from Australia.

### **Recommendation 61**

**10.72** The committee recommends that the Migration Act and Regulations be amended to allow for greater flexibility and discretion in dealing with breaches of the conditions of student visas.

### **Recommendation 62**

**10.75** The committee recommends that the recommendations of the *Evaluation of the Education Services for Overseas Students Act 2000* continue to be implemented as a high priority.