

INTRODUCTION

Referral of the Inquiry

On 21 June 2005, the Senate referred to the Legal and Constitutional References Committee an inquiry into the administration and operation of the *Migration Act 1958*. The inquiry was to report by 8 November 2005.

On 6 October 2005 the Senate agreed to extend the reporting date to 1 December 2005, The Senate subsequently agreed to further extend the reporting date to 21 December 2005. The committee subsequently resolved to table its report on the first sitting day in 2006.

These extensions arose for a number of reasons: the considerable amount of material to presented to the committee; the significant public interest in this inquiry; and the committee's need to thoroughly consider the evidence it has received; as well as the committee's heavy workload and several administrative and procedural matters which diverted the committee's time and attention.

The committee's terms of reference were to inquire into:

- (a) the administration and operation of the *Migration Act 1958*, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- (b) the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- (c) the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- (d) the outsourcing of management and service provision at immigration detention centres; and
- (e) any related matters.

Background to the inquiry

The decision to instigate the inquiry arose in particular from the handling by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) of two cases: the wrongful detention of an Australian resident, Ms Cornelia Rau, and the improper deportation of an Australian citizen, Ms Vivian Solon. As is explored in greater detail in Chapter 1, these instances of maladministration reflected widespread public concern at many aspects of DIMIA's operations with respect to, among other things, detainees and asylum seekers.

This report also reflects the latest instance of a long running public and parliamentary scrutiny of Australia's immigration system. The report is written in the light of the earlier evidence and findings of this committee's June 2000 report *A Sanctuary under Review: An examination of Australia's Refugee and Humanitarian Determination Processes*, and the 2004 report of the Senate Select Committee on Ministerial Discretion in Migration Matters.

Readers are also referred to the reports of the Senate Legal and Constitutional Legislation Committee which explore in detail a number of the legislative changes to the *Migration Act 1958* over time, and which form something of a legislative history of the Act.

Scope of the inquiry

Emphasis

Evidence received by the inquiry was primarily concerned with the effectiveness, efficiency and equity of the existing onshore refugee program and so-called 'humanitarian program', and of detention and removal of persons without a visa. Therefore, there is little focus non-humanitarian aspects of the Act although some of the recommendations do relate to those areas.

Individual cases

The committee received submissions and heard evidence from individuals affected by departmental or Refugee Review Tribunal (RRT) decisions, and Federal and High Court decisions, many of whom had made requests to the Minister under section 417 of the Migration Act. Although the committee found many of these individual cases raised questions about access to appropriate services, it had resolved that it would be inappropriate for a Parliamentary Committee to intervene in or pursue claims concerning any individual case. Instead, where matters raised were within the terms of reference, they were taken into account in formulating our conclusions and recommendations.

Evidence concerning the Department of Foreign Affairs and Trade

The committee's terms of reference included an examination of the activities and involvement of the Department of Foreign Affairs and Trade and other government agencies in processes surrounding the deportation of people from Australia. The committee received little evidence on this issue. This was due in part to the inquiry by the Senate Foreign Affairs and Trade Committee into asylum and protection visas for consular officials and the deportation, search for and discovery of Vivian Solon. A particular focus for that inquiry – which was conducted in parallel with this inquiry – was DFAT's involvement in the deportation, search and discovery of Ms Solon. This committee did not see the need to cover the same ground, especially in light of the focus of that inquiry and the evidence presented to it concerning DFAT's involvement in the deportation process. The committee endorses the findings and recommendations

of the Senate Foreign Affairs and Trade Committee (which are set out in Appendix 8 to this report).

Conduct of the inquiry

Submissions

The Committee advertised the inquiry in major national and state/territory newspapers on 29 June 2005, as well as writing directly to a large number of individuals and groups including non-government organisations, law associations, academic and specialist lawyers, community legal groups, and groups with a special interest in refugee matters. The committee received 234 submissions,¹ and a number of exhibits.

Hearings

The committee held public hearings in Adelaide on 26 September 2005, Melbourne on 27 September 2005, Sydney on 28 and 29 September 2005, and Canberra on 7 and 11 October and 8 November 2005² amounting to 478 pages of transcript.

A significant number of questions asked by Senators at these hearings were placed or taken on notice by witnesses, particularly government witnesses. Answers were still being received in January 2006, with responses from GSL finally received on 18 January 2006.

The committee wishes to thank all those who provided written and oral evidence, and who have provided additional information and supplementary submissions. The committee also notes its appreciation of the assistance provided by DIMIA officers preparing submissions, giving evidence before the committee on several occasions, and responding to numerous questions on notice and requests for additional information.

The committee had the benefit of making visits to the Villawood Immigration Detention Centre in Sydney. The Committee thanks DIMIA and the contractor, GSL Pty Ltd for facilitating these visits. Although the Committee did not have the opportunity to visit other Immigration Detention Centres, some Committee members had visited other facilities, including during the course of this inquiry.

As well as the public hearings, the committee also held one *in camera* hearing, which assisted it considerably in its understanding of general and specific issues. The issue of privacy and security of individuals was uppermost in committee consideration during this inquiry, and the use of *in camera* hearings enabled free discussion on a number of matters.

1 A list of submissions is at Appendix 1

2 A list of hearings and witnesses is at Appendix 2

Issues relating to confidentiality and restricted documentation

Departments, individuals and their representatives provided the committee with substantial amounts of material, much of which was classified as confidential, or it was requested that publication be restricted.

As noted above, in inquiries of this type, the committee is particularly aware of the need to protect personal information and therefore decided to omit or treat as confidential any such personal information, especially concerning asylum seekers, provided in submissions.

Structure of the report

The terms of reference of the report could have been dealt with in several ways. However, a format was decided whereby certain of the terms of reference are discussed across several chapters (as, for instance, the issue of international obligations), and others are dealt with primarily in a single chapter – for example, the issues of deportation and removal.

Chapter 1 considers what is, in the committee's view, a fundamental question in the administration of the Migration Act—that of the nature of the Minister's responsibility for the actions and administrative 'culture' of their department.

Chapters 2, 3 and 4 then assess the migration process in roughly the order in which an applicant will encounter them: initial application, secondary review procedures, and the exercise of ministerial discretionary powers.

The remaining chapters then deal with particular aspects of the process: Chapters 5 and 6 look at the policy of mandatory detention in policy and practice; Chapter 7 examines the outsourcing of the management of immigration detention centres; Chapter 8 examines temporary protection visas and bridging visas; Chapter 9, the administration of removal and deportation; and Chapter 10, student visas.

All references to submission page numbers are to the page numbers as they appear in printed volumes of submissions. References to *Hansard* transcripts of evidence are generally to the final versions of transcripts.

Some references have been made in footnotes to *in camera* evidence or to documents provided by departments or from other sources, which are considered confidential. The references have been made to note for the record the location of the source. However, this evidence is not publicly available.

Senator Trish Crossin
COMMITTEE CHAIR
March 2006