

ADDITIONAL COMMENTS FROM THE AUSTRALIAN GREENS

1.1 The scandalous treatment of Cornelia Rau in the immigration detention system shocked the Australian public. Then the discovery that Vivian Solon had been unlawfully detained and deported raised serious questions about the competence and humanity of Australia's immigration policy. The almost universal call for a Royal Commission to investigate what looked like a Department 'out of control' and seriously damaging people, was ignored by the Government. Instead it instigated two private inquiries with limited terms of reference.

1.2 Despite the narrow scope of their investigation, the Palmer Inquiry and the Comrie Inquiry reported damning findings that indicated 'systemic failures' and serious 'cultural problems' within the Department of Immigration.

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The Senate called on the Government to establish a Royal Commission. The Government refused to heed this demand and the Senate initiated this Senate Inquiry to investigate whether the serious failures exposed by the Rau and Solon cases was widespread and endemic.

Submissions & Hearings

1.4 The submissions received and the evidence given at public hearings presented the inquiry with a consistent criticism of the administration of the Migration Act and remarkably similar suggestions for reform.

1.5 The evidence presented to the inquiry made it clear that the incompetent handling and mistreatment meted out to Ms Rau and Ms Solon was not an isolated incident. The widespread incidences of such behaviour mostly went almost unnoticed and unreported in remote or off-shore detention centres.

1.6 The evidence indicated the Department of Immigration was failing to administer the Act to afford fairness, justice and proper process, and more disturbingly it was failing in its duty of care to people in its custody. Indeed there was compelling evidence that the Department and the private companies administering detention centres were administering the Act in a manner that was hostile to people and in some instances contributed to their abuse.

1.7 The evidence also indicated that parts of the Migration Act contribute to the failures of the Department, particularly the failure of some sections of the Department to ensure that its officials can use appropriate discretion and common sense. The sections of Migration Act that most significantly contributed to this occurrence were sections 189 and 196 of the Act relating to detention, section 501 relating to

deportation, parts of the Act relating to Temporary Protection Visas and the failure of the Act to properly provide complementary or humanitarian protection.

1.8 The Senate Committee inquiry visited Villawood Immigration Detention Centre (IDC), considered by many commentators on Australia's immigration detention centres to be one of the better detention centres. Two features of Villawood IDC were particularly disturbing. The first was the dorm style accommodation located in Stage One – a room filled with about 60 bunk beds less than a metre apart. This looked more like a prison in a developing country than administrative detention in Australia. Indeed, one detainee shouted at the committee members that Villawood was “worse than jail”. The second disturbing experience was being inside the isolation unit. The small cold bare walled cell with its heavy metal door and tiny window reminds one of the cruelty of the silent prison at Port Arthur, colonial Tasmania. To think of Cornelia Rau with untreated schizophrenia, or the many asylum seekers, spending endless days in an isolation cell is a reminder of just how badly the policy of mandatory detention has failed. During the course of the inquiry the Senate Legal and Constitutional Committee was informed that an asylum seeker was held in the Villawood IDC isolation unit for 76 days.

The Report

1.9 The Australian Greens are happy to sign on to the main committee report with dissent our noted for two recommendations. If the recommendations of this report were adopted it would assist the Department of Immigration in administering the Act in a fairer and more humane way. I commend the report to the Parliament and urge the Government to put party politics aside and adopt the recommendations of the main committee report in the interest of good governance, competent administration of the Migration Act and respect for human rights.

1.10 Despite the broad range of the inquiry, two themes consistently emerged throughout.

1.11 The first theme relates to the cultural attitude within the Department of Immigration. The Secretary and Minister have admitted that the department is in need of “cultural change”. Witnesses told the inquiry that there was a culture of suspicion and hostility toward asylum seekers. The committee was told that departmental officials were ‘trying to catch them out’, ‘looking and probing for inconsistencies’, or ‘searching for a reason to reject’. The result of this attitude, one lawyer said, was “randomness all the way through” the protection visa determination system.

1.12 It is clear that the culture that led to Cornelia Rau being unlawfully incarcerated and mistreated for 10 months and led to the deportation of a broken women to a hospice in the Philippines, is widespread in the Department of Immigration and as the Comrie Report found this culture is driven in the Department by a view held by departmental officials that this is what is being asked them by the government through government policy and directions.

1.13 The second theme that consistently emerged during the inquiry was that the policy of mandatory detention was seriously damaging people, particularly their mental health. What is meant to be detention for purely administrative purposes had morphed into a system of punitive detention without the same safeguards that are in place in the criminal justice system.

1.14 The power to detain ‘unlawful non-citizens’ has meant that cultural hostility toward asylum seekers has been manifested into cruel behaviour toward detainees behind the razor wire.

1.15 A lawyer and migration agent recently opined to me that the Department of Immigration was misnamed. It should be re-named the “Department of Compliance and Detention”. This gets to the crux of the current problem. Instead of the Department making impartial, unbiased and well considered decisions and treating its ‘clients’ with dignity and respect, the policies of this Government have led to the virtual criminalisation of asylum seekers.

1.16 The Australian Greens lay the blame for the criminalisation of asylum seekers directly on this Government. The Prime Minister, the former Minister Ruddock and the current Minister Vanstone, all bare responsibility for the current cultural and policy problems of the Department of Immigration. The trails from Cornelia Rau suffering untreated schizophrenia in the Baxter isolation cell, and the trail from Vivian Solon enduring her injuries in a hospice in the Philippines lead directly to the Prime Minister’s door.

1.17 The exploitation of xenophobia by this Government and the demonisation of asylum seekers and refugees has led to the culture of hostility that exists in the Department of Immigration. Continual public comments, some of which have been found to be untrue, from the Prime Minister and Ministers about the ‘security threat’ posed by the boat people, the need to ‘repeal and deter’ asylum seekers and the discrediting of asylum seekers as non-genuine or queue jumpers, have directly led to the culture problems evident in the recent actions of the Department of Immigration.

1.18 It should be no surprise that the bureaucracy has taken on the culture attitudes that have been so vehemently expressed by government ministers and subsequently administered the Act in a way that they thought the government wished. The political eagerness to exploit xenophobia, particularly during the 2001 federal election, has meant that innocent people seeking Australia’s protection have been turned into ‘undesirables’ that the Department of Immigration felt compelled to repel and filter out.

1.19 **The Australian Greens can not sign onto recommendation 45.** Although the spirit of this recommendation seeks to limit the extent and use of immigration detention, the Australian Greens oppose mandatory detention as a matter of policy. While we note that this recommendation mitigates some of our concerns about mandatory detention, we believe that mandatory detention is a fundamentally flawed policy and should be abolished.

1.20 A policy that incarcerates innocent people indefinitely breaks fundamental rights and the norms of our legal system. Of particular concern is the lack of discretion under Section 189 of the Act and the lack of judicial oversight of the decision to detain people. The Australian Greens have moved amendments in the Parliament to implement judicial oversight into the current detention regime, but these were rejected by the Government and Opposition.

1.21 **The Australian Greens dissent from recommendation 50** relating to temporary protection visas. The Australian Greens do not support the use of temporary protection visas as a matter of policy. The Australian Greens agree with the United Nations Protocol relating to Refugees that refugees should not be discriminate against on the basis of the method by which they arrive.

Additional Recommendations:

1.22 The Australian Greens recommend the following recommendations in addition to those contained in the report:

- In relation to chapter three - reform of the Refugee Review Tribunal (RRT). The Australian Greens support more fundamental reform than proposed in the Report. I recommend the removal of privative clause from the Migration Act to allow comprehensive review of RRT decisions. Many submitters suggested abolishing the RRT with the review function passing to another body, possibly the Federal Magistrates Court or AAT. The Australian Greens support such a position and recommend that the Australian Law Reform Commission investigate a replacement body for the current RRT.
- In relation to chapter six, *The use of detainee labour*. The Australian Greens recommend:
 - - all work should be voluntary and remuneration for work should be equivalent to established employment and industrial laws and regulations of Australia."
 - - Current and past detainees who have been employed via the 'merit system' should have a capacity to apply for appropriate compensation for work completed within the immigration detention system.
- In relation to chapter six, The Australian Greens recommend the policy of mandatory detention be abolished and that asylum seekers be housed in publicly owned and managed open reception centres that are accountable pursuant to Commonwealth legislation and where entry and exit are unrestricted and that, provided medical and security checks are satisfied or after 14 days has passed, whichever occurs first, they be granted a bridging visa and assisted without delay to move into the community.

- In relation to chapter eight, The Australian Green recommend the Temporary Protection Visa be abolished and all current Temporary Protection Visa holders be automatically granted a Permanent Protection Visa.

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