

APPENDIX 4

COMRIE REPORT – FINDINGS AND RECOMMENDATIONS AND GOVERNMENT RESPONSE

Main findings

1. Vivian¹ was born in the Philippines on 30 October 1962. She married an Australian citizen, Robert William Young, on 26 May 1984 and came to live in Australia on 7 July 1984. She became an Australian citizen on 3 March 1986 and used the name Vivian Solon Young.
2. On 30 March 2001 Vivian was found injured in a park in Lismore, New South Wales, after having fallen into a deep drain. She was taken by ambulance to Lismore Base Hospital, where, under the name Vivian Alvarez, she was admitted as an involuntary patient to the Richmond Clinic Psychiatric Unit.
3. On the basis of information Vivian provided, a social worker at the Richmond Clinic advised the Department of Immigration and Multicultural and Indigenous Affairs office in Southport, in south-east Queensland, that Vivian might be an illegal immigrant. Apart from initial database searches, DIMIA staff did not actively pursue Vivian's case for a month.
4. DIMIA officers first interviewed Vivian on 3 May 2001, at Lismore Base Hospital. On the basis of information Vivian gave them, the officers involved assumed she was an unlawful non-citizen, and it is this assumption that appears to have been the catalyst for much of the subsequent response by DIMIA. The officers did not seek access to hospital records, which contained personal information that would have helped to identify Vivian. Nor did they actively pursue a male friend of Vivian's in Lismore who had information that would have helped with identifying her.

¹ Vivian used or was referred to by a variety of names. Vivian Alvarez is used in this report, since that is the name under which she first came to the attention of the Department of Immigration and Multicultural and Indigenous Affairs in 2001. In the interest of clarity and readability, she is generally referred to as Vivian throughout the report.

5. On 12 July 2001 DIMIA officers collected Vivian from the St Vincent's Rehabilitation Unit in Lismore and took her by car to the DIMIA office in Southport. From the time of Vivian's first interview with DIMIA on 3 May, the DIMIA officers had done little about the case; active use of this time might well have resulted in her being identified. One DIMIA officer made the erroneous assumption that Vivian might have been a sex slave, and this assumption appears to have influenced the way in which her case was handled.
6. On 13 July a formal interview was conducted with Vivian. During it, she said she was an Australian citizen, that she wanted to remain in Australia, and that she wanted to apply for a visa. Inadequate action was taken by DIMIA to pursue these crucial remarks.
7. The inquiries DIMIA officers made focused on confirming the name Vivian Alvarez. Insufficient attention was given to questioning whether this was the correct name. The DIMIA officers were aware Vivian had recently been a patient in a psychiatric facility, so it seems logical that they would have pursued the question of her name more diligently.
8. The inquiries made in an attempt to identify Vivian were ad hoc and symptomatic of a situation in which DIMIA officers had been inadequately trained for their role as compliance officers, particularly in relation to the interrogation of IT systems and databases. There were on DIMIA's TRIM database details that would have linked the name Alvarez to the names Solon and Young, but these were not accessed by compliance officers.
9. The management of Vivian's case was very poor, lacking rigour and accountability. Migration Series Instruction 267 requires that a compulsory checklist be completed in removal cases. It was not complied with. This meant that another requirement under the instruction—that the checklist be approved by the Officer in Charge of Compliance—was also not complied with. Failures are evident in the management of the case from the time of Vivian's first contact with DIMIA until her removal from Australia on 20 July 2001.
10. The DIMIA officers involved in Vivian's case had a flawed understanding of the application and implications of s. 189 of the *Migration Act 1958*.

11. The Inquiry recognises that only a court of competent jurisdiction can ultimately determine whether the detention of Vivian was lawful or unlawful. Nevertheless, it is the Inquiry's view that the decision to detain her under s. 189 of the Migration Act was not based on a reasonable suspicion: the relevant inquiries were neither timely nor thorough and there was a lack of rigorous analysis of the available information. Accordingly, this action was unreasonable and therefore, by implication, unlawful.
12. Vivian is an Australian citizen, so the application of visa provisions to her is irrelevant. The approach DIMIA compliance officers took, however, persuades the Inquiry that the visa provisions were manipulated to accommodate their management of Vivian's case.
13. When she was taken into detention Vivian was photographed, but the photograph was not used adequately in an attempt to identify her. She was not fingerprinted, and this omission precluded the opportunity to match her fingerprints with those held at the National Automated Fingerprint Identification System of CrimTrac (the national law enforcement database).
14. Vivian's serious physical and mental health problems received insufficient attention in decision making associated with her detention and removal from Australia.
15. Although DIMIA officers were presented with a difficult decision about where to detain Vivian before removing her, her detention for one week in a single motel room was inappropriate. Her privacy, dignity and welfare were compromised by the fact that she was guarded in this room at all times by two contracted security guards and had no access to the medical facilities available to people held in immigration detention centres.
16. Although Vivian's disappearance (as Vivian Solon @ Young) had come to the attention of the Queensland Department of Family Services and the Queensland Police Service on 16 February 2001—when she failed to collect her son from a child care centre in Brisbane—it was not until five months later that the Queensland Department of Family Services reported her as a missing person. The Queensland Police Service activated a missing persons report on 17 July 2001, when Vivian was being held in detention. The delay in reporting her as a missing person

greatly limited the likelihood of locating her before her detention and her removal by DIMIA on 20 July 2001.

17. On 19 July 2001 the Queensland Police Service Redcliffe Intelligence Office made inquiries with the Brisbane office of DIMIA about the travel movements of Vivian Solon @ Young. DIMIA's response was that Vivian Alvarez Solon @ Young had last arrived in Australia on 2 September 1993. This was the first time since Vivian had come to DIMIA's attention that DIMIA had linked the name Alvarez with Solon @ Young. Despite the fact that on that very day Vivian was being held in detention in a Brisbane motel, the limited name connectivity of DIMIA databases did not allow for the association of these names. A major opportunity to prevent Vivian's removal was lost.
18. In response to welfare concerns raised by the Philippines Embassy through its Honorary Consulate General in Brisbane, two members of the Filipino community visited Vivian at the motel in which she was detained. The first visit occurred on 18 July, and Vivian gave her name as Solon. The second visit was on 19 July; Vivian again gave her name as Solon and said she had been married to a Mr Young. This crucial information was neither sought by nor supplied to DIMIA.
19. The Philippines Embassy had expressed concern about Vivian's fitness to travel and as a result did not issue a travel document allowing for her removal to the Philippines. A locum medical practitioner visited the motel on 19 July, examined Vivian and certified her as fit to travel. The Philippines Consulate General then issued a travel document that allowed Vivian to be removed the next day.
20. The use of a locum medical practitioner to certify Vivian as fit to travel was inappropriate in the circumstances—including the fact that he had no knowledge of or access to Vivian's medical history. This situation provides evidence to support the Inquiry's contention of a flawed DIMIA culture—one that pays insufficient attention to detainees' welfare and care needs.

21. On 20 July Vivian was removed to the Philippines, escorted by a female officer of the Queensland Police Service. In view of Vivian's poor physical and mental health and the unsatisfactory manner in which her case had been managed, the Inquiry considers that Vivian's removal was effected with undue haste and without adequate consideration of her welfare. DIMIA failed to meet its duty of care obligations to Vivian and unlawfully removed her from Australia.
22. The unlawful removal of Vivian was a consequence of systemic failures in DIMIA—among them inadequate training programs, database and operating system failures, poor case management, and a flawed organisational culture.
23. On 14 July 2003 the Queensland Police Service Missing Persons Bureau contacted the DIMIA Entry Systems and Movements Alerts Office to ask about Vivian Solon @ Cook @ Young. Two DIMIA officers independently carried out database searches that linked Vivian Alvarez with Vivian Solon Young. Both these officers advised the same supervisor of their discovery that an Australian citizen had been removed. The supervisor took no action to redress this serious problem.
24. The television program *Without a Trace* went to air on 20 August 2003; it featured a segment showing Vivian's photograph. The following day, an officer at the Entry Systems and Movements Alerts Office, who had seen the program the night before, performed database checks that linked Vivian Alvarez and Vivian Solon Young. This officer informed the supervisor who had been advised of the discovery on 14 July 2003 that an Australian citizen had been removed. Again, the supervisor failed to take action.
25. A DIMIA Brisbane officer who had been involved in the removal of Vivian also saw the *Without a Trace* program. The following morning this officer performed database searches that linked Vivian Alvarez with Vivian Solon Young. The officer took the search results to the person who had been her supervisor at the time of Vivian's removal and advised him of her discovery that an Australian citizen had been removed. This supervisor failed to take any action.

26. On 9 September 2003 the Queensland Missing Persons Bureau—which by now was aware that Vivian had been removed in 2001—contacted the Department of Foreign Affairs and Trade in Canberra, seeking information in an attempt to locate Vivian in the Philippines. Communications between DFAT in Canberra and the Australian Embassy in Manila record that the DFAT officers involved were aware that an Australian citizen had been removed. These DFAT officers provided the information the Missing Persons Bureau sought but took no action to follow up on the question of how an Australian citizen came to be removed to the Philippines.
27. Robert Young, Vivian’s former husband, had persisted in his attempts to locate Vivian. Having been advised by the Missing Persons Bureau that she had been removed to the Philippines in 2001, he contacted the DIMIA Contact Centre in Sydney on 24 September 2003 and provided important information about Vivian’s wrongful removal. The officer at the Contact Centre failed to pursue the matter.
28. Robert Young’s persistence led the Missing Persons Bureau to contact the supervisor at the DIMIA Entry Systems and Movements Alerts Office in Canberra on 28 September 2004. This supervisor—the supervisor who had been advised on 14 July and 21 August 2003 of Vivian’s removal—carried out further database searches that linked Vivian Alvarez with Vivian Solon Young. He contacted DIMIA’s Southport office and obtained a photograph of Vivian. He then contacted DIMIA’s Brisbane office and had discussions with a senior officer there.

Inquiries by staff at the Brisbane office established that Vivian was an Australian citizen when she was removed in 2001. Two senior officers and other more junior staff in the Brisbane office were aware of these facts. One of the two senior officers was the supervisor who had been told on 21 August 2003 of Vivian’s unlawful removal. Apart from forwarding Vivian’s compliance file to the Entry Systems and Movements Alerts Office in Canberra on 30 September 2004, none of the three senior officers (one in Canberra and two in Brisbane) took any action.

It is the Inquiry’s view that the conduct of these officers could constitute a breach of one or other of the requirements of the Australian Public Service Code of Conduct, as detailed in s. 13 of the *Public Service Act 1999*.

29. After 30 September 2004 Vivian's file was kept at the Entry Systems and Movements Alerts Office in Canberra, where it was found on 21 April 2005, in a correspondence hutch attached to a desk. Standard practice for the securement of official files was that they be placed in the office correspondence locker. Vivian's file had not been put there.
30. It is of serious concern that Vivian's unlawful removal was the subject of considerable discussion in DIMIA's Compliance and Investigations Office in Brisbane in 2004 and that a number of officers performed database searches that linked the names Vivian Alvarez and Vivian Solon.
31. Vivian's unlawful removal in 2001 was eventually acknowledged officially only because of the continued inquiries by Robert Young, who brought the matter to the attention of the Minister's office in an email of 4 April 2005. Had Mr Young not persisted, the wrong done to Vivian and DIMIA's failures in the management of her case—including the failures of three senior officers—might well have remained unknown to the Australian community.
32. Misinterpretation of the provisions of the *Privacy Act 1988*, by both DIMIA officers and officers of the Queensland Missing Persons Bureau, created a situation in which important information that could have led to the discovery of Vivian's whereabouts was not released to Robert Young.
33. The Inquiry's investigation of this case was hampered by the fact that DIMIA had failed to maintain email business records for more than 12 months during the period in question.
34. DIMIA's overall management of Vivian's case can only be described as catastrophic. Nevertheless, it is important to record that some DIMIA officers performed their duties diligently and professionally. Having discovered that Vivian had been unlawfully removed, they took the evidence that established this fact to their supervisors and advised them of a grave problem. That these supervisors failed to take action should not obscure the diligence and professionalism of their subordinates.

35. The Inquiry's investigation produced substantial evidence to support many of the findings and recommendations in the Palmer report—the July 2005 report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau. Since the circumstances of the Alvarez matter first arose in 2001 and the Palmer report focused on matters that occurred in 2004, this Inquiry into the Circumstances of the Vivian Alvarez Matter concludes that many of the systemic problems identified by both investigations had been present in DIMIA for some years.

Recommendations

The recommendations of this Inquiry into the Circumstances of the Vivian Alvarez Matter follow immediately. The inquiry's investigation also revealed evidence that supports a number of the recommendations made in the Palmer report—the report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau. Those recommendations are recorded immediately following this Inquiry's 12 recommendations.

Recommendation 1

The Inquiry recommends that the Secretary of DIMIA take all necessary steps to:

- redress the negative culture in the Brisbane Compliance and Investigations Office—as demonstrated by the failure of a number of officers to take action on becoming aware that an Australian citizen had been unlawfully removed from Australia
- ensure that the problems and deficiencies identified in relation to the Brisbane Compliance and Investigations Office do not exist in other regional offices and in related areas in DIMIA head office.

[See Section 3.3.1.]

Recommendation 2

The Inquiry recommends that the Secretary of DIMIA instruct staff to comply with the requirement of Migration Series Instruction 267 that a compulsory checklist be completed to record the actioning of a removal and that the actioning of a removal be approved by a senior compliance officer—the Officer in Charge of Compliance. The checklist should be attached to every compliance file.

[See Section 3.3.2.]

Recommendation 3

The Inquiry recommends that the formal interview of detainees be constructed in such a way as to require that, where necessary, responses from a detainee be further investigated. The interview process should be dynamic and designed to elicit information useful to the making of decisions about detention and removal.

[See Section 3.3.2.]

Recommendation 4

The Inquiry recommends that, as an urgent priority, DIMIA commission a thorough, independent review and analysis of its information management systems. The review should be carried out by an experienced, qualified IT systems specialist and should aim to do the following:

- identify the real organisational policy and operational information management requirements—particularly requirements for interconnectivity, compliance management functionality, and growth
- explore the potential for single-search entry to all DIMIA databases
- formulate an implementation plan for consideration by the DIMIA executive.

[See Section 3.3.3.]

Recommendation 5

The Inquiry recommends that DIMIA commission a thorough, independent review and analysis of the IT training requirements for the Border Control and Compliance Division and the Unlawful Arrivals and Detention Division. The review should identify the requirements for the various functional responsibilities within the divisions.

[See Section 3.3.4.]

Recommendation 6

The Inquiry recommends that in the training program for compliance and investigations officers there be a focus on objectivity in decision making and a strong warning that false assumptions will contribute to poor decisions. Further, all staff at DIMIA should be reminded of the need for great care in the spelling and recording of names in files and records.

[See Section 3.5.]

Recommendation 7

The Inquiry recommends that DIMIA institute a review of the operations of contact centres, to determine more effective procedures for dealing with information those centres receive.

[See Section 3.7.]

Recommendation 8

The Inquiry recommends as follows:

- that compliance staff be trained to exercise greater caution in performing their duties—including verification of information—where it is known or suspected that a possible unlawful non-citizen may have mental health problems
- that any training program developed as a result of recommendations in the Palmer report and this report include a component designed to better equip compliance officers to deal with people with known or suspected mental health problems.

[See Section 4.2.2.]

Recommendation 9

The Inquiry recommends as follows:

- that DIMIA take all necessary action to ensure that appropriate standards for health and care needs are developed and introduced for situations involving detainees in transitional detention
- that, where it is necessary or appropriate to conduct a medical examination to determine the fitness to travel of an unlawful non-

citizen, DIMIA officers make all reasonable efforts to ensure that the medical practitioner concerned receives the medical history and record of the unlawful non-citizen and that the medical practitioner—who, if possible, is someone who has previously treated the patient—is advised of the factual circumstances, including the behaviour of the unlawful non-citizen, that have led to the need for the medical examination.

[See Section 4.2.2.]

Recommendation 10

The Inquiry recommends that the Secretary of DIMIA take all necessary steps to ensure that email business records are kept in accordance with the requirements of the *Archives Act 1983*.

[See Section 5.3.]

Recommendation 11

The Inquiry recommends that the Minister for Immigration and Multicultural and Indigenous Affairs write to Mr Robert William Young to commend him for his diligence in pursuing the matter of Vivian Alvarez and bringing it to the attention of the Australian Government.

[See Section 5.1.]

Recommendation 12

The Inquiry finds that the conduct of officers A, B and C, as described in this report, might constitute a breach of one or other of the requirements of the Australian Public Service Code of Conduct, as detailed in s. 13 of the *Public Service Act 1999*. The Inquiry recommends that this opinion be brought to the attention of the Secretary of DIMIA, in accordance with s. 8(10) of the *Ombudsman Act 1976*.

[See Section 7.3.]

Relevant recommendations from the report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau

Recommendation 3.1

The Inquiry recommends that DIMIA:

- design, implement and accredit—for all compliance officers and other staff who might reasonably be expected to exercise the power to detain a person under s. 189(1) of the *Migration Act 1958*—a legislative training package that provides the officers with the requisite knowledge, understanding and skills to fairly and lawfully exercise their power
- ensure that the training comprehensively covers the use of DIMIA and other agencies' databases and search capability and the conduct of searches to support investigations
- restrict the authority to exercise the power to detain a person under s. 189(1) to staff who have satisfactorily completed the training program and who are considered to be otherwise sufficiently experienced to exercise that power
- ensure that a component on 'avenues of inquiry' be included in the Certificate IV in Government (Statutory Investigation and Enforcement) Training Program delivered to DIMIA officers.

Recommendation 3.4

The Inquiry recommends that DIMIA create a dedicated Identity and Immigration Status Group to ensure that, where the identity or immigration status of a detainee remains unresolved after initial inquiries have been completed, frequent follow-up reviews are conducted. The Identity and Immigration Status Group should:

- review the continued validity of 'reasonable suspicion'—based detention on a regular basis—and at least every month—against the background of accumulating information
- be staffed by people who have wide experience in compliance and detention policy and operations, are familiar with the associated Commonwealth and state and territory legislation and arrangements, and have skills in investigation and analysis
- have the authority, responsibility and accountability for conducting and/or overseeing all necessary inquiries to

establish the identity and immigration status of unidentified detainees

- report monthly to executive management on the status of individuals still in immigration detention, the reason why they are being detained, what is currently being done to resolve the situation, and the expected date for resolution.

Recommendation 5.1

The Inquiry recommends that the DIMIA Secretary:

- commission and oversee a review of departmental processes for file creation, management and access
- take a leadership role in implementing the major changes that will probably be necessary as a result
- ensure that staff receive training in effective file management practices and the reasons for them
- make executive management personally accountable for ensuring that sound file management practices are followed.

Recommendation 5.2

The Inquiry recommends that the DIMIA executive ensure the preparation for staff of a checklist to be used as a minimum standards template for conducting identification inquiries. The checklist should provide a menu of avenues of inquiry, specify a sequential order for investigations, be included as an attachment to the DIMIA Interim Instruction on Establishing Identity in the Field and in Detention, and form a part of the personal investigation file. The DIMIA executive should also:

- formalise the Interim Instruction together with the checklist attachment as soon as practicable
- ensure that suitable training modules are developed and delivered to all staff—including managers—who might be involved in identification inquiries
- institute management arrangements to ensure that such inquiries are linked as appropriate to the Identity and Immigration Status Group.

Recommendation 5.3

The Inquiry recommends that, as a matter of urgency, the Commonwealth Government take a leadership role with state and

territory governments to develop a national missing persons policy to guide the development of an integrated, national missing persons database or capacity. Initial policy development could be carried out under the guidance of the Australasian Police Ministers Council, with the output submitted to governments for consideration and agreement.

Recommendation 5.4

The Inquiry recommends that, on the basis of an agreed national missing persons policy, the Commonwealth Government take a leadership role with state and territory governments in developing and implementing a national missing persons database or capacity that will provide an effective national recording and search capability under both names and biometric data. Discussions in this regard should be informed by reporting on the progress and success of the Minimum Nationwide Person Profile project to the Australasian Police Ministers Council.

Recommendation 5.5

The Inquiry recommends that DIMIA reassess its position in relation to privacy in all its public policy operations associated with immigration detention. In revising its practices, it should:

- seek advice from the Privacy Commissioner and the Minister
- take immediate steps to increase awareness and understanding on the part of relevant DIMIA staff—including executive staff—of the principles and provisions of the Commonwealth’s *Privacy Act 1988*
- revise and strengthen procedures relating to identity in immigration detention, to ensure that the wider options potentially created by this approach are considered.

Recommendation 5.6

The Inquiry recommends that DIMIA establish for inquiries about immigration detainees a ‘hotline’ facility that can deal with those inquiries as a ‘one-stop shop’. DIMIA should ensure that the contact officer position is continuously staffed, regardless of the absence of any officer, and that all embassies and high commissions are advised of the details of these arrangements and ask their consular officials to direct all immigration detention inquiries to the nominated DIMIA contact officer in the first instance.

Recommendation 5.7

The Inquiry recommends that DIMIA ensure that:

- fingerprints and other biometric data collected from individuals in immigration detention are stored on a national database to facilitate investigations by Commonwealth and state and territory police and other law enforcement agencies
- appropriate liaison arrangements are made with CrimTrac
- any DIMIA decisions in relation to the collection and storage of biometric data are consistent with strategies being pursued by CrimTrac in response to guidance by Australian governments.

Recommendation 7.1

The Inquiry recommends that DIMIA develop and implement a holistic corporate case management system that ensures every immigration detention case is assessed comprehensively, is managed to a consistent standard, is conducted in a fair and expeditious manner, and is subject to rigorous continuing review.

Recommendation 7.2

The Inquiry recommends that DIMIA critically review all Migration Series Instructions from an executive policy and operational management perspective with a view to:

- discarding those that no longer apply in the current environment
- where necessary, rewriting those that are essential to the effective implementation of policy, to ensure that they facilitate and guide effective management action and provide real guidance to busy staff
- ensuring that up-to-date, accurately targeted training is delivered to staff who are required to implement the policy guidelines and instructions
- establishing regular management audits that report to executive management, to ensure that the Migration Series Instructions are up to date and DIMIA officers are adhering to them.

Recommendation 7.3

The Inquiry recommends that the Minister commission the Secretary of DIMIA to institute an independent professional review of the functions and operations of DIMIA's Border Control and Compliance Division and Unlawful Arrivals and

Detention Division in order to identify arrangements and structures that will ensure the following:

- DIMIA’s compliance and detention functions are effectively coordinated and integrated.
- The desired outcomes of these functions and the necessary resources—including the number and the skills profile of staff—are clearly identified before a decision is made on the structure that will best enable effective and equitable service delivery.
- The restructuring accommodates these requirements and ensures that arrangements are made to monitor and manage the high-level risks to the Commonwealth inherent in immigration detention.
- There is a seamless approach to dealing with immigration detention operations and case management.
- The aims and objectives of the Government’s immigration detention policy are fairly and equitably achieved and human dignity is demonstrably respected.

Recommendation 7.4

The Inquiry recommends that DIMIA:

- review the current training programs for compliance and detention officers to ensure that induction and in-service programs convey an accurate and contemporary picture of DIMIA operations and adequately prepare operational and management staff for all aspects of the work they will be expected to do
- ensure that such training particularly deals with the consultation, coordination, reporting and management requirements of compliance and detention operations and shows how to manage the risks inherent in the performance of these functions
- immediately develop and implement a policy that requires that every decision to detain a person on the basis of ‘reasonable suspicion of being an unlawful non-citizen’ is reviewed and assessed within 24 hours or as soon as possible thereafter.

DIMIA should incorporate this policy of 24-hour review in all relevant training programs and operational guidelines to ensure that compliance officers understand the need to:

- objectively determine the reasons and facts upon which a decision to detain is made
- verify the validity of the grounds of ‘reasonable suspicion’ and the lawfulness of the detention
- take immediate remedial action as necessary and report the circumstances of any unresolved matter to the Identity and Immigration Status Group.

Recommendation 8.3

The Inquiry recommends that DIMIA:

- develop, for all immigration detention and compliance executives and managers, a briefing program that clearly explains the need for a decision to be made to remove from Australia a person reasonably suspected of being an unlawful non-citizen and the responsibilities associated with exercising that power
- ensure that the central factors relating to removals and the implications for identity investigations and the exercising of detention powers are included in departmental training programs for compliance and removals officers
- ensure that the implications of all aspects of identity checking, detention and removals are included in the checks and balances exercised by the Identity and Immigration Status Group.



Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Report from the Secretary

To
Senator the Hon Amanda Vanstone
Minister for Immigration and Multicultural and
Indigenous Affairs

RESPONSE TO THE RECOMMENDATIONS OF
THE REPORT OF THE COMMONWEALTH
OMBUDSMAN OF THE INQUIRY INTO THE
CIRCUMSTANCES OF THE VIVIAN ALVAREZ
MATTER

October 2005

people our business

1. Background

On 2 May 2005 the Acting Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Peter McGauran MP, referred to the Palmer Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau a request to examine the circumstances surrounding the removal from Australia of Ms Vivian Alvarez, an Australian citizen. The Palmer Report was released on 14 July 2005 and included comments on the progress of the investigation into Ms Alvarez's case. The Government asked the Commonwealth Ombudsman to take responsibility for completing the investigation into the removal of Ms Alvarez from Australia. The Ombudsman accepted the request and Mr Neil Comrie AO APM was retained to continue the investigation.

The Ombudsman's report of the Inquiry into the Circumstances of the Vivian Alvarez Matter (referred to as the Comrie Report) was provided to me on 29 September 2005 and will be made public by the Ombudsman on 6 October 2005 under section 35A of the *Ombudsman Act 1976*.

An additional 201 immigration matters, covering the period July 2000 to April 2005, have been referred to the Ombudsman by the Minister for Immigration and Multicultural and Indigenous Affairs (the Minister) for investigation. Until improved arrangements are in place to ensure cases of particular concern (out of those cases recorded in the system as 'released not unlawful') can be more easily identified, there will be ongoing discussion with the Ombudsman regarding any cases which appear to involve unlawful detention. To date an additional 20 matters, covering the period May to June 2005, have been referred.

The Comrie Report is highly critical of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and makes twelve recommendations covering training, record-keeping, case management, information systems and the prevailing culture in some parts of the Department. These are very serious issues. Clearly, the circumstances surrounding Ms Alvarez's case were highly unsatisfactory. The Prime Minister publicly conveyed an apology to Ms Alvarez on 14 July 2005. I would like to take this opportunity to apologise most sincerely on behalf of DIMIA.

Mr Comrie also reinforces the findings and recommendations made in the Palmer Report, the broad thrust of which has already been accepted by the Government. New initiatives to address both his specific recommendations and the broader concerns he raised have been underway for some time. Further measures have also been announced by the Government. Their implementation is set out in more detail in my response to the Palmer Report, which I have provided to the Minister and which I understand is to be tabled in the Parliament on 6 October 2005 (a copy is available at www.immi.gov.au). These measures also provide an effective response to the matters raised in the Comrie Report, as set out below, and will ensure that DIMIA becomes an organisation that meets the expectations of the Government, the Parliament and the wider community. An organisation that is: more open and accountable; deals more reasonably and fairly with clients; and has staff that are well trained and supported and who embrace the first two themes.

2. Response to the recommendations in the Comrie Report

Recommendation 1

The Inquiry recommends that the Secretary of DIMIA take all necessary steps to:

- redress the culture in the Brisbane Compliance and Investigations Office – as demonstrated by the failure of a number of officers to take action on becoming aware that an Australian citizen had been unlawfully removed from Australia
- ensure that the problems and deficiencies identified in relation to the Brisbane Compliance and Investigations Office do not exist in other regional offices and in related areas in DIMIA head office.

Response

Agreed. I have appointed a new SES Band 1 level Deputy State Director to assist the Queensland State Director in implementing change throughout DIMIA's Queensland Offices. The new Deputy State Director will commence duties as soon as possible and will focus on improvements in the compliance, border security and detention areas to ensure higher standards in decision-making and operational activity.

As previously recommended by Mr Palmer, I have also appointed a consultant to provide independent ongoing advice on compliance and detention activities within DIMIA and the detention services contract. Mr Mick Roche, a former Deputy CEO of the Australian Customs Service, Deputy Secretary in the Department of Health and head of the Defence Materiel Organisation, will commence his contract in the very near future and will provide advice to me by the end of 2005.

I announced the restructure of the detention, compliance and border security areas of the Department on 31 August 2005. Three new divisions, Detention Services, Compliance Policy and Case Coordination, and Border Security have been established to provide a better balance of responsibility and accountability for these activities. The key positions at the head of the detention and compliance divisions have been filled by experienced external senior executive officers. The new head of the Compliance Policy and Case Coordination Division will, in close consultation with me, the relevant Deputy Secretary and Mr Roche, address the wider issues in relation to compliance activity in DIMIA's National and State and Territory Offices.

The restructure in these areas forms part of my broader plan to improve departmental structures and governance frameworks within DIMIA to address concerns about the culture in the wider Department. Three Deputy Secretaries (one more than at present) will ensure there are clear lines of responsibility and accountability. The improved governance arrangements include a high level Values and Standards Committee with external membership (including from the Commonwealth Ombudsman's Office, the Australian Public Service Commission and the community) to ensure the Department is meeting community expectations and focusing on meeting the Australian Public Service values. There will also be a significantly enhanced internal audit programme to strengthen compliance checking (i.e. are DIMIA officers actually doing what the law and our instructions require?) and areas

identified as high risk by either Mr Palmer or Mr Comrie. The Chief Internal Auditor will report regularly to the Department's Executive Management Committee.

Better structure and governance models are not the full answer to improving the culture in DIMIA. Better training and support for staff is a significant driver for cultural change. Dramatic improvements to the provision of technical training are described under Recommendation 5 below. A new national training strategy that directly addresses concerns about values, ethics and standards and excellence in leadership is being implemented in DIMIA.

Recommendation 2

The Inquiry recommends that the Secretary of DIMIA instruct staff to comply with the requirement of Migration Series Instruction 267 that a compulsory checklist be completed to record the actioning of a removal be approved by a senior compliance officer – the Officer in Charge of Compliance. The checklist should be attached to every compliance file.

Response

Agreed. MSI 267 has been revised and will be reissued in the near future. In the interim the removals checklist has been replaced by a 'removal availability assessment' which was distributed to State and Territory Directors and Removals Managers by Deputy Secretary Bob Correll on 25 August 2005. This assessment includes the same rigorous checks as contained in MSI 267 and, in addition, it requires that the assessment be signed off by either the relevant State or Territory Director or a Senior Executive Service officer prior to a removal taking place. The assessment is required to be attached to every compliance file.

As part of the Government's response to the Palmer report, DIMIA is also reviewing all MSIs to ensure they facilitate and guide effective management action.

Recommendation 3

The Inquiry recommends that the formal interview of detainees be constructed in such a way as to require that, where necessary, responses from a detainee be further investigated. The interview process should be dynamic and designed to elicit information useful to the making of decisions about detention and removal.

Response

Agreed. All compliance and detention Migration Series Instructions will be reviewed as part of the response to the Palmer Report and this report, including instructions on the conduct and recording of interviews. In the interim I will issue procedural advice in relation to the specific issue raised in this recommendation.

The new National Identity Verification and Advice Section has been in place since May 2005 to ensure identity issues in relation to persons of compliance interest are resolved as quickly as possible. Updated instructions on identity checking are currently being trialled operationally before being finalised in the near future.

Recommendation 4

The Inquiry recommends that, as an urgent priority, DIMIA commission a thorough, independent review and analysis of its information management systems. The review should be carried out by an experienced, qualified IT systems specialist and should aim to do the following:

- identify the real organisational policy and operational information management requirements – particularly requirements for interconnectivity, compliance management functionality, and growth
- explore the potential for single-search entry to all DIMIA databases
- formulate an implementation plan for consideration by the DIMIA executive.

Response

Agreed. A request for proposal for a consultant to review information requirements and systems was issued on 24 August 2005 following the Government's acceptance of a similar recommendation from Mr Palmer in his July report on the Cornelia Rau matter. The consultant is to report by the end of January 2006 with an implementation plan over the medium and long term for consideration. A second review is also underway to provide a 'health check' in regard to the appropriateness of the mix and deployment of DIMIA's technical platform to support current and future business needs. The focus of both reviews will be to ensure that DIMIA systems adequately support decision-making and case management in the longer term.

A single entry client search facility is being developed. A pilot using existing search capabilities will be rolled out later this year. A second phase facility incorporating more powerful search tools will be available by late March 2006. Training in more effective use of name searching facilities will be rolled out as part of the response to the Palmer Report.

Recommendation 5

The Inquiry recommends that DIMIA commission a thorough independent review and analysis of the IT training requirements for the Border Control and Compliance Division and the Unlawful Arrivals and Detention Division. The review should identify the requirements for the various functional responsibilities.

Response

Agreed. As part of his consultancy, Mr Mick Roche will examine the training needs of DIMIA officers working on compliance and detention activities.

The Government has also announced that it will establish a College of Immigration Border Security and Compliance to deliver comprehensive, tailored operational training for DIMIA officers. All new compliance and detention staff will be required to complete a 15 week programme of training and existing staff will complete regular refresher training. We anticipate that the College model will be developed by mid-December 2005 and established by mid-2006. In the meantime, enhanced training for compliance and detention staff will be provided by December 2005, focusing on the application of 'reasonable suspicion', emerging legal issues, identity investigations,

search warrant training and capacity to search and interrogate all DIMIA systems. The latter specifically picks up on IT training requirements.

Recommendation 6

The Inquiry recommends that in the training program for compliance and investigations officers there be a focus on objectivity in decision-making and a strong warning that false assumptions will contribute to poor decisions. Further, all staff at DIMIA should be reminded of the need for great care in the spelling and recording of names in files and records.

Response

Agreed. Quality decision-making will be a key focus in the curriculum at the College of Immigration Border Security and Compliance. These messages will be part of the training programme. The curriculum will address the need for objectivity, care in the recording of names and the need to take extra care in the handling of people who may have mental health problems (in line with Recommendation 8 below).

On my first day as Secretary I reminded staff of the need for care and diligence in all aspects of decision-making – the need to be fair, reasonable and lawful. I have repeatedly reinforced this message to all staff and in particular, I have made it clear on several occasions that should any staff member become aware that we have acted in an unlawful way they must advise their State or Territory Director or Branch Head immediately. I have placed a personal responsibility on those officers to resolve the matter quickly and effectively.

A specific project is being undertaken as part of the Records Management Improvement Plan to correct the large number of multiple 'Person Identifiers' already recorded.

Recommendation 7

The Inquiry recommends that DIMIA institute a review of the operations of contact centres, to determine more effective procedures for dealing with information those centres received.

Response

Agreed. DIMIA will further review the operation of the contact centres to address these concerns. DIMIA has introduced improved protocols, scripts and training for call handling in contact centres (which handle telephone inquiries to DIMIA). Collectively, these centres handle over 1.3 million calls per year.

Recommendation 8

The Inquiry recommends as follows:

- that compliance staff be trained to exercise greater caution in performing their duties – including verification of information – where it is known or suspected that a possible unlawful non-citizen may have mental health problems;
- that any training program developed as a result of the recommendations in the Palmer report and this report include a component designed to better equip compliance officers to deal with people with known or suspected mental health problems.

Response

Agreed. These issues are being addressed in the development of enhanced training for compliance officers (see Recommendations 5 and 6 above).

Recommendation 9

The Inquiry recommends as follows:

- that DIMIA take all necessary action to ensure that appropriate standards for health care needs are developed and introduced for situations involving detainees in transitional detention;
- that where it is necessary or appropriate to conduct a medical examination to determine the fitness to travel of an unlawful non-citizen, DIMIA officers make all reasonable efforts to ensure that the medical practitioner concerned receives the medical history and record of the unlawful non-citizen and that the medical practitioner – who, if possible, is someone who has previously treated the patient – is advised of the factual circumstances, including the behaviour of the unlawful non-citizen, that have led to the need for the medical examination.

Response

Agreed. The existing guidelines for fitness to travel and fitness to depart are to be examined by DIMIA in consultation with Health Services Australia and the Department of Health and Ageing, with a view to their revision. The current arrangements for fitness to travel assessments will also be considered at a workshop being convened by DIMIA's Detention Health Services Branch in October 2005. The detention service provider, Global Solutions Limited, International Health and Medical Services and Professional Support Services (all involved in health care delivery to detainees, including those in transitional detention) will be involved in the discussions.

Mr Comrie focuses more broadly on shortcomings in arrangements for detainees in transitional detention, which is exacerbated in Queensland because there was at the time of Ms Alvarez's detention no immigration detention facility (IDF) in that State. The Government has decided to establish better transitional detention arrangements in Queensland. DIMIA has entered into negotiations with the CEO of Shaftesbury Campus (at Burpengary, just outside Brisbane) who has offered the facility to assist with accommodation of people in detention in Queensland. The Queensland Government has raised concerns about whether the CEO is entitled to sublease campus facilities for this purpose. DIMIA cannot proceed until this issue is resolved between the Queensland Government and the lessee.

Recommendation 10

The Inquiry recommends that the Secretary of DIMIA take all necessary steps to ensure that email business records are kept in accordance with the requirements of the *Archives Act 1983*.

Response

Agreed. Following the Government's acceptance of the similar recommendations from Mr Palmer in his July report on the Cornelia Rau matter, a comprehensive Records Management Improvement Plan is being developed in close consultation with the National Archives of Australia. The Plan includes: a strong training component to ensure all staff are aware of

obligations under the Archives Act; a focus on the links between electronic and paper records; and an upgrade to DIMIA's email management system. The administrative instruction on internet and email usage will be revised and reissued to ensure alignment with recordkeeping policies and statutory obligations.

Recommendation 11

The Inquiry recommends that the Minister for Immigration and Multicultural and Indigenous Affairs write to Mr Robert William Young to commend him for his diligence in pursuing the matter of Vivian Alvarez and bringing it to the attention of the Australian Government.

Response

Agreed. The Minister has written to Mr Young along these lines.

Recommendation 12

The Inquiry finds that the conduct of officers A, B and C, as described in this report, might constitute a breach of one or other of the requirements of the Australian Public Service Code of Conduct, as detailed in s.13 of the *Public Service Act 1999*. The Inquiry recommends that this opinion be brought to the attention of the Secretary of DIMIA, in accordance with s.8(10) of the *Ombudsman Act 1976*.

Response

Noted. Having considered this recommendation from the Ombudsman, and pursuant to section 13 of the Public Service Act (PSA), I appointed Deputy Secretary Bob Correll as my delegate to examine these issues and to consider whether there may be a basis for DIMIA instituting a formal disciplinary process to determine whether or not any DIMIA employees have breached the APS Code of Conduct. Mr Correll has now advised me that, pursuant to section 13 of the PSA, he has formed a view that a Code of Conduct investigation is needed. He has also advised me that he intends to appoint Mr Dale Boucher, a former Australian Government Solicitor and a senior administrative lawyer and consultant, to undertake the investigation. The investigation will commence as soon as possible.

Andrew Metcalfe
Secretary

Department of Immigration and Multicultural and Indigenous Affairs
4 October 2005

