



Our Ref: 200510133/BH

Mr Owen Walsh
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Mr Walsh

SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE: INQUIRY INTO THE ADMINISTRATION AND OPERATION OF THE MIGRATION ACT 1958

I welcome the opportunity to provide a submission to the Inquiry into the Administration and Operation of the *Migration Act 1958* (Cth).

The Western Australian Government has no direct role to play in the administration of the *Migration Act 1958*, but is nevertheless obliged to operate within the parameters imposed by the Commonwealth immigration policy and I have therefore undertaken consultation across the public sector to inform this submission. I do note, however, that the time frame provided by the Senate Committee has meant this submission could not be as detailed as the complexity of the legislation would warrant.

Terms of Reference

- 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;*
- Concerns surrounding the administration of the *Migration Act 1958* have been present for a significant time and made public through different forums in Australia, some of which are referred to specifically in this submission.
 - The time it takes for the assessment of visa applications (mainly for applicants in detention centres), and the limitations imposed under certain visa categories (particularly Temporary Protection Visas and Bridging Visas) are of concern. Some of these limitations render the visa holder dependent on charity for all aspects of their daily existence. Such a situation is made even harder to bear when it can take years to reach a final decision on the applicant's visa status.
 - Other aspects of the administration of the *Migration Act 1958* that raise deep concerns became particularly obvious with the release in July 2005 of the Palmer Report (*Inquiry Into the Circumstances of the Immigration Detention of Cornelia Rau*). These aspects relate to the process of investigation, assessment, detention, and deportation of alleged

visa over-stayers or alleged illegal entrants – especially where the person is suffering from poor mental health. Findings 10 and 13 of the Palmer Report refer specifically to “the DIMIA management approach to the complexities of implementing immigration detention policy” being “‘process rich’ and ‘outcomes poor’”; that “the organisational structure and arrangements fail to deliver the outcomes required by the Government in a way that is firm but fair and respects human dignity”; and that aspects of the Rau case were not the result of the failure of the Migration Series Instructions but a “failure of management processes and corporate oversight” (p x).¹

- The Western Australian State Government supports increased checking of the details of people applying for visas using, for example, the latest intelligence, the known profiles of terrorists and suicide bombers, countries recently visited, and the reason(s) they are visiting 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;

The Western Australian Government considers that better communication between DIMIA, the Department of Foreign Affairs and Trade (DFAT), and other Commonwealth, State and Territory government agencies will be invaluable in establishing the identity of people who come to the attention of DIMIA or for whom deportation is pending. In order to effect better communication, it is suggested that protocols or memorandums of understanding regarding the release of private and confidential information be established between DIMIA, DFAT, and other relevant government agencies.

Finding 32 of the Palmer Report (p xiii) is also strongly supported: that there be established as a matter of urgency a national missing persons database, or similar, to aid in personal identification.

It is also important to ensure that effective protocols are developed between DIMIA and mental health service providers in all Australian jurisdictions on the exchange of information to ensure that the situations relating to Cornelia Rau and Vivian Solon never happen to Australian citizens or permanent residents. It is incumbent upon all governments and all service provided to be especially sensitive to the vulnerability of people with mental illnesses.

c) the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;

People in immigration detention often arrive in Australia already suffering from post traumatic stress disorders and other emotional or psychological conditions associated with torture or trauma caused by war, persecution, or dispossession. The compounding effect of long term, indefinite immigration detention on such vulnerable people is well researched and documented.

This effect is particularly pernicious on young children, with the very real risk of impairment of balanced and healthy development, and is in itself abusive. This is in addition to the fact that the indefinite detention of children constitutes a breach of the United Nations High Commissioner for Human Rights *Convention on the Rights of the Child* (ratified by Australia

¹ Palmer, Mick: *Report of the Inquiry Into the Circumstances of the Immigration Detention of Cornelia Rau*. Commonwealth of Australia, July 2005.
http://www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf

in 1991) - in particular Articles 22, 25, and especially 37(b) "...The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". Further, research shows the risk of child abuse for children in detention centres is high². While the Western Australian Government appreciates the effort now being expended by the Commonwealth Government to remove all children from detention, it urges the Government to ensure that mechanisms are put in place to ensure that the detention of children is a last resort and to ensure that no excuses are utilised to shy away from this rule.

This submission refers specifically to the Human Rights and Equal Opportunity Commission (HREOC) Report of the *National Inquiry into Children in Immigration Detention – A Last Resort*, tabled in Federal Parliament in May 2004. This Inquiry found Australia's immigration detention policy has failed to protect the mental health of children, failed to provide adequate health care and education, and failed to protect unaccompanied children and those with disabilities.

As highlighted in the Palmer Report, it is strongly supported that the provision of mental health services to people in detention centres be improved.

The Western Australian State Government also notes its concern over certain events that occur within detention centres and that have significant impact on the provision of education services to school aged learners residing in migration centres. Events such as hunger strikes, rioting, and the relocation of others in the detention centre (either through deportation or the granting of visas) have a severely detrimental effect on the mental wellbeing of the students and their ability to successfully participate in education.

Students in the Perth, Curtin, Port Hedland, and Christmas Island detention centres have been able to use Western Australian schools. Resources have been provided, including teachers of English as a Second Language, translators, funds for additional classroom materials, and student access to physical and mental healthcare providers. Other aspects supporting the students include school staff access to information on the students, and the development of collaborative partnerships between school and detention centre employees. These support mechanisms have been critical in ensuring the smooth integration of students into schools.

d) the outsourcing of management and service provision at immigration detention centres; and

The Western Australian Government's 2003 submission to the National Inquiry into Children in Immigration Detention made it clear it was not in a position to comment on certain areas related to the management of delivery of services in immigration detention facilities. This still remains the case, especially as the Commonwealth Government has since closed the Curtin and Port Hedland facilities. Nevertheless, the Western Australian Government remains concerned about the apparent poor communication between the private operators of those facilities and the Commonwealth authorities. Private, profit-making enterprises have been given apparently conflicting roles: where they are charged with security and detention of detainees and their families, and at the same time providing high levels of general welfare and health needs.

² Submission to the National Inquiry into Children in Immigration Detention from the Western Australian Government. HREOC, 2003.
http://www.hreoc.gov.au/human_rights/children_detention/submissions/wa.html.

of the immigration detention policy outcomes expected by the Government, detainees and the Australian people" (p xiii).

If outsourcing of the management of detention centres is to continue, it is incumbent upon the Government to ensure that the welfare of detainees is not comprised for monetary gain. As a democracy we must ensure that standards of decency and decorum are followed at all times. It is also important to ensure that, by regularly monitoring and reviewing the management practices of private operators, transparency is paramount and that they are held to account at all times.

e) any related matters.

Settlement services

DIMIA provides services to humanitarian entrants through two main programs, namely, the Integrated Humanitarian Settlement Strategy (IHSS) and the Community Settlement Service Scheme (CSSS).

In the past few years, the demographic profile of Australia's humanitarian intake has changed with a trend towards higher numbers of refugee and humanitarian entrants from African countries, Afghanistan, and Iraq. The current IHSS and CSSS providers are struggling to provide the appropriate level of services required by these recent arrivals.

These recently arrived refugees, many of whom have spent years in refugee camps, require a higher level of intensive service to meet their complex health, education and housing needs. The current model provides minimal services only, emphasising referrals for service provision to State Government agencies and non-government authorities, many of which do not have the resources or skills to adequately meet client needs. In addition, IHSS services are only provided for the initial 3-6 months of settlement. Consultations with the community and service providers reveal the gross inadequacy of this time limit for refugees and humanitarian entrants who have complex needs and require more ongoing settlement assistance.

Interpreting services

The range of settlement services provided by the Commonwealth have included interpreting and translating services to refugees and humanitarian entrants, many of whom require assistance in communicating in English. DIMIA have advised that, through a 1998 MCIMA resolution, State and Territory Governments have committed to making due provision for interpreting services as part of the core funding of all community based, not for profit organisations funded by them.

Upon request, DIMIA have provided a draft copy of the 1998 resolution (DIMIA has advised that it does not have a copy of the final resolution). The resolution does not in fact commit State and Territory Governments as suggested. Rather it relates to Ministers discussing with relevant Ministerial colleagues the need to make due provision as part of the core-funding of all government funded community-based organisations. WA did not support this position and did not progress the draft resolution.

This issue has recently come to the fore in the State and Commonwealth negotiations on the funding arrangements for the Supported Accommodation and Assistance Program (SAAP V) Services. Under the current arrangements for SAAP IV, which commenced in 1999, the Commonwealth provides 60 percent of the total funding with the State contributing 40 percent. For the SAAP V agreement this will change to a 50/50 arrangement.

DIMIA provide fee-free interpreting services through the Commonwealth's Translating and Interpreting Service (TIS) to SAAP service providers but however maintain that this was done on a transitional basis until the end of the current agreement.

In 2004-05, the cost of TIS services used by Western Australian SAAP services was \$32963. This represents just a small fraction of the total cost of interpreting services for Western Australia that were being funded under DIMIA's TIS Community Service Obligation but that are now expected to be funded by the State.

Education Services

The current cohorts of refugee students are entering Western Australia from Western and Northern Africa and the Middle East. Students from Northern Africa and the Middle East arrive with limited or no schooling experiences, little or no literacy in their first language, and may have witnessed or experienced one or multiple acts of torture or trauma. The Commonwealth New Arrivals funding of \$4854 per student provides one year of intensive English instruction at an Intensive English Centre (IEC) for one year.

Approximately 98% of these students access English as a Second Language (ESL) support through an IEC for their first 12 – 18 months in Australia. Currently there are some 650 students in IECs who have arrived as refugees under the Humanitarian Settlement Scheme. This is an increase of some 150 students from the 2004 numbers.

The New Arrivals funding does not make provision for the cost of employing bilingual support staff to facilitate the education of newly arrived refugee students who have little or no educational background and no English language skills. Bilingual support staff are also needed to facilitate communication between the school and parents. To remedy this, the WA Department of Education and Training (DET) employs in excess of 85 Ethnic Education Assistants to:

- provide support for students in IECs and post IEC programs
- liaise between the school and families of students
- provide cultural background information to teachers; and
- where NAATI accredited, translate written information for parents and families of students in IECs and in post IEC programs.

Funding for the employment of Education Assistants has had to be accommodated by increasing the student-teacher ratio, thereby increasing class sizes, and using the excess funds from the New Arrivals Program to employ Education Assistants. Given some of the students have no educational background and lack basic skills, this has in turn given rise to a number of issues as they do not get the intensive level of assistance and teacher support required, even with the employment of an assistant. In addition, DET provides the infrastructure costs and the use of education facilities and staff.

DET has analysed service provision for refugee students with intensive needs at approximately \$10000 per student p.a. compared with the current funding level of \$4854.

Health Services

The volume, health care complexity, and acuity of newly arrived African refugees entering Australia have risen significantly over the last 12 months. The WA Department of Health (DoH) is having to provide care and treatment for large groups of refugees (100+) from sub-Saharan Africa who are arriving with minimal notice, discussion, or new financial investment. Existing services cannot cope with the size of the groups, their multiple needs, and high acuity, creating an urgent need for an improvement in the health services provided.

The pre-departure medical assessments performed in Africa are of dubious accuracy and, in their current form, do not assist in the assessment of new arrivals. There is no pre-departure screening or treatment for acute malaria and no clear pathway for the required medical assessment within a short time frame after arrival. Additionally, tropical illnesses of this nature are not endemic to Australia and many medical practitioners are not adequately skilled to deal with these illnesses in general practice.

To address this, DoH has funded a Migrant Health Service to undertake basic health assessments for all refugees on arrival, including screening for Tuberculosis, HIV and blood borne viruses, gastrointestinal parasites, malaria, other tropical diseases and assessing immunisation status. The costs involved are significant and do not include the greater than \$100,000 required for interpreting services.

Further, the lack of liaison and coordination over the health care needs of humanitarian entrants has resulted in numerous presentations by refugees and humanitarian entrants to Emergency Departments in WA hospitals, which are ill-equipped to deal with large families and without an appropriate interpreter available (even by phone). Again, this results in significant costs borne by the State Health system.

There is also a false assumption that General Practitioners are able to provide the amount and type of care required for this medically complex refugee group. They are unable to do so because:

- GPs are in short supply and therefore able to "choose" their patients. In general, they are not interested in seeing complex, non-English speaking clients who require long and extended consultations and who present with diseases not previously encountered in their suburban practice;
- refugees and similar migrants need to be "bulk-billed" and GPs willing to do so are difficult to access, particularly close to the migrants' residence. In addition, the Medicare fee is inadequate given the complexity of these families;
- interpreting services, even by phone, are not always available in the particular African dialect and, additionally, patients have poor literacy standards, ruling out using written information. These practical aspects delay busy general practices and further reduce the chances of a refugee family getting an appointment;
- many of the medications required to treat tropical illnesses are not on the PBS. also forcing patients into the hospital system to access pharmaceuticals.

Once again I thank you for the opportunity to provide this submission and I look forward to seeing the Report in November.

Yours sincerely



DR GEOFF GALLOP MLA
PREMIER

12 AUG 2005