



Community Relations Commission  
For a multicultural NSW

**Community Relations Commission  
For a multicultural NSW  
submission to the**

**Parliament of Australia**

***Senate Legal and Constitutional Committee***

***Inquiry into the administration and  
operation of the Migration Act 1958***

August 2005

## **Acknowledgements**

This submission was compiled by the Community Relations Commission For a multicultural NSW and includes contributions from the following NSW Government agencies:

- Community Relations Commission For a multicultural NSW
- NSW Department of Education and Training
- NSW Department of Community Services
- NSW Department of Corrective Services
- NSW Department of Housing
- NSW Health
- NSW Police
- The Cabinet Office, NSW
- The Office For Women, NSW Premier's Department

## Acronyms

AMEP -	Adult Migrant English Program
AMES -	Adult Migrant English Services
AFP -	Australian Federal Police
APEC -	Asia Pacific Economic Cooperation
CRC -	Community Relations Commission For a multicultural NSW
CSMC -	Corrective Services Ministers Conference
CSSS -	Community Settlement Services Scheme
DET -	Department of Education and Training
DCS -	Department of Corrective Services
DIMIA -	Department of Immigration and Multicultural and Indigenous Affairs
DoCS -	Department of Community Services
DoH -	Department of Housing
DV -	Domestic Violence
ESL -	English as a Second Language
ETA -	Electronic Travel Authority
GSL -	Global Solutions Ltd
HREOC-	Human Rights and Equal Opportunity Commission
IDC -	Immigration Detention Centre
IEC -	Intensive English Centres
IHSS -	Integrated Humanitarian Settlement Strategy
IOM -	International Organisation for Migration
LACs -	Local Area Commands
LGAs -	Local Government Areas
MCEETYA-	Ministerial Council on Education, Employment, Training and Youth Affairs
MCIMA-	Ministerial Council on Immigration and Multicultural Affairs
MOU -	Memorandum of Understanding
MRCs -	Migrant Resource Centres
MSAs -	Migrant Service Agencies
NAATI-	National Accreditation Authority for Translators and Interpreters Ltd
NGOs -	Non-Government Organisations
OIMS -	Offender Integrated Management System
SCIMA-	Standing Committee of Immigration and Multicultural Affairs
SHP -	Special Humanitarian Program
STARTTS -	Service for the Treatment and Rehabilitation of Torture and Trauma Survivors
TIS -	Translating and Interpreting Services
TPV -	Temporary Protection Visa

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# **SENATE INQUIRY INTO THE ADMINISTRATION AND OPERATION OF THE MIGRATION ACT 1958**

## **Introduction**

NSW continues to be the major destination point for new arrivals to Australia, having received about 36.8% of all immigrants over the period 2001-2004. From mid-1999 to 2003 over 18,600 refugees settled in NSW.<sup>1</sup> Settlement patterns in NSW have also changed over the last ten years with more refugees beginning to settle in rural and regional areas of the State. NSW receives approximately 51.9% of temporary protection visa holders. This has a significant impact on demand for government services, particularly health and education.

The Commonwealth Government agreed, at the Standing Committee of Immigration and Multicultural Affairs (SCIMA), 2004, that settlement planning arrangements be reviewed and that Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) would work with jurisdictions bilaterally to determine a format for ongoing discussions. To fully address settlement planning and increase the efficacy of the Commonwealth Government's consultations with NSW Government agencies, the former NSW Premier Bob Carr established the NSW Government Immigration and Settlement Planning Committee.

The Community Relations Commission For a multicultural NSW chairs the NSW Government Immigration and Settlement Planning Committee. The other members of the Committee are the NSW Department of Ageing, Disability and Home Care, NSW Department of Commerce, NSW Department of Community Services, NSW Department of Education and Training, NSW Department of Housing, NSW Department of Local Government, NSW Department of State and Regional Development, NSW Health, NSW Police, NSW Premier's Department, The Cabinet Office NSW, and the Department for Immigration and Multicultural and Indigenous Affairs (DIMIA). In preparing this submission the Community Relations Commission For a multicultural NSW consulted NSW government agencies. DIMIA was not a party to this submission as it is a NSW response.

NSW government agencies consider that the Commonwealth Government's assistance for individuals in detention, those released from detention centres into the community, humanitarian entrants, and refugees is inadequate. NSW government agencies do not support the detainment of children in immigration detention and have raised serious concerns about the welfare of children in detention centres and the long-term impact upon their development and well-being. NSW supports a policy of border protection and the mandatory detention of adults, for a minimal period, while assessing security and health risks and with the aim of ensuring that claims to residency of unauthorised asylum seekers are assessed by a managed and fair process. NSW government agencies advocate that detainees be treated in a humane and dignified manner and strongly supports efforts to expedite the processing of applications for refugee status.

NSW government agencies are concerned about the consequences of long-term detention and the unmet psychological and physical health needs of adult detainees. The Commonwealth Government-provided health services in detention centres are inadequate, leading to flow-on effects for the health and well-being of detainees once they are released into the community.

The educational services available to detainees whilst in detention are inadequate, despite some recent efforts by NSW government agencies, in collaboration with the Commonwealth Government. The Commonwealth Government should also clarify ambiguity surrounding the roles of Federal and State law-enforcement agencies in responding to particular categories of crime and incidents in detention centres.

NSW government agencies are concerned that the Commonwealth Government is not taking adequate measures to ensure that sponsors under the Special Humanitarian Program (SHP) are supporting the needs of the SHP entrants. The continued failure of sponsors to meet their obligations has a significant impact on NSW Government services. NSW has raised the issue of the Commonwealth's duty of care to SHP entrants in this regard.

This submission will outline key areas of concern to NSW government agencies relating to the Inquiry's 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
- 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.
- E. Any related matters

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

## **A- 1 Migration Detention**

### ***A-1-1 Detention of Children***

The report of Human Rights and Equal Opportunity Commission's (HREOC) *Inquiry into Children in Immigration Detention*, 'A last resort?' in May 2004 highlighted that Australia's immigration detention policy had failed to protect the mental health and physical wellbeing of children, education opportunities were poor and unaccompanied minors were not properly cared for.

NSW government agencies welcome the recent Commonwealth Government's announcement that all remaining children will be released from Australian immigration detention centres without further delay. It is unfortunate that this decision has come at such a late stage with some children having spent a high proportion of their lives in immigration detention. There is a considerable body of evidence to suggest that detention of both adult and child refugees for prolonged periods of time has a significant negative impact on their physical and psychological wellbeing and this is particularly deleterious to their future health and development. Therefore NSW government agencies are concerned about the long term impact of detention on children now living in the community. It is likely that children who have spent long periods in immigration detention will require higher levels of support. Unless the Commonwealth takes responsibility for the consequences of its detention policy and provides the services required by these children over the long term meeting their needs will place an additional burden on NSW government services particularly in the areas of education and health.

### **Recommendation:**

That the Commonwealth take full responsibility towards children and their families adversely impacted by their experience of detention through providing or funding the additional support services required by these groups over the long term to remedy as far as possible any health, developmental and psychological impacts of detention.



## ***A-1-2 Access to NSW schools and educational services by children in immigration detention***

By 2002, as a result of Australia's mandatory detention policy, large numbers of asylum seekers were detained in Villawood Immigration Detention Centre (IDC), including significant numbers of school age children. At that time, through representations made by both members of the general public and State government agencies, DIMIA came to acknowledge the value of children in immigration detention being able to access education in a school environment within the community, provided that the requirements of the Migration Act to detain unlawful non-citizens was met.

In June 2002, agreement was reached between DIMIA and the NSW Department of Education and Training (DET) to allow a number of detainee immigration children from Villawood Immigration Detention Centre (IDC) to access schooling in NSW Government schools.

Since July 2002, detainee children have had access to designated local government schools and have participated in school curricula activities in the same way as other children. From July 2002 to July 2005, thirty-three children from Villawood IDC have enrolled in NSW primary schools, high schools and Intensive English Centres (IEC). While enrolled in classes ranging from kindergarten to Year 12, a number of these children have successfully made the transition from primary to high school or from IEC to high school. Arrangements with DIMIA have allowed parents of these children who are also in immigration detention to attend school parent/teacher nights and other school functions.

During this time, children from immigration detention centres have been able to experience stability in a structured school environment, accessing the full school curriculum including English as a Second Language (ESL) support and school counselling services.

However, enabling these students to access local schools under the Migration Act has required special and unusual arrangements to be made in regard to schools. As a result of the requirements of the Migration Act to detain unlawful non-citizens, DIMIA and its contracted Detention Services Provider must ensure that detainees remain in immigration detention while attending a local school.

In relation to the current provision of schooling external to Villawood IDC, this means that:

- A school in which detainee children enrol, must first be assessed by DIMIA for compliance with the Migration Act and then declared an 'alternative place of detention'; and
- The principal (and any other teachers as required) must be a 'directed person' authorised to act on behalf of an officer in ensuring immigration detention and, if required, to accompany and restrain the detainee child.

- In regard to the participation of detainee children in local school programs, DIMIA and NSW DET have established a set of procedural arrangements. Participation of detainee children in local schools is primarily determined by:
  - DIMIA assessment of both the particular child and the individual school facility to ensure the requirements of the Migration Act can be met;
  - NSW DET assessment of the child's social and educational skills including literacy in English and numeracy as well as health and welfare issues; and
  - NSW DET assessment of the capacity of a local school to meet the needs of a particular child.

Further information on NSW DET's role and functions in relation to the administration and operation of the Migration Act 1958 is detailed in Appendix A.

### **Recommendation:**

- That the Commonwealth Government ensure that all school aged children who are placed into immigration detention be permitted to enrol in government schools.

### ***A-1-3 Conduct of immigration compliance operations in schools***

The Migration Act requires that all unlawful citizens, including minors under 18 years of age, be detained, and unless they are granted permission to remain in Australia, must be removed as soon as practicable. In implementing this requirement, DIMIA compliance officers conducted two immigration compliance operations in NSW Government schools in March 2005 removing a number of children from their schools and taking them into detention. The NSW DET was not informed that the compliance operations were to take place.

The absence of notice by DIMIA officers regarding compliance operations represented a significant departure from previous practice. In the only other two examples of compliance operations being conducted in schools over the past five years, prior notification had been given to the NSW DET.

In addition to the compliance operations conducted in schools, in November 2004 and March 2005, a number of school-aged students were removed from their homes by immigration compliance officers and placed in immigration detention.

Following this NSW DET and the Commonwealth agreed to the following protocols in relation to the future removal of children from NSW DET schools:

- Prior notification being given by DIMIA officers of the proposed removal to a nominated NSW DET officer. Negotiations will take place on a case by case

basis between the NSW DET and DIMIA over the timing and manner of the operation.

- The nominated NSW DET officer advising the Regional Director, School Education Director and Principal of the school concerned of the proposed operation.

There still remain major areas for improvement in the provision of information concerning the conduct of compliance operations outside of school premises involving school aged children enrolled in government schools.

### **Recommendation:**

- That the Commonwealth Government review the conduct of compliance operations outside of school premises involving school aged children enrolled in government school and develop agreed protocols in consultation with State/Territory governments.

### ***A-1-4 Use of NSW correctional centres for Immigration Detainees***

NSW correctional centres are sometimes utilised by the Commonwealth Government to accommodate immigration detainees. Under the *Migration Act 1958* (the Act) non Australian citizens who are unlawfully in Australia (*unlawful non-citizens*) must be detained and, that unless they are given permission to remain in Australia, they must be deported as soon as practical. The Act provides that *lawful non-citizens* may be detained in *immigration detention* in certain circumstances. Section 5 of the Act defines the range of places of immigration detention as including “in a prison or remand centre of the Commonwealth, a State or a Territory; or in a police station or watch house.”

In the past ten years the NSW Department of Corrective Services has held a considerable number of immigration detainees in correctional centres at the request of the Commonwealth Government. Such requests usually concerned immigration detainees who were considered by the Commonwealth Government to be unsuitable for detention at Villawood Immigration Detention Centre for security or behavioural reasons; or convicted criminals awaiting deportation whose sentences of imprisonment had been completed. The Commonwealth Government pays the NSW Government a fee to house immigration detainees in correctional centres.

The Migration Act also provides for refusal or cancellation of a visa on character grounds (s. 501), including a character test. A person does not pass the character test for a variety of reasons including a substantial criminal record (a sentence of imprisonment of 12 months or more, or multiple sentences of imprisonment totalling 2 years or more), association with criminal groups or associations, or a significant risk that the person will engage in criminal conduct in Australia.

Where an immigration detainee is charged with a criminal offence related to behaviour in a Commonwealth Immigration Detention Centre and refused bail, such a charge sanctions the person’s continued detention in a correctional centre as an inmate and not an immigration detainee.

NSW government agencies are of the view that immigration detainees should not be detained in NSW correctional centres unless exceptional circumstances exist and are recognised as exceptional by NSW.

Detention of immigration detainees in correctional centres was considered by all Australian State and Territory Corrective Services Ministers at the Corrective Services Ministers Conference (CSMC) on 26 June 2001. Since the commencement of a policy regarding detention agreed on at the 2001 CSMC, and with the exception of an incident in January 2003 in which the Department of Corrective Services accepted into custody fifteen inmates who had participated in riots and were alleged to have attempted to escape from Villawood IDC, the NSW Department of Corrective Services has not held a considerable number of immigration detainees in correctional centres at any time.

### **Recommendation:**

That the Commonwealth Government should improve arrangements for the maintenance and transfer of immigration detainees and the exchange of information between jurisdictions for the purposes of managing immigration detention, in consultation with States and Territories.

## **A-2 Provision of Migration Advice**

### ***A-2-1 Migration Agents***

The *Migration Act* regulates the licensing and conduct of migration agents. NSW government agencies are concerned that the Commonwealth has not worked with jurisdictions to establish an appropriate and agreed response framework to exploitative and/or unlawful or illegal conduct. NSW Police is particularly concerned that State law enforcement agencies are expected to respond to such situations without adequate mechanisms in place. This is relevant with reference to unconscionable conduct that takes place in the course of or in relation to procedures under particular visa categories. Such behaviour might include extortion, fraud or other offences against the person (such as assault).

Migration agents sometimes play a role in visa processing and may be perceived to have power over their clients' outcomes. NSW government agencies are concerned that this could potentially create opportunities for exploitative and/or illegal conduct. Depending on the nature of possible offences, this could impact on the obligation and capacity of relevant state and federal law enforcement authorities to act.

### ***A-2-2 Changes to Settlement Grants Program***

Migrant Resource Centres (MRCs) and Community Settlement Services Scheme (CSSS) are organisations funded by the Commonwealth to assist recently arrived humanitarian entrants and family stream migrants with low levels of English proficiency to settle in the community. This includes the provision of a range of services and advice.

Under the current Settlement Grants Program these organisations are able to provide migration advice. This is often done by trained personnel on a *pro bono* basis. However, under the Commonwealth's proposed new Settlement Grants Program, to take effect July 2006, Migrant Resource Centres (MRCs)/ Migrant Service Agencies (MSAs) or CSSS organisations will not be able to provide free migration advice.

Migrant Resource Centres (MRCs)/ Migrant Service Agencies (MSAs) or CSSS organisations will be required to refer their clients seeking migration advice to registered migration agents. Migration agents may decide to provide assistance *pro bono*, on a fee basis or under other funding programs such as the Immigration Advice and Application Assistance Scheme. However NSW government agencies are concerned that a change in Commonwealth policy may lead to the following adverse consequences:

- Increased fees and charges may be sought by private migration agents;
- Increased risk of clients being placed at risk of unscrupulous migration agents;
- Registered migration agents across Australia may not provide an adequate level of *pro bono* advice and will not be sufficiently funded through the Immigration Advice and Application Assistance Scheme to fulfil the role previously undertaken by MRCs/ MSAs and CSSS agencies;
- Many current clients of MRCs/MSAs and CSSS agencies may seek direct assistance from their elected federal, state or local government representatives, as they will not be able to afford private migration agents; and
- Is likely to make the already complex area of migration increasingly difficult for new and emerging communities and humanitarian refugees to navigate through.

### **Recommendation:**

That the Commonwealth continue to fund MRCs/ MSAs and CSSS agencies to provide migration advice.

## **A-3 Visa classes, processing, assessments and issues**

### ***A-3-1 Temporary Protection Visa (TPV)***

NSW receives a high number of Temporary Protection Visas (TPV) holders. Centrelink data, 29 April 2005, indicates that although 13.9% of TPV holders were released in NSW, 51.9% of all TPV holders on Centrelink benefits are resident in NSW (1752 TPV holders).

NSW government agencies are concerned that the Commonwealth TPV policy results in considerable costs to the State as the Commonwealth Government limits access for TPV holders (including children) to a range of Commonwealth funded settlement services such as accommodation, English language programs, and psychological and

physical health services This has placed a heavy burden on community organisations struggling to meet the special needs of refugees who are TPV holders and who are left outside the mainstream humanitarian settlement services. This is especially true of Department of Community Services (DoCS) funded Community Services Grants Program (CSGP) organisations such as Neighbourhood Centres.

The Commonwealth is responsible for the health and well-being of TPV holders. The Commonwealth is considering granting permanent residency status to all TPV holders en masse. Before doing so, NSW Government has requested that the Commonwealth Government outline the impact this will have on State/ Territory Government services. The Commonwealth should not be abrogating its responsibilities to TPVs.

NSW government agencies are of the view that being a TPV holder over a long period, has detrimental affects on individuals by restricting their access to key services and creating further insecurity and uncertainty in their lives. Some TPV holders eventually become permanent residents. The Commonwealth policy is likely to have a negative impact on refugees' mental and physical wellbeing and may compound the effect of prior experiences of trauma related to the violence of wars, political upheavals, and their time in detention centres in Australia. Limited access to mainstream services whilst on a TPV may create an environment of long-term disadvantage and social exclusion. At particular risk are TPV holders who are women and children, vulnerable youth, and those with psychological and mental health needs.

### **Recommendation:**

That prior to the Commonwealth granting permanent residency status to all Temporary Protection Visa (TPV) holders en masse, the Commonwealth provide written advice outlining the impact that this will have on State/Territory services. NSW has expressed the view that the Commonwealth should not abrogate its responsibilities to TPV holders.

### ***A-3-2 Domestic Violence provisions***

Under the Commonwealth's Domestic Violence (DV) Provisions holders of/ applicants for some temporary visas may be eligible for permanent residence in Australia if:

- Their relationship has broken down; and
- They, or a member of their family unit, have suffered domestic violence perpetrated by their sponsor, spouse or defacto partner.

In 2003-04 approximately four hundred and forty applications were received under the Commonwealth DV provisions. Those on bridging visas and other classes of temporary visas represent approximately fifty cases (ten percent) each year. Applicants holding temporary visas and bridging visas are without any form of income support, housing assistance or Medicare while their application for permanent residence is processed or under review. NSW government agencies are concerned about the hardship faced by these applicants and their dependents during this time.

On average it takes two to three months from the time DIMIA is first informed that the relationship has broken down to assess an application. Applications under the DV

provisions are given priority with seventy percent decided within forty-eight hours of the required documents (evidence of domestic violence, police character checks, health checks) being submitted. There can be considerable delays in cases where there is a dependent child.

NSW has repeatedly noted its concern about the lack of eligibility for income, health care and housing assistance for these applicants with the Commonwealth since 2000. The barriers faced by applicants (predominantly women) awaiting permanent residency via the DV provisions have not been reduced during this period.

The lack of support services leads to an increased risk of applicants and their dependents returning to a violent home environment or engaging in illegal and unregulated employment.

DIMIA introduced changes to the Domestic Violence policy for spouses awaiting permanent visa status on 1 July 2005. The DIMIA *Fact sheet 04: Migration Program Family Stream integrity measures* states that:

To ensure that only genuine claimants can benefit from these provisions, arrangements will be put into place enabling DIMIA to refer doubtful claims to an independent service provider with expertise in assessing such claims.

NSW government agencies are concerned that the only independent service provider to be gazetted for the purposes of reviewing claims considered doubtful by DIMIA is Centrelink. NSW government agencies support the view that specialist domestic violence services are the only agencies that are appropriately qualified to be able to provide an accurate assessment of the existence of domestic violence.

These changes may subject applicants (predominately women) in domestic violence situations to further questions about allegations of domestic violence, where the onus is on women to prove abuse. This process is likely to make women feel forced to return to violent situations to maintain their visas and avoid deportation and possible separation from children. Visa restrictions appear to place an additional pressure on women to not report incidents of violence and to remain in volatile situations.

### **Recommendations:**

- That the Commonwealth provides applicants and their dependents on bridging and temporary visas with access to Commonwealth funded income support, health care and housing services while their application is assessed or reviewed under the Domestic Violence provisions.
- That the impact of the current Commonwealth Domestic Violence provisions, particularly the assessment and review of claims, on the welfare and safety of applicants be scrutinised to ensure that applicants and their dependents are not exposed to any additional hardships due to the administrative and legal processes. This includes assessing whether administrative and legal processes constrain the ability of victims of violence or those in threatening or vulnerable domestic situations to report violence and/or leave a spouse without fear of losing their residency status.

- That guidelines be introduced to ensure that the use of the term assault in the Commonwealth Domestic Violence provisions be interpreted broadly so as to include all types of domestic violence offences included in State and Territory legislation, for example stalking and intimidation.
- That the assessment of doubtful claims be undertaken by qualified professionals with expertise in domestic violence matters, which could include contracting State and Territory specialist domestic violence services as well as engaging Centrelink social workers with the requisite expertise to provide accurate assessments of the existence of domestic violence.

### ***A-3-3 Impact of visa application processing times***

NSW government agencies are concerned that lengthy visa application processing times can place additional pressure on State Government resources. The NSW Government provides different forms of government assistance to individuals and households, depending on the type of visa held. For example, permanent residents are eligible for public housing. Individuals on Temporary Protection Visas (TPV) are eligible for other assistance such as Rentstart, Tenancy Guarantee (assisting households to take up private sector tenancies) and emergency temporary accommodation (in public housing dwelling stock).

The NSW Department of Housing also provides housing assistance to homeless asylum seekers who are on bridging visas, while they are awaiting resolution of their permanent residency. A number of these cases may take lengthy periods of time to resolve. During that time asylum seekers are subject to high levels of hardship as they have no income and are not permitted to work. These delays place additional pressures on State government resources. A speedier determination of visa status would alleviate some of this pressure.

### **Recommendation:**

That the Commonwealth Government expedites assessment of visa applications for asylum seekers on bridging visas.

### ***A-3-4 Issuing of standard appropriate identification***

Issuing identification documentation is particularly pertinent for refugees and asylum seekers who do not necessarily have paperwork on arrival and are unable to access such documentation. The lack of appropriate identification may disadvantage a person and can complicate and protract investigations with State law enforcement agencies. Legislating for visa processes that issue appropriate personal identification will assist effective service provision and interaction with relevant State and Federal authorities.

NSW government agencies have raised the issue of DIMIA ascribing refugees, without documentation stating their date of birth, identical birth dates. Representatives from NSW Health, DET and NSW Police reported that the date January 1<sup>st</sup> has appeared as the birth date on many African immigrants' documents. In one particular case, a girl was enrolled in school as a thirteen year old. Later investigation revealed that she could be as old as eighteen.



The implications of such discrepancies may result in poor outcomes in the following areas:

- Children's criminal matters. Where a person is alleged to have committed a criminal offence, their age is relevant to whether they are dealt with under the juvenile justice system or under the adult criminal justice system. It is vital in the determination of criminal responsibility for the court to have access to reliable information on the child's age to determine criminal responsibility, and whether the person should be treated as a juvenile or an adult in the criminal justice system. Inappropriate treatment of young offenders would be a breach of the International Convention on the Rights of the Child and the United Nations' Rules for the Protection of Juveniles Deprived of their Liberty. Whole-of-government implications may also arise through possible litigation brought against the State for improper treatment of individuals across the service system.
- Children's care and protection matters. The Children's Court hears and determines children's care and protection matters. The age of a person is relevant to whether they should be the subject of child protection proceedings before the Court.
- Child protection activities are dependent on the year of birth to determine legislative application. Substantial confusion may arise to the responsibilities of educational institutions in regards to Child Protection Laws and the allocation and use of limited resources.
- The year of birth is the determinant as to whether a person is eligible to apply for a drivers license, consent to sexual behaviour, enter employment, or to leave home or school.

### **Recommendation:**

That the Commonwealth Government issue all long term and short term immigrants including refugees released from immigration detention with standard appropriate identification and documentation.

### ***A-3-5 Visa classes and conditions of enrolment in NSW Government Schools and TAFE NSW***

The NSW Department of Education and Training (DET) is involved in the implementation of the *Migration Act 1958*. Further information on NSW DET's role and functions in relation to the administration and operation of the *Migration Act 1958* is detailed in Appendix A.

Each year, in response to Australia's permanent and temporary migration programs, large numbers of non-Australian citizens apply to enrol in agencies of the NSW DET. The vast majority enrol in government schools and colleges/campuses of TAFE NSW.

Enrolment services and courses offered by the agencies comprising the NSW DET vary according to conditions found on the visa or other travel document held by the student. There are many different types of visas, including permanent, temporary and

provisional visas, business visas, student visas, visitor visas and bridging visas. Bridging visas, for example, have conditions which require evidence of the previous substantive visa and documentary evidence of the new substantive visa applied for.

Visa classes and conditions are subject to regular review and change by DIMIA. This situation requires the NSW DET to ensure effective currency of information provided to schools and colleges of TAFE NSW by regularly updating its guidelines and advice, in particular the *Schedules of Visas*.

Although such changes to visa classes, regulations and conditions directly impact on government agencies, these usually occur with no notice or opportunity provided to these agencies to consider the impact of the changes on policy development and program delivery.

It seems that the Commonwealth Government regards the effective administration and operation of the *Migration Act* and its regulations by State and Territory agencies as an implementation matter that does not merit a national consultative planning or whole of government approach.

### **Recommendations:**

- That the Commonwealth Government establishes processes to ensure that State and Territory Governments are given the opportunity to comment on proposed changes to immigration regulations.
- That the Commonwealth Government develops LEGENDcom (DIMIA's on-line subscription service) so that subscribers are alerted in regards to any legislative changes, the introduction of new visas and regulations.
  - It would also be beneficial if the availability of LEGENDcom services, including training on the use of LEGENDcom, were made known to a broader range of service providers.
- That the Commonwealth Government acknowledges that immigration regulations are at times complex to interpret and provide training to State/Territory agencies about regulations, policies and visa conditions on a regular basis.

### **A-3-6 Visa documentation and school enrolments**

Currently DIMIA has an array of documentation formats that indicate visa sub-class. These may include:

- A passport from another country.
- Documentation issued by DIMIA.
- Electronic Travel Authority (ETA)
- eVisas

- An arrival stamp generally issued to military personnel and their dependents under the Status of Forces Agreement.

Staff enrolling students in NSW Government schools and TAFE NSW must sight original visa stamps or labels affixed to passports or to other official travel documents in order to assess visa and residency status, authorised period of stay and eligibility conditions.

There is a current shift by DIMIA to increase the practice of issuing label free computer based visas ie. electronic visas or eVisas. This service is expected to apply to the provision of visas on-shore. Electronic visas are not shown on the holders' passport or other documentation. This shift in DIMIA's visa processing may present further security risks.

An eVisa is a visa that has been electronically granted through the DIMIA internet based eVisa system. Holders of an eVisa are issued with an approval letter from DIMIA. The approval letter is printed from the internet based eVisa system and includes details of the visa class, the visa expiry date and the visa conditions. Details can only be assessed if the applicant's provides the approval letter.

An Electronic Travel Authority (ETA) may be issued instead of a visa for visitors or temporary business residents from certain countries. The ETA is issued electronically and details of the visa only exist in DIMIA computer records. Details of the ETA can only be assessed by a separate paper issued by DIMIA.

The APEC Business Travel Card gives accredited business people from participating countries in the Asia Pacific Economic Cooperation (APEC) forum the equivalent of visa-free travel to other participating APEC countries.

These 'visa free' arrangements are about to be expanded by the Commonwealth Government with the introduction via legislation of an optional evidencing regime from 1 July, 2005. This system will involve the phased elimination by different Commonwealth policy and program areas of labels as the main form of documentary evidence of visas.

This shift has major implications for NSW DET. Neither temporary visa holder applicants nor NSW DET enrolling staff will be readily able to confirm temporary visa holders' residency status for enrolment purposes.

### **Recommendation:**

That the Commonwealth Government ensures that consultation between DIMIA and State/ Territory government agencies, including the NSW Department of Education and Training, occurs as a matter of priority to address the issue of an optional evidencing regime. That possible security risks be fully assessed and a risk management plan be developed with States and Territories.

### ***A-3-7 Employment of overseas trained teachers***

Current regulations and conditions relating to visa classes restrict the NSW DET from employing overseas qualified teachers to meet specific skill shortages in the teaching force.

The NSW DET is particularly concerned about the need to obtain criminal record checks from overseas countries for overseas trained teachers or teachers visiting Australia on visas.

### **Recommendations:**

That the Commonwealth Government introduce the following changes to assist the employment of overseas trained teachers:

- *Working While Studying* – Increasing the maximum number of hours that students on a visa can work from 20 hours to 24 hours would enable the NSW DET to employ them as teachers for three days per fortnight.
- *Working Holiday Visa* – This visa provides for a maximum stay of 12 months in Australia with a maximum of 90 days of casual work allowed with any one employer. The NSW DET suggests that the visa's conditions be amended to enable employment with an employer for more than 90 days within the 12 month stay, e.g. three school terms (150 days);
- That another class of visa be provided with conditions that allow a 12 month stay with employment with the one employer for the full 12 months. Such a visa would allow for flexibility in employment of teachers particularly for hard to staff areas of NSW and in secondary teaching areas where there is a shortage of qualified teachers in areas of mathematics, technological and applied studies and science, particularly physics;
- *Tourist Visa* – It is recommended that this visa be amended to enable qualified overseas trained teachers to be able to work for the period of their stay so they can be employed by NSW DET to teach in NSW Government schools.
- That the Commonwealth Government cooperates with State /Territory agencies, including the NSW DET, to investigate ways in which overseas trained teachers can be better screened for criminal offences, including sex offences.

<p><b>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.</b></p>
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Under the *Migration Act 1958* (the Act) *lawful non-citizens* may be *deported* in certain circumstances. The Act requires that non Australian citizens who are unlawfully in Australia (*unlawful non-citizens*) be detained and, that unless they are given permission to remain in Australia, they must be deported as soon as practical.

## **B-1 Wrongful detention and deportation of Australian citizens**

NSW government agencies have serious concerns about the wrongful detention and deportation of Australian citizens. NSW government agencies note that the Palmer Report, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, July 2005, has examined these issues and the Commonwealth has undertaken to do work in this area.

## **B-2 Deportation of Australian-born children**

Children facing deportation, who have been raised in Australia and therefore may speak only English, who have been educated and socialised in NSW (or other state) schools, and who wish ultimately to remain in Australia with their parents, face a unique and potentially traumatic situation in being deported to a previously unknown country and environment.

## **B-3 Deportation of Children enrolled in NSW schools**

There remain major areas for improvement in the provision of information concerning the conduct of compliance operations outside of school premises involving school aged children enrolled in government schools.

There is a lack of information provided by DIMIA to government schools about school aged children who have been detained or deported. This is particularly the case for international students. Some international students who have not complied with their visa conditions have been placed in detention. Other students have been deported at short notice. In these cases there has been no contact from DIMIA as to the actions taken. In some cases these students were under 18 years of age and the parents were not advised of the deportation. The NSW DET has had to ascertain from other children and or family members why the international student was absent from school.

### **Recommendation:**

That, subject to appropriate privacy considerations, the Commonwealth Government advises NSW DET of any action taken by DIMIA to detain or deport children enrolled in NSW Government schools or TAFE NSW.

<p><b>C. The adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention</b></p>
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**C-1 Current provision of health services in the Villawood Immigration detention centre**

NSW government agencies are concerned that the current health services provided by Commonwealth contracted services in Immigration Detention Centres are insufficient to comprehensively meet the physical and psychological health needs of people living there. Concerns include the limitations on funds for health care and degree of access to appropriate medical, psychological and dental services, the training of detention centre staff and the Commonwealth monitoring the activity of the contract.<sup>20</sup> The Commonwealth currently contracts Group 4 Falck Global Solutions Pty Ltd (GSL) to operate immigration detention facilities in Australia.

NSW Health supports the Human Rights and Equal Opportunity Commission (HREOC) guidelines for the provision of health care. In addition, NSW Health promotes the delivery of health services to people of refugee and refugee-like background within the following principles, as outlined in the NSW Health *Strategic Directions in Refugee Health Care in NSW*, 1999:

- Refugees be treated with dignity and respect, fairly and equitably, and free from unlawful discrimination.
- Refugees have the right of choice and the right to receive appropriate and timely information that empowers them to take control of their own health needs.
- Refugees have the right to be provided with a full range of health services in a confidential manner that recognises and validates their traumatic experiences, and protects privacy.

NSW Health is committed to providing ongoing quality health services and to promoting new and innovative approaches to improving the health of refugees living in NSW. In 1999 NSW Health released *Strategic Directions in Refugee Health Care in NSW*, which outlines the NSW Government's policy framework for achieving these goals.

NSW Health funds a number of health services that provide specialised services to refugees living in the community. These include the NSW Refugee Health Service, the Transcultural Mental Health Centre and Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS).

NSW government agencies have considerable experience in dealing with people released from Immigration Detention Centres. This includes people released from Villawood and also those who have been released from detention centres in other jurisdictions. The following concerns are supported by the experiences of NSW

clinicians working with people released from detention and on published research in this area.

While the number of asylum seeker arrivals to Australia will ultimately vary depending on world events, past experience shows that a significant number will eventually be found to warrant protection, (of the recent wave of those seeking onshore protection over 90% received asylum) and so be released into the care of the community. It is therefore in the interests of the NSW health system to promote access to appropriate prevention, early intervention and treatment services during the period of detention, to ensure that the health consequences of detention on refugees are minimised.

Asylum seekers and refugees are likely to already be significantly traumatised and in poor physical health on arrival in Australia. Long periods of detention without access to appropriate levels of psychological and physical health care may exacerbate health problems and lead to the development of mental health problems such as depression. A significant number of immigrants held in detention are eventually granted refugee status by the Commonwealth. As a result the State becomes responsible for the ongoing provision of their health care. Individuals who have been detained for a long period of time and who have not received appropriate health care in detention are likely to have higher health needs and require more intensive levels of health care from State Government services.

Periods of detention for adults should be kept to a minimum with strong efforts to expedite the processing of applications for refugee status. NSW government agencies hold concerns about the treatment of persons in immigration detention and advocate the need to ensure that individuals who are detained are treated in a humane and dignified manner. NSW government agencies are concerned by recent media coverage of Global Solutions Ltd's mistreatment of detainees.

Villawood Detention Centre health facility is staffed by contracted, sessional General Practitioners and by employed nurses. Services interacting with these staff, with detainees admitted to or brought to public hospitals, and with persons released into the community from detention, have expressed over time a number of concerns regarding health care in Villawood Immigration Detention Centre. Issues raised include:

- The involvement of security staff in decisions about who receives medical assistance, or when.
- The level of training of health staff employed in centres in relation to cross-cultural health care, and refugee specific health care, including torture & trauma.
- The level of use of professional interpreters (eg. TIS) for all medical consultations.
- Whether detainees are provided with routine access to confidential consultations with health staff, without the presence of custodial staff in or near the room.
- The model of care provided ie: treatment only provided for when assistance is requested, versus Health Case Management.
- Handcuffs or other restraints being used during some transports to and from medical or dental appointments.

- Lack of coordination of medical follow up for detainees released into the community.
- Lack of medical record summaries/information accompanying detainees when they are released (or deported).
- Lack of preventive health programs, particularly targeting women and children.
- Lack of monitoring of health services by independent bodies to ensure adequacy of services, and to ensure that access to, and quality of, medical care is not compromised by cost factors.

NSW government agencies note that The Palmer Report *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, July 2005 made a number of recommendations regarding the provision of health care to asylum seekers in immigration detention.

### **Recommendations:**

- That the Commonwealth urgently increase the standards of health care to immigration detainees.
- That the review requests a full independent inquiry into the management of detention centres.

### **C-1-1 Refugee Health**

Refugees are one of the most vulnerable groups in society.<sup>2</sup> Approximately 40 per cent of refugees arriving in Australia are children or young people.<sup>3</sup>

Refugees have unique and distinct health needs, primarily stemming from the experiences of psychological trauma, upheaval and dislocation. This is compounded by loss of family members, subsequent grief and loss and disruption to normal family life. Added to this is the normal growth and developmental needs of children from refugee backgrounds. In this context, prolonged detention of asylum seekers, their children, young people and unaccompanied minors of refugee-like background, places undue stresses on individuals, and exposes them to adverse conditions that could cause new problems and exacerbate existing ones. NSW government agencies are concerned that individuals who have been detained for a long period of time and who have not received appropriate health care in detention are likely to have higher health needs and require more intensive levels of health care from State Government services.

International studies investigating the health of refugees have identified a significant prevalence of both mental and physical health problems.<sup>4</sup> Psychological trauma is one of the most significant health problems prevalent amongst refugees. They are likely to have been exposed to war, dislocation and exile. They may have seen family members physically or sexually assaulted or killed in bombings and homicides.

Physical health problems including malnutrition, anaemia, intestinal parasitic diseases, orthopaedic problems, incomplete immunisations, severe behavioural problems and delayed puberty have also been reported. Studies have found that a significant number of refugees require significant dental care.



Studies examining the health issues of refugees living in the community have reported a significant burden of physical and mental ill health compared to other immigrants. A study of one hundred and two refugees presenting for health care in Sydney<sup>5</sup> identified that health problems of this group included:

- Psychological disorders including depression, anxiety, post-traumatic stress disorder (26%).
- Musculoskeletal problems including previous injury/ trauma (24%).
- Circulatory disorders, including cardiovascular disease (18%).
- Digestive disorders (16%).
- Infectious diseases including tuberculosis, HIV, hepatitis B (12%).

The NSW Refugee Health Service, funded by the NSW Government through the Department of Health, has conducted consultations with refugee groups, community organisations and health workers in Western<sup>6</sup> and South Eastern Sydney Area Health Services. Some of the findings were as follows:

- Physical health issues identified were **infectious diseases** contracted in countries of origin such as eye problems and intestinal infections including parasites. Allergies to dust and pollens related to climate changes in Australia were also cited.
- Refugees also were identified as having **untreated dental problems** as a result of time spent without access to dental services and/or being in refugee camps.
- **Low immunisation rates and needs for screening for immunisation** amongst refugees and their children were also identified as major health issues. Service providers reported that sometimes it was unclear whether or not immunisation had taken place prior to arrival in Australia, or if they had missed out on immunisation all together.
- Problems attributable to **poor nutrition** were identified for refugees. These have arisen in two different settings. Prior to arrival in Australia, they may have experienced malnutrition due to poor availability of food at home or in refugee camps. After arrival in Australia they were believed to be susceptible to under-nourishment due to lack of availability of culturally familiar foods.
- **Psychological trauma** was identified as a major contributor to health problems in refugees. Witnessing family members or others being injured or killed, having to flee from one's home at short notice and other traumatic events were named as contributing to psychological health problems, including anxiety, fear and depression.
- **Behavioural and developmental problems** amongst refugee children were acknowledged as stemming from trauma. Interruption to development, poor

school performance, anxiety, and poor adjustment in relating to peers were perceived as a direct result of experiences of war, dislocation and resettlement.

- **Family dislocation** through war, conflict, process of fleeing and exile, as well as the disintegration and disconnection resulting from the experience of being a refugee has significant impacts on adults and children refugees.
- Participants also described **changes in roles, family composition and culture**. For example, a male child may have to take on adult roles if their father has died. Parents were identified as sometimes not knowing how to play with children as a result of ongoing trauma.
- **Burdens of responsibility unmatched to age** were also given as an issue affecting refugee youth.
- Refugees cope with a range of traumatic incidents and human rights violations which may compromise the process of cognitive, emotional, social and physical development which can then result in compromises in the development of normally functioning family relationships.
- In addition, the consequences of **direct torture and trauma** experienced in their country of origin has a profoundly negative impact on their physical and psychological wellbeing. This presents a fundamental need for appropriate support and intervention in relation to their psychological and mental health needs.

In Australia, asylum seekers in Immigration Detention Centres who have travelled to Australia by boat, have additional risks to their health. These include exposure to sun through inadequate shelter, risk of dehydration, inadequate nutritional intake due to lack of food supplies, risk of infectious diseases related to inadequate sanitation, and fear of drowning.<sup>7</sup>

### ***C-1-2 The health effects of detention***

NSW government agencies are concerned about the significant physical and mental impact of detention<sup>8</sup> and the long term ramifications of the Commonwealth's policy on individuals and State services. Detainees may be more traumatised than refugees living in the community, and that prolonged detention has increased adverse effects on detainees' mental health.<sup>9</sup>

Detained asylum seekers reported exposure to an average of 12.4 (of a possible 16) major trauma categories compared with 4.8 for their refugee compatriots residing in the community. Detainees were also more depressed, suicidal, and suffered more extreme post-traumatic, panic and physical symptoms than refugees who had not been detained. Levels of past trauma exposure did not account fully for these differences and suggest that the conditions of detention may contribute to the mental health problems of detainees. A study of the mental health of thirty-six people living in Villawood Detention Centre showed that thirty-three were experiencing clear evidence of severe depressive illness with the remaining three experiencing mild depressive symptoms.<sup>10</sup>

Prolonged detention places already vulnerable and traumatised refugees at an additional risk of both physical and mental health conditions and disorders and is detrimental to the healthy functioning of the family unit. These effects are particularly significant for children and impact on their future emotional development and wellbeing.

### **Recommendation:**

NSW government agencies recommend a full independent inquiry into the long-term impact of long-term immigration detention on the mental health and settlement of refugees in the community.

## **C-2 Adequacy of education services to school aged children in immigration detention**

NSW government agencies are concerned about the inadequacy of education services provided to school aged children in immigration detention. The lack of access to adequate education services affects the physical and mental well being of children in detention. It is likely that once released into the community these children will require intensive support and this places an additional burden on NSW Government education services.

Consistent with Australia's obligations under the United Nations Convention on the Rights of the Child (1989) (the Convention), and its duty of care towards detainee children, DIMIA contracts its Detention Service Provider to provide access to education consistent with Immigration Detention Standards.

In determining the adequacy of education services provided to children within detention centres, the benchmark for comparison would be education services available in local government primary and secondary schools. Such services include instruction and assessment in curriculum areas, including literacy and numeracy, English as a second language tuition, special education services, welfare support and counselling, interpreting and translation services and refugee resettlement support services.

Information available indicates that educational programs in Villawood IDC do not provide the same level of education available to children in local schools. This contradicts the Convention principle that there must be no discrimination in access to education for any child, regardless of status. A child in detention has the right to access and participate in education 'to the maximum extent of available resources' (the Convention, Article 4).

Unlike the situation in schools, education for children of any age in Villawood IDC is not compulsory. The Immigration Detention Standards do not require the provider to meet State or Territory curriculum requirements. Nor do the standards require the provider to use qualified or registered teachers.

On available information, Villawood IDC educational programs for children include pre-primary education and general education. Adult education programs include general education, life skills, English classes, basic computing and vocational training.

A young child recently released after being held in detention for several months commented, 'There is no education ...' (in the detention centre).

The current educational provision at Villawood is limited in terms of breadth of curriculum and depth of teaching programs. Despite the best efforts of detention personnel, it is not appropriate for them to make decisions regarding educational services, given their field of expertise. In addition, the quality of provision is severely impacted on by teacher quality and numbers of students participating in educational activities. The small numbers of both students and teachers means that to group students of similar age and educational needs would not be possible.

Children need to learn more than basic English to advance their education and they learn much more from interaction with peers in school. In school, unlike detention centres, children are able to learn in a safe and nurturing environment while working towards achieving their educational goals.

At the same time the capacity of the detention centre to address the mental health issues of immigration detainee children also appears to be limited. When former immigration detainee children enrol in schools, they can be severely traumatised by their experiences requiring specialist counsellor support and sometimes further support from outside agencies such as the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS).

The NSW DET also closely cooperates with other government and non-government agencies such as the Department of Community Services, NSW Refugee Health Service, Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), Anglicare and the Migrant Resource Centre Association Inc in order to provide support to schools to meet the needs of refugee students and their families within the school community.

On the available evidence, the educational and support programs provided by the contractor are inadequate and inappropriate in providing for children of different ages and abilities.

If children continue to be detained (in community based detention) under the *Migration Act*, then the Commonwealth should provide funding to State and Territory education providers to enable these children to attend school. As the major educational provider in New South Wales, the NSW DET is well qualified to provide education and training services to DIMIA detained children. Since 2002, the NSW DET has operated a highly effective program for these children in local schools.

### **Recommendation:**

That all children in immigration detention be provided with Commonwealth funded enrolment in a government school.

## D. The outsourcing of management and service provision at immigration detention centres

NSW government agencies are concerned about the recent media coverage of Global Solutions Ltd (GSL) treatment of detainees. GSL administers Australia's immigration detention centres on the basis of a public-private partnership contract. The Palmer report and media coverage signifies the need for an overhaul of the management of immigration detention centres.

### D-1 Outsourcing of Law Enforcement Services

NSW government agencies have noted difficulties with the outsourcing of law enforcement services on and around the premises of detention centres. NSW Police only has jurisdiction on Commonwealth properties at the invitation of the Commonwealth. However, the Commonwealth appears to expect that NSW Police will respond to criminal incidents in relation to both staff and detainees where the Australian Federal Police (AFP) lacks the capacity or resources to respond appropriately.

While such services are currently delivered on a cost-recovery basis by NSW, they are the subject of local agreement. Ambiguity remains around Federal and State capacities (as opposed to jurisdictional obligation) and the agreement to respond to designated categories of crime and incidents.

Detainees suffering from a mental illness may, on occasion, demonstrate behaviour that requires the intervention of police such as self harm, or violence towards staff and others. The establishment of clearer responsibilities of State and Commonwealth law enforcement agencies may support appropriate responses by the Commonwealth to establish the safety of detainees and staff.

#### **Recommendation:**

The Commonwealth should not abrogate its responsibilities in this area. The Commonwealth should clarify jurisdictional responsibilities for law enforcement within and around detention centres, increase flexibility by allowing for local service agreements and ensure appropriate responses to provide for the safety of detainees and staff.

### D-2 Outsourcing of education and training services

Global Solutions Pty Ltd (GSL) is contracted by DIMIA to manage immigration detention facilities. The *Detention Service Contract* determines the nature of education and training, if any, to be provided at detention facilities. For instance, Section 10.1.17 of the *Detention Service Contract*, outlines that:

*Adult detainees also require access to meaningful activities... including English language tuition and other life-skills programs, and that*

*In the context of the detention environment, life skills programs can enhance adult detainees' knowledge of and the ability to cope, both during*

*their residence in detention and, in the event they are granted a visa, in the Australian community (10.1.18)*

It is clear from the *Detention Service Contract* that GSL's role is not one of a vocational education and training provider. Outsourcing the provision of education and training to education providers would ensure the development and delivery of appropriate educational programs, in particular to adult detainees.

In 2004 TAFE NSW's Access and General Education Curriculum Centre developed a teaching and learning resource for adult detainees in immigration detention across Australia. The *Staying Healthy* resource was funded by GSL and focuses on teaching and learning English language and developing life skills for adult detainees. While there was discussion about the need to develop further resources this was not progressed by GSL due to lack of funds.

The *Detention Service Contract* limits the availability of educational programs in Australian detention facilities. Australian detention centres and facilities are not able to *seek to offer professional career or trade qualifications (10.1.17)*.

Adults in detention would greatly benefit from participating in programs aimed at enhancing and improving detainees existing job skill base. This is particularly the case for those adults who have been detained for long periods of time. The provision of adequate vocational education and training programs provides detainees with the ability to take control of their own lives and contribute to the society in which they will eventually be released into, whether in Australia or overseas.

### **Recommendations:**

The Commonwealth Government should consider:

- Changes to the *Detention Service Contract* to include the provision of vocational education and training programs to adult detainees.
- The contracting of appropriately qualified State/ Territory agencies (such as TAFE NSW) to deliver vocational education and training programs to adult detainees.

## **E. Any related matters**

### **E-1 Settlement Service Planning and Service Provision to Humanitarian Entrants**

#### ***E-1-1 Sponsored Humanitarian Entrants***

NSW government agencies hold the view that the Commonwealth Government has not taken adequate measures to ensure that sponsors of humanitarian entrants under the Commonwealth Special Humanitarian Program (SHP) are supporting the needs of the SHP entrants. The majority of refugees enter via the Special Humanitarian Program, proposer supported visa applications.

Across NSW government human service agencies there are growing concerns with the unmet needs of SHP entrants, the demand on State services and cost shifting to the State, where proposers are failing to meet their obligations.

NSW has continued to raise concerns with the Commonwealth Government regarding sponsor obligations and has sought advice from the Commonwealth Government on steps taken to assess and monitor sponsors under the SHP. In particular NSW government agencies have expressed the following concerns:

- The continued failure of sponsors to meet their obligations and the impact of this on State services, and the Commonwealth's duty of care to SHP entrants.
- Individuals and community groups sponsoring individual humanitarian entrants raise a number of complications when they fail to meet their proposer obligations, shifting responsibility for service provision onto community service organisations and State government services. While well-meaning these sponsors may also not be prepared for the unique situation and needs of humanitarian entrants, making the provision of proper care and support difficult. This situation may be countered through community education programs that prepare groups for the complexities of humanitarian sponsorship and by introducing ways to moderate activities in this area.
- In many cases those proposers, who are former humanitarian entrants, face severe hardships in fulfilling the financial and other responsibilities cast upon them when they sponsor family members to enter Australia. While the desire to reunite families and bring relatives out of camps and other conditions of hardship is understandable, the current immigration system, which places significant financial responsibility onto proposing parties, severely disadvantages and places people – both entrants and proposers – under severe financial pressure. Despite the apparent hardships, it is evident that individuals and communities will continue to pursue the sponsorship role and for this reason, alternatives must be identified.

- A fundamental flaw exists in this process because government agencies often encounter humanitarian refugees that have been sponsored without any prior planning, advice or consideration as to the availability or appropriateness of services that can be provided to assist them. A primary example of this is the impact on State government agencies, particularly schools in rural and regional areas.

There are instances where proposers are unable to fulfil their commitments regarding provision of accommodation and the Department of Housing (DoH) has been called upon to provide assistance (often at short notice) to facilitate entry to accommodation. This can be particularly difficult given the large household size of many of the refugee families.

While steps have been taken by the Commonwealth to better support the “proposer system” through the Enhanced Proposer Support Service in NSW, many of these households, particularly those with large family complements, have difficulty in finding adequate housing. Factors limiting housing choice include limited supply of large housing in both the public and private housing sectors, affordability issues and in the private rental market, barriers to entry include discrimination and lack of tenancy history.

DIMIA has announced a range of measures in the 2004-05 Budget to improve support to Special Humanitarian Program (SHP) entrants and to ease the burden on their proposers. These enhancements will be of assistance to Humanitarian Program entrants, including SHP entrants. However, NSW government agencies continue to be concerned that the provisions will not adequately meet the full needs of SHP entrants. NSW schools report that the financial obligation on sponsored families to repay the debt incurred by their proposers, such as the cost of airfares, is currently forcing many secondary aged students to leave school early and seek work.

NSW government agencies have also raised concerns with the Commonwealth regarding particular non-government organisations that:

1. Appear to be operating loan schemes to enable proposers to meet their financial obligations, and
2. Appear to be operating non-regulated *de facto* immigration programs in parts of NSW.

## **Recommendations:**

- That the Commonwealth Government reviews the Special Humanitarian Program, monitors its agreements with Proposers and expands its consultative processes with State/Territory, Local Government and community service providers to ensure SHP entrants are assisted effectively to settle in the community without cost shifting to States/ Territories. The Commonwealth should increase efforts to improve both the proposer arrangements and communication in advance about the location and timing of arrival of Special Humanitarian Entrants to assist settlement planning by service providers. That the Commonwealth Government notifies the NSW Government when SHP visas are issued and provide the postcode of the sponsors. The



Commonwealth's monitoring of proposer support after the grant of a SHP visa needs to be more thorough. It is strongly recommended that the Commonwealth Government meets its duty of care to SHP entrants by meeting any costs of settlement where a proposer is not in a position to meet stated undertakings.

- That the Commonwealth Government provide community education programs that prepare potential sponsors and communities for the complexities and heighten their understanding of the responsibilities of humanitarian sponsorship.
- That the Commonwealth Government investigates the implications of NGOs operating loan schemes and of the impact and cost of service provision arising from their operations.

### ***E-1-2 Concerns about the new Settlement Grants Program***

From July 2006 a new Commonwealth Settlement Grants Program will replace the current *Migrant Resource Centres (MRC) / Migrant Service Agencies (MSA) Core Funding and Community Settlement Service Scheme (CSSS)*. The new program will be an annual application-based grants program. Funding, including overheads, will be provided to successful organisations on a project basis for one, two, or three years.

A Commonwealth *Discussion Paper* outlining the new program was released on 6 April 2005, followed by public consultations. A final policy paper will be released by the Commonwealth in August 2005.

NSW government agencies have expressed the view to the Commonwealth that its budgetary changes are likely to lead to a reduction in levels of service and the capacity of organisations to work flexibly to meet the needs of humanitarian entrants while placing an increased pressure on NSW Government to fund services for new entrants. NSW government agencies have raised the following concerns about the impacts of the new Settlement Grants Program:

- That the Commonwealth's budgetary changes will lead to a reduction in levels of service and capacity of organizations to work flexibly and meet the needs of humanitarian entrants and place an increased pressure on States to fund services for new entrants.
- It is likely that NSW agencies will receive "compensatory" requests for project based funding from those community organisations that have been de-funded in the revamping process. For some NSW agencies grant requests are likely to increase as the Commonwealth Government is proposing that it only fund a proportion of reasonable administration and management costs. These costs may include salaries and related on-costs, contributions to rent and operations costs.
- With the cessation of the Commonwealth's provision of fee-free interpreting and translating services to non-government agencies, it is likely that NSW agencies providing interpreter and translation services will experience an escalation in usage and therefore require an increased budgetary allocation to

interpreting and translation services.

- That some MRCs may be left with little in the way of infrastructure resources to effectively operate. A reduction in MRC capacity may create further challenges in conducting an appropriate assessment of settlement needs. If new service providers are unable to identify and prioritise the needs of all new arrivals many client groups may be excluded from receiving responsive assistance.
- The introduction of project based funding has the potential to destabilise existing services and networks, reduce the capacity of ethnic communities to participate in decision making and is likely to result in the loss of expertise in the community sector. This in turn may impact adversely upon the level and quality of advice provided by the community sector to NSW government services with a significant impact on the quality of advice provided to and relied upon by NSW health services.

By shifting the core funding base for MRCs and MSAs, the proposal puts at risk core services currently offered to new entrants. Organisations build expertise and strong networks over time to assist emerging communities and newly arrived migrants. Continuity of service aids the provision of consistent and high quality services. If service providers change regularly there is a risk that with the change of providers and workers, expertise and knowledge is lost to those communities. As a result settlement support will diminish in effectiveness and consistency. This may create further challenges in accomplishing an appropriate assessment of settlement needs. New service providers may be unable to identify and prioritise the needs of all new arrivals as effectively as longer-standing organizations and as a result many client groups may be excluded from receiving the level and type of assistance that best meets their needs.

Small Non-Government Organisations (NGOs) have voiced concern that the new structure favours large religious institutions and charities and places them at a disadvantage. Moreover, the expectation that funding bodies, other than DIMIA, will provide proportional contributions to rent and overheads will impact on the capacity of NSW government departments to adequately fund NGOs. Community organisations are concerned about the shortened funding cycle and have expressed support for a longer funding cycle of at least three years to maintain consistent services to newly arrived communities.

### **Recommendation:**

That the Commonwealth Government note the concerns of NSW government agencies regarding the new Settlement Grants Program and consider mechanisms to monitor the impact of the change in program funding and arrangements on the quality and range of services provided to migrants and new entrants.

### ***E-1-3 Settlement and Housing Needs***

As a result of formal discussions between the Commonwealth and all jurisdictions the Commonwealth acknowledged that all States/Territories are facing difficulties in meeting the settlement and housing needs of humanitarian entrants, particularly in

rural and regional areas, and as a result the Commonwealth has implemented the following:

- Access to Integrated Humanitarian Settlement Strategy (IHSS) assistance to find and secure permanent rental accommodation was extended to SHP entrants in the 2004-05 Budget.
- A tenancy training program to assist humanitarian entrants to understand their responsibilities and to provide them with the necessary skills to meet these responsibilities has been instituted by DIMIA.

Despite these initiatives, a number of significant issues still remain to be addressed with regard to the housing and settlement needs of humanitarian entrants:

- The state and location of on-arrival accommodation. As many humanitarian entrants remain in the local government area in which they first arrived, services in these localities need to be strengthened.
- NSW government agencies continue to be seriously concerned about significant cost shifting from the Commonwealth to the State government housing services as a result of SHP proposers not meeting sponsor obligations.
- The supply and adequacy of housing and the availability of suitable rental accommodation for humanitarian entrants settling in rural and regional locations.

NSW government agencies are working with DIMIA to locate humanitarian entrants in regional and rural NSW. While some areas have been identified as ideal due to employer, council and community support, they are currently unsuitable on the basis of lack of appropriate accommodation. For regional migration to proceed housing must be built in those areas that offer employment opportunities. This could be achieved through collaborative arrangements with the three tiers of government, and/or incentives to private developers.

NSW government agencies are concerned that on arrival accommodation provided by the Commonwealth to refugees is inadequate. Given the language, cultural differences and limited service availability to some of the newly emerging communities it is suggested that four weeks is an insufficient time in which these households can properly establish themselves.

The rental cost of large premises is often prohibitive for families living on welfare benefits and low wages. Housing options for large families are limited in both metropolitan and regional areas. Fifty-five percent of refugee and Special Humanitarian Program (SHP) entrants assisted in 2003-04 were part of families with 5-13 members.

There are many instances of racial discrimination where real estate companies are reluctant to rent accommodations to refugees. Real Estate agents sometimes assume that refugees will not look after rented premises to an acceptable standard. Real estate agents may only accept people as tenants if a direct debit system is set-up with their

Centrelink benefits. The issue of finding housing for families with large numbers also poses an additional settlement stress.

### **Recommendations:**

That on arrival accommodation be provided by the Commonwealth Government to some refugee groups for an extended period determined perhaps by an assessment of individual household's readiness to move from on arrival accommodation.

That the Commonwealth Government consider and advise the States/ Territories on the Commonwealth's role and programs in assisting humanitarian entrants to gain suitable housing, including program or funding enhancements necessary to rectify current housing shortages.

### ***E-1-4 Settlement needs of humanitarian entrants***

Each group of humanitarian entrants have unique settlement needs. Therefore settlement planning and the type and level of assistance provided by the Commonwealth must be assessed in connection with the unique concerns, strengths, cultural and historical background of the humanitarian entrants. This approach is required to minimise the physical and psychological hardship experienced by new arrivals and to ensure as far as possible harmonious and successful settlement within communities. NSW government agencies recommend that the Commonwealth Government develop a flexible humanitarian program and adapt the provision of integrated settlement services to respond effectively to changing circumstances and community needs. NSW is experiencing a high influx of humanitarian entrants from the African subcontinent. The current issues faced in settlement planning and support for African humanitarian entrants highlight key challenges for government and are discussed in detail in this section to highlight the complexity of issues for this particular group of humanitarian entrants at the present time.

NSW government agencies continue to raise concerns with the Commonwealth regarding the acute level of assistance required by newly arrived African refugees and the serious consequences of not meeting the settlement needs of those individuals and communities.

An increase in the numbers of humanitarian entrants with increased levels of need, mostly from the African subcontinent, settling in metropolitan and rural and regional areas has opened a new range of issues regarding the quality and delivery of services provided by the Commonwealth. Many entrants have complex health, education and settlement needs. Special services beyond those regularly afforded to new arrivals are required. The Commonwealth Integrated Humanitarian Settlement Strategy (IHSS) generally provides six months of support services. For the majority of African humanitarian entrants this is an insufficient time frame.

The Commonwealth's failure to provide services that target the complex needs of arriving communities can lead to dire psychological and physical hardship. This is likely to impact adversely on community harmony and upon the ability of entrants' to establish their new lives in Australia.

Some NSW government agencies are experiencing extreme difficulties recruiting caseworkers, case aids and sessional workers from African communities.

Additionally, there are very few African-focused community organisations that can assist in family support work. There is also a severe lack of interpreters and translators in African languages.

### **Recommendations:**

- That the Commonwealth Government provide timely information to State/Territory government agencies regarding the arrival and profile of humanitarian and refugee groups.
- That the Commonwealth Government extend the time period and level of support services through the Integrated Humanitarian Settlement Strategy to refugee groups identified as having increased support and settlement needs.

### ***Health Issues amongst Refugee Arrivals***

The Commonwealth Government's Integrated Humanitarian Settlement Strategy (IHSS) provides six months of support services to refugee arrivals and the Commonwealth funds the Early Health Assessment and Intervention (EHAI) program. NSW government agencies consider that for the majority of African humanitarian entrants this is an insufficient time frame. NSW government agencies are also concerned about the resource implications of the post-arrival health screen checks on NSW Health services.

High rates of illness have been identified among people recently arriving in NSW from African refugee camps. NSW Health has sought advice from the Commonwealth Government regarding plans to support and fund health screening for these people. In the last few months, approximately one-hundred refugees have arrived every four to six weeks in NSW, settling mainly in Sydney, Newcastle and Wollongong. This is vastly different to the usual settlement mechanisms whereby people arriving in family groups have been settled into the community. This poses problems with the creation of effective linkages and the provision of health care.

DIMIA staff in NSW have asked the NSW Government funded Refugee Health Service to conduct post-arrival health checks for these groups, which has put significant strain on that service and the Area Health Services involved, particularly their public health units, pathology, x-ray and infectious disease clinical services. A number of persons arriving *en masse* in March 2005 required admission to hospital soon after arrival. Health problems identified in the charter flight arrivals have included high rates of malaria parasitemia (about 50%), chest infections, low rates of vaccination, and infection with various other parasites. There is also the potential for sleeping sickness, tuberculosis, hepatitis B, HIV and other sexually transmissible infections.

Evidence from interstate suggests a high proportion of adults and children will be vitamin D deficient, including babies born here to recently arrived mothers. All require prolonged therapy to prevent rickets and other conditions. It is estimated that the initial screening and follow-up for each group of one hundred humanitarian entrants cost the NSW Health System at least \$50,000. This figure excludes costs covered by Medicare, does not include the cost of certain treatments (eg for vitamin deficiency and anaemia), and does not factor in repeated follow-up visits required by

a proportion of those screened. These costs are additional to the funds NSW Health provides for its ongoing refugee health program.

No funding has been provided by the Commonwealth for the post-arrival health checks screening or to meet the high health needs for these refugee groups. Although Medicare covers the cost of most of the blood tests undertaken, NSW Health services receives no Commonwealth funding to provide the following:

- Medications not covered by the Pharmaceutical Benefits Scheme (PBS)
- Intensive use of staff resources (including clinical, specialist and pathology services provided by NSW Health services).
- Transport and logistics.
- Coordination, administration and follow-up of screening checks and treatment with clients and service providers.

NSW government agencies welcome refugees into the community. However, it is the Commonwealth Government's responsibility to ensure adequate services are available for refugee arrivals whether the Commonwealth provides these services directly or funds State and Territory government to deliver health services. It is important to ensure that both the health and welfare of refugees is cared for and the wider community is protected from the importation of infectious diseases. NSW government agencies note and encourage the Commonwealth Government's provision of much more timely and detailed background health information for more recent groups of refugee entrants. However, the Commonwealth Government needs to provide additional health resources to meet the increased level of need and to develop strategies to deal with the following issues:

- Whilst HIV tests are performed overseas on individuals 15 years old and above, there are small numbers who have been found to be HIV positive soon after arrival.
- The increased intake of entrants from Africa with highly complex health needs has also had a considerable impact on mainstream health services. Entrants are often presenting with illnesses outside the experience of Australian clinicians. Communication with people from Africa has proven difficult because of their low literacy level and the lack of available interpreters from these small and emerging communities.
- NSW Health considers refugee health issues to be so significant and so specialised that Area Health Services covering areas where entrants have been settled, like the Hunter, have launched clinics specifically targeting these groups. The establishment of an additional clinic to address the health needs of children entrants from Africa is currently being investigated.
- General practitioners in private practice are unable to meet the needs of these complex cases, in particular due to lack of adequate remuneration, insufficient time, lack of specialised knowledge, and lack of access to on-site interpreters. The availability of medications and cost to the patient are further problems.

- In rural and regional areas, general practitioners may have closed their books, and generally do not bulk bill making their services inaccessible to newly arrived refugees.
- NSW Health notes and encourages the work undertaken by DIMIA in providing pre-departure treatment of malaria and intestinal parasites (as provided by the US and Canadian Governments by the International Organisation for Migration) for the recent chartered flights arriving from Africa. As a matter of course, these interventions should be evaluated and modified as required.

## **Immigration and NSW Health programs to control communicable diseases**

### **Tuberculosis**

Australia has one of the lowest rates of Tuberculosis (TB) in the world. These low rates have been maintained in the presence of large-scale migration from countries with higher rates than Australia largely because of effective pre migration screening and the activities of specialised multi disciplinary TB services in the states and territories.<sup>11</sup>

Applicants with x-ray or clinical evaluation consistent with inactive TB, past treated TB or recent contact with active TB are given an Australian visa on the condition that they are placed on a TB Health Undertaking (TBU) and consent to medical follow up on arrival in Australia. Each year in NSW approximately 5,000 people are referred to the NSW Health Department for assessment and screening for TB.

It is NSW Health Department policy that all persons referred on a TBU are provided with care and treatment free of charge regardless of residency status or Medicare eligibility to reduce the potential for transmission of disease within the community.

In 2004 a Review of Tuberculosis Services was undertaken by the NSW Health Department. One of the significant findings of the review related to the management of persons arriving in Australia on a TBU. The review highlighted the need to improve interagency liaison, funding for clinical activities and the coordination of TB screening activities.

### **HIV**

Policy in regard to immigration and health assessment of applicants for entry to Australia is entirely within the control of the Commonwealth Government. These persons, once diagnosed HIV positive in Australia, are often referred by Health Services Australia to NSW health services – including specialist sexual health and HIV services. It is possible that some of these persons may not have known their HIV status prior to entering Australia. Failure to adequately safeguard public health exposes the Commonwealth Government to both financial and political liability.

There are strong indications that people recently arriving in Australia have poorer knowledge of HIV/AIDS and the availability of HIV/AIDS services and report fear of accessing tests for HIV, due to higher discrimination and mistrust of government

agencies in their countries. Therefore they are at a higher risk of receiving a late HIV diagnosis (that is, being diagnosed with an AIDS defining illness within three months of first being diagnosed with HIV). Late HIV diagnosis is associated with poorer long-term health outcomes.

The scientific literature demonstrates that highly active antiretroviral treatment (HAART), by reducing HIV viral load, contributes to minimising the risk that a person with HIV will transmit the infection. The literature also demonstrates that HIV positive people in regular contact with health services are less likely to engage in behaviour that place others at risk of acquiring HIV. Therefore there is a compelling public health argument for ensuring that people recently arriving into Australia are linked to health services and have access to HIV treatment if required.

### **Tuberculosis, blood borne virus and vaccine preventable disease status of immigrant healthcare workers**

The NSW Health Department has in place policy which requires healthcare workers to be screened for tuberculosis, blood borne viruses and vaccine preventable diseases and to be offered vaccination as appropriate. The aim of this policy is to minimise the risk of transmission of these infections in healthcare settings.

Healthcare workers seeking to immigrate for the purposes of training or employment in NSW public health organisations must not perform exposure prone procedures if they are infectious for the blood borne viruses HIV, Hepatitis C and hepatitis B (i.e. HIV antibody positive; hepatitis C PCR positive; and hepatitis B surface antigen and/or e antigen and or DNA positive). Healthcare workers should be advised of this requirement prior to entering Australia; and they should be required to provide documentation which demonstrates that they meet the criteria for employment in NSW.

NSW Health is aware of clinicians – particularly medical practitioners – who have joined surgical training programs and/or taken up appointments involving the performance of exposure prone procedures who have subsequently been found to be infectious for a blood borne virus and therefore unable to continue in either the training program or their employment. This is a significant cost to the individuals concerned, the NSW health system and potentially to public health.

NSW Health has also been involved in the management of healthcare workers with active TB and their contacts (patients, members of the community and other healthcare workers).

### **Recommendations:**

That the Commonwealth Government work with the Australian Department of Health and Ageing to develop a health assessment and promotion protocol. This protocol should ensure the provision of clinical advice on the indications for screening and immunisation. The protocol should also include information for health services' staff regarding culturally specific considerations and requirements, and information on health status and health service provision in the specific camps of origin.



That the Commonwealth Government:

- Notes the significant increase in the complexity of health care needs of Sub-Saharan refugees and recognises that a more organised and planned system of health care must be brokered for this group.
- Agree that an urgent review of the pre-departure, post-arrival and longer term health care needs of this refugee group be commenced with a view to specifically progressing the following recommendations:
  1. That the Commonwealth Government urgently finance a pre-departure medical assessment and treatment service for refugees similar to that provided by the Geneva-based International Organisation for Migration (IOM) for other countries.
  2. That the Commonwealth Government urgently inject extra funds into State and Territory Health Services to enable the provision of an appropriate level of screening and specialist care, and for health liaison services to the refugee group.
  3. That the Commonwealth Government recognise the shortage of general practitioners and that an urgent approach to the Health Insurance Commission (HIC) be made to progress a Medicare item which reflects the time and complexity required in the initial assessment of a refugee and their family (similar to the Indigenous Health Check item), and a separate item for continuing primary health care of newly arrived refugees with multiple complex health issues.
- Identifies funding sources for State and Territory health services to provide health screening and specialist care for newly arrived entrants with significant personal health issues which may impact on public health and the provision of adequate health care by State and Territory public health care services.
- Ensures the provision to current humanitarian entrants of individual hand-held health records detailing previous health screening results, immunisations given and any other important health information collected in African refugee camps.
- That the Commonwealth Government continues consultations and implements a national, evidence- based guidelines on the health screening and management of communicable and other conditions among newly arrived refugees.

### ***Psychological well being and support structures***

Refugees have acute counselling needs. The Commonwealth Government's Integrated Humanitarian Settlement Strategy (IHSS) provides six months of support services to refugee arrivals. NSW government agencies consider that for the majority of African humanitarian entrants this is an insufficient time frame. The long term cost of providing mental health services is likely to flow to NSW government services.

Refugees have experienced extended periods of stress and trauma. They may have spent years fleeing a harrowing situation, experienced the hardship of being homeless

and unsettled for years, lost family and friends, experienced poor health, and obtained little or no schooling. Grieving over the loss of kinship networks and cultural associations is a familiar experience of settlement. This is heightened through the frequent sense of rejection or discrimination in their neighbourhood, educational institution or workplace.

In terms of trauma counselling the Commonwealth needs to consider in consultation with communities and health specialists the range of therapeutic and counselling models offered to refugees. Traditional Western models of counselling may not be culturally sensitive and may not be accepted by some refugees. The Commonwealth should consider funding alternative programs including group and family counselling, group venting, cathartic dancing, singing and music may be other forms of therapy that could be considered to assist with the healing and resettlement process.

It is also important that counselling organisations dealing with new settlers employ bilingual workers or liaison officers to ensure that African refugees feel comfortable accessing their services.

Many African communities seek support and solace through church networks. There are close to ten African based churches in Sydney. The importance of these church networks for African communities is a consideration when selecting regional areas for settlement. There is scope to work more effectively with community leaders to build their support structures, knowledge and skills in community welfare related areas. Educational programs run through the churches to reach the wider congregation are unlikely to be accepted unless they involve community leaders. Key issues for such programs include child protection, relationship issues, domestic violence, education and employment services.

### ***Educational issues and needs***

Education in Australia is usually highly valued by humanitarian entrants and there are high expectations of children to succeed in school. Children generally look forward to enrolling in school and taking up their studies.

Post traumatic stress and health problems due to refugee experiences can lead to absences from school, or manifest in poor behaviour in the classroom. Teachers and school counselors require support to identify wider problems faced by students from African communities, namely problems arising from grief, post-traumatic stress disorder and minimal or no formal schooling. Students are likely to require individual attention and homework support with schooling.

Parents often do not have an understanding of the Australian school system and curriculum. Parents themselves may have a limited education and therefore find it difficult to support their children in their schoolwork. It should be noted that a number of African adults settling in NSW have very high levels of education although their children have not had the opportunity to experience formal schooling. Practical and financial implications for parents of school aged children include the costs of uniforms, what to give children for lunch, how to travel to school, how to help with homework, how to approach school teachers.

Some refugees come from cultures which value oral learning over written learning and as a result children may have good oral skills but no experience of writing. Many African students need support to develop basic literacy skills such as pencil and pen use as well as intensive support in order to develop their English language and literacy skills.

A number of African students are bilingual. Some speak English with a degree of fluency, especially those coming from former British colonies such as Nigeria, Ghana and Sierra Leone, but may not have developed equivalent literacy skills in English. Other students, such as those from Sudan and Ethiopia, may be bilingual in Arabic and their first language, such as Dinka, Amharic, Somali, Oromo and Tigrigna. A number of African communities' languages are based on oral language systems and as a consequence these communities have limited experience in written language systems. For example Dinka spoken by southern Sudanese is mainly an oral language.

The level of Commonwealth funding for English as a Second Language (ESL instruction) is inadequate. This issue is more fully addressed in section *E-1-6 English as a Second Language (ESL) – New Arrivals Funding*. The Commonwealth funding regime does not take into consideration the differential costs associated with providing intensive ESL tuition to refugees and those with little, disrupted or no previous schooling. The intensity of support required for these students is impacting on schools across NSW. It has been estimated that the level of intensive English support that refugees require is at least three times the amount currently provided by the Commonwealth Government. See Appendix B for a Method for a Revised ESL New Arrivals per Capita Grant.

In NSW there is a severe shortage of interpreter services in African Arabic and other languages spoken in African countries. This shortage hinders access to government services, including education and training.

### ***Employment***

A lack of education and poor English language skills means that humanitarian entrants are likely to be amongst the long-term unemployed. Unemployment in country of origin and lack of overseas qualifications at an appropriate level may present serious barriers to accessing further education and employment.

A lack of local experience and limited understanding of local workplace culture also contributes to high rates of unemployment. Agencies could assist by liaising with prospective employers and arranging meetings with new arrivals. Brokerage programs involving business, local agencies and community leaders are likely to produce higher employment outcomes than leaving new settlers to make their own contacts.

There are few employment programs designed to specifically assist refugees and new migrants. There is a lack of support available to refugees seeking job and interview skills.

### ***Housing issues***

Housing issues are discussed in section *E-1-3 Settlement and Housing Needs*.

### ***Policing issues***

Some recently arrived refugee young people are presenting at youth refuges and are some are coming before the juvenile justice system. This is not reflective of all youth from refugee backgrounds, however there are some increased vulnerabilities for some people from some migrant communities.

Factors associated with increased vulnerability may include mistrust of authority (largely due to traumatic experiences of police in their countries of origin), inadequacy of support services, detention experiences, high visibility and racism within the community, high unemployment, illiteracy, poverty and trauma.

Other circumstances that may increase the risks of anti-social behaviour amongst young refugees include:

- The breakdown of family relationships and the lack of role models (particularly adult males and father figures) in the community.
- A sense of isolation and rejection particularly after being repeatedly subjected to racist harassment and discrimination.
- Difficulty adjusting to the education system and a lack of tailored educational programs and services.
- Unemployment and financial difficulties.
- Possessing a limited awareness of laws and social rules.
- A lack of low or no cost locally based activities and entertainment (particularly during school holidays).

Proactive community education programs to educate refugee communities on Australian laws, especially child protection laws may reduce incidences of child neglect and behaviour regarded as anti-social.

### ***Family and Relationship Issues***

Significant levels of family breakdown and violence are noted in the Sudanese community. Factors that may contribute to relationship difficulties and family breakdown include:

- Migration and the experience of disorientation and alienation in Australia.
- The negative psychological impacts from long periods in refugee camps, the experience of war and other traumatic situations.
- Poor socio-economic situation and outlook in Australia – high levels of unemployment.
- Changing traditional balance of power if the woman is obtaining an income or social support service.

- The cost and limited availability of suitable housing for large families.
- Financial pressures and debt issues. For example those who have come under the 202 visa there is the additional financial pressure of paying back the cost of their airfares.

### ***E-1-5 Language Needs of Newly Arrived Refugees***

As part of the 2004/05 migration program the Minister for Immigration and Multicultural and Indigenous Affairs, on 23 March 2004, announced an increase in refugee and humanitarian places to 13,000. As part of this refugee places increased from 4,000 to 6,000, with 7000 places made available under the special humanitarian program. The major source countries for refugee and humanitarian entrants are Sudan, Iraq, Afghanistan, Ethiopia and Iran, with seventy per cent coming from Africa.

The Department of Immigration and Indigenous and Multicultural Affairs has confirmed that in the six month period 1 July 2004 to 31 January 2005 Australia has settled 7, 703 refugees and humanitarian entrants. The DIMIA Australia-wide figures distributed across states are as follows:

<b>NSW</b>	2,208	<b>VIC</b>	2,321
<b>QLD</b>	637	<b>SA</b>	880
<b>WA</b>	797	<b>TAS</b>	248
<b>NT</b>	116	<b>ACT</b>	67

In the sixth month period July 2004 to January 2005, NSW settled 2, 208 refugees and special humanitarian entrants, representing 31.6% of the total Australian intake. Of this number, 1,152 (54.6%) were school aged.

Refugees and humanitarian entrants generally have high educational support needs and require specialist services to access schooling or further education and training.

### **Lack of accredited interpreters**

The increase of refugee/humanitarian arrivals from the African region has resulted in a huge increase of demands for interpreting services in a variety of new languages. However, professionally accredited interpreters for these languages are very scarce.

Insufficient means to provide effective communication between humanitarian entrants and service providers can have negative impacts on the settlement of humanitarian entrants:

- The lack of on-site professional and accredited interpreters is putting these refugee/ humanitarian entrants in at-risk situations, especially if they are suffering chronic sickness. It should be noted that under current Commonwealth provisions for fee-free TIS translations services are provided for private health care providers, but not in the public health system, which most humanitarian entrants would access.

- Many police officers have reported difficulties in establishing effective communication with recent humanitarian entrants due to inadequate interpreter services. This has placed pressure on some Local Area Commands (LACs) as they are required to actively search for appropriate language assistance. This is in addition to existing financial pressures on LACs as NSW Police is not eligible for fee-exempt interpreter services under existing government provisions.
- NSW Police would benefit from DIMIA initiated requirements of providers of ESL to refugee youth and humanitarian entrants to incorporate information about police functions and levels of assistance.

Currently, as the primary provider of translation services the Community Relations Commission For a multicultural NSW (CRC) provides interpreter/ translator services in Tigrinya, Amharic and Somali languages. Between 1/7/04 – 31/3/05 the CRC received a total number of twenty two interpreting requests for Tigrinya language and forty three for Amharic language. The CRC will recruit interpreters in 2005 for all languages which are recognised or tested by the National Accreditation Authority for Translators and Interpreters Ltd (NAATI) including Tigre, Oromo, Nuer, Sudanese, Amharic and Tigrinya.

NSW government agencies have highlighted the issue of inadequate translation services to the Commonwealth Government, specifically:

- In Australia and in particular NSW there is a severe shortage of interpreter services in African Arabic and other languages spoken in African countries. This shortage hinders access to government services, including education and training.
- A number of African communities' languages are based on oral language systems and as a consequence these communities have limited experience in written language systems. For example Dinka spoken by southern Sudanese is mainly an oral language.
- In the Sudanese community there are many women who are illiterate in their own language and require significant levels of assistance to access services and entitlements.

## **Recommendations:**

- That the Commonwealth Government provide fee-free interpreting to all agencies providing services to entrants under the Humanitarian Program in their first two years of settlement.
- That the Commonwealth Government considers a tax deduction equal to the cost of two NAATI examinations, on successful completion of the NAATI test. This would provide a strong incentive to potential interpreters and translators, many of whom invest their own funds in undertaking training with little opportunity to recoup the cost in the short the medium term.

- That the Commonwealth Translating and Interpreting Service (TIS) develop strategies to recruit more professional interpreters for the identified languages.
- That the Commonwealth Government provides additional funding to community settlement services to engage professional interpreters in delivering services.

### ***E-1-6 English as a Second Language (ESL) – New Arrivals Funding***

NSW government agencies hold the view that Commonwealth funding levels to support the tuition needs of newly-arrived school aged students are inadequate. Refugee and humanitarian entrants face many challenges in coping with a new school environment and learning English. Their needs are not being met and the Commonwealth funded English as a Second Language (ESL) tuition hours are inadequate.

The Commonwealth Review of Settlement Services (the Review) indicates the need for a “whole of government” approach to early intervention strategies to support school children and young people with their English language learning needs and their transition to further education, training and employment. It also indicates the need for the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to work bilaterally with states and territories to plan for the timely response to the needs of newly-arrived humanitarian entrants of school age. (See recommendation 15 and 17 of the Review.)

#### ***The cost structure of the ESL New Arrivals Program***

The objective of the Commonwealth’s *ESL New Arrivals Program* is ‘to improve the educational opportunities and outcomes of newly arrived students of non-English speaking backgrounds by developing their English language competence and facilitating their participation in mainstream education activities.’<sup>12</sup>

Through the program, the Commonwealth Government provides States and Territories with annual per capita grants to enable education authorities to provide a course of intensive English instruction. The per capita grant for 2005 is \$4,854 for both government and non-government schools.

The arrangements for the program, as specified under the *Quadrennial Administrative Guidelines 2005-2008*, specify a minimum of 10 hours per week teaching contact time for individual students for a period of six months.<sup>13</sup> With this level of instruction students are expected to develop sufficient English language skills to enable participation in mainstream education activities.

In 1992-93, however, the Australian National Audit Office conducted a review of the ESL Program, and proposed a revision of the funding rate so that the per capita grant better reflected the level and cost of intensive ESL instruction, including a longer period of instruction for refugee students and those with little or no previous formal schooling.<sup>14</sup> This proposal has not been adopted.

### ***Actual cost of providing intensive ESL instruction***

In 2003, a Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) Schools Resourcing Taskforce review of the ESL New Arrivals per capita grant established that, in 2001, the estimated per capita cost of providing intensive ESL instruction by state and territory government education systems ranged between \$4,500 and \$8,450 with a national average of \$6,074. The Commonwealth grant at that time was \$3,997.

The national average cost of providing intensive ESL instruction was based on the formula components of:

- a notional teacher salary of \$64,207
- class sizes of ten students
- intensive instruction for 30 hours per week
- An estimated national average of three terms (i.e. 33 weeks) of instruction provided to regular students and five terms (i.e. 51 weeks) provided to refugee students and those with little, no previous or disrupted formal schooling.

The intensity of support required for these students is impacting on schools across Australia. It has been estimated that the level of intensive English support that refugees require is at least three times the amount currently provided by the Commonwealth Government.

### ***Research on English as a second language and literacy learning in schools***

Research on the educational needs and outcomes of ESL students in schools highlights the importance of developing academic proficiency, as well as everyday communicative fluency in the second language, in order for ESL students to be able to participate and succeed in school.<sup>15</sup> Over the last twenty years, studies have established that it takes ESL learners, on average, at least two years to reach parity with their English speaking grade peers in everyday communicative fluency but a minimum of five to seven years to ‘close the gap’ on standardised tests of literacy.<sup>16</sup>

Research also confirms that those new arrivals students who enter school with minimal prior formal schooling, little or no literacy in their own language, refugee trauma experiences, weak or disrupted family ties or physical/sensory impairments experience a double disadvantage and are typically several years behind their newly arrived ESL peers in attaining comparable literacy skill levels.<sup>17</sup>

### ***Proposed future cost structure of the ESL New Arrival Program***

To more closely reflect the actual costs incurred by State and Territory education systems in providing intensive English instruction to different groups of newly-arrived students, the Commonwealth Government should:

- Increase the ESL New Arrivals Programme per capita grant.



- Allow for differential ESL New Arrivals funding rates for regular students and for educationally disadvantaged students, such as refugee and humanitarian entrants.

Using the methodology highlighted in Appendix B and applying the latest available MCEETYA national teacher salary rate, the regular ESL New Arrivals per capita rate would be \$6,242 and the per capita rate for educationally disadvantaged refugee and humanitarian students would be \$12,117.

The above ESL New Arrivals rates have been calculated by costing the different lengths of time required for the minimum amount of intensive instruction for newly arrived students to achieve minimum literacy standards equivalent to appropriate national literacy benchmarks. These standards are identified as English language and literacy achievement at Level 3 outcomes on the *ESL Scales*.

A feasible identification method for determining student eligibility for either per capita rate would need to be agreed upon. The simplest and most reliable method would be identification by visa subclass indicating refugee or humanitarian entry status.

The refugee and humanitarian rate should also be applied to those temporary humanitarian entrants eligible for Commonwealth ESL New Arrivals Programme funding. States and Territories would be able to report nationally on new arrivals students according to these visa categories.

### ***Temporary visa holder eligibility for ESL New Arrivals support***

Over the past decade, the Commonwealth Government has steadily reduced the number of permanent visa holders and increased the number and categories of temporary visa holders entering Australia.

Many temporary visa holders are long term residents. School aged dependents of temporary residents are required to be enrolled in school. Most of these school aged dependents require intensive English assistance on enrolment.

The Commonwealth Government has exclusive decision-making responsibility for entry into Australia of people on temporary visas. As at 30 June 2003 there were 132,916 temporary visa holders residing in Australia.

Currently, the Commonwealth Government is considering whether to create a new “guest worker” category of temporary visa to fill short-term gaps in the skilled and unskilled workforce.

However, there are instances of a lack of eligibility consistency between Commonwealth Government programs and services. For example, under the current ESL New Arrivals Programme Guidelines, all temporary visa holders, with the exception of students under 18 years of age holding temporary protection visas enrolling in schools after July 2002, are ineligible to receive the ESL New Arrivals per capita grant.

It is proposed that the Commonwealth Government take funding responsibility for temporary visa holders enrolling in Australian schools. These include:

1. Dependents of temporary residents who gain permanent residency as spouses after a waiting period (i.e. visa sub classes 300, 302, 304, 309, 310, 210, 445, 446, 450, 826, 850).
2. Dependents of temporary residents who access services in Australia as part of international relations or agreements, including New Zealand citizens and diplomatic and consular staff (i.e. visa sub classes 444, 461, 415, 426, 995).

This would assist in meeting the funding arrangements for education of dependents of temporary visa holders that have been permitted entry into Australia.

Relevantly, it is noted that dependents of temporary residents who gain permanent residency as spouses after a waiting period *automatically* become citizens of Australia on the basis of an established, proven relationship with an Australian citizen and the Commonwealth Government's exclusive right in the granting of Australian citizenship.

Similarly, the Commonwealth Government allows New Zealand citizens and diplomatic and consular staff to enter Australia and access State and Territory education services as a result of its exclusive decision making powers in relation to international relations and agreements.

***Implementation of a whole of government approach to meeting the English language learning needs of newly arrived school aged migrants and humanitarian entrants***

It is beneficial to the Australian community to assist school aged refugee and humanitarian entrants to develop the necessary English language skills to participate in Australian society. Accordingly, it appears necessary to review and revise the funding formula through the *ESL New Arrivals Programme* increasing the per capita assistance for students with high educational needs, specifically refugees and humanitarian entrants.

**Recommendations:**

- That the Commonwealth Government cease to shift responsibility for the costs associated with its migration policies under the 2005-2008 quadrennial funding arrangements for schools by implementing the following resolutions agreed to at the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), in April 2004:
  - Increasing the per capita assistance to ESL - New Arrivals with high educational needs, in particular, refugees and humanitarian entrants (*Resolution 3a*), and
  - Expanding the visa classifications eligible for New Arrivals Funding to include:
    - Dependents and temporary residents who gain permanent residency as spouses after a waiting period (eg. visa classes 300, 302, 304, 309, 310, 210, 445, 446, 450, 826, 850) (*Resolution 3b (i)*).

- Dependents of temporary residents who access services in Australia as part of international agreements, including New Zealand citizens and diplomatic and consular staff (eg, visa sub class 444, 461, 415, 426, 995.) (*Resolution 3b (ii)*).

## **E-1-7 Provision of TIS Services to Humanitarian Entrants**

The Commonwealth's Translating and Interpreting Service (TIS) provides fee-free translations of key documents to the majority of new arrivals in their first two years of settlement, under Community Service Obligation (CSO) arrangements with DIMIA.

All jurisdictions have agreed at formal meetings with the Commonwealth that the level of need and support already evidenced by humanitarian entrants from African nations far exceeds any required previously by other immigrant groups. Amongst issues arising in the provision of translating and interpreting services, the following stand out for further consideration:

- Because a number of African communities' languages are based on oral language systems and as a consequence these communities have limited experience in written language systems, many entrants require additional interpreting services
- In Australia and in particular NSW there is a severe shortage of interpreter services in African Arabic and other languages spoken in African countries. This shortage hinders access to government services, including education and training.
- Illiteracy in local languages, in addition to English requires significant levels of assistance to access services and entitlements.

The Commonwealth provides services to non-business related permanent visa holders in their first two years of settlement through their eligibility to fee free translations of those documents that are necessary to ensure a positive settlement outcome for those individuals. This includes entrants to Australia under the Humanitarian Program.

The Commonwealth's current policy for the provision of fee free interpreting services seems inconsistent in that it excludes the provision of the former services to assist people with their basic requirements including health services provided through the public health system, education and housing.

In the past five years there has been a significant increase in the humanitarian intake from African nations. This has increased the cost of service provision to the States and Territories.

NSW government agencies have expressed the view that it would be appropriate for the Commonwealth to provide fee free interpreting to all State and Territory government agencies providing services to entrants under the Humanitarian Program in their first

two years of settlement as this would assist in ensuring positive settlement outcomes for those individuals in Australia.

### **Recommendation:**

- That the Commonwealth provide fee free interpreting to all agencies providing services to entrants under the Humanitarian Program in the first two years of settlement so as to enable positive settlement outcomes for those individuals in Australia.

## **E-2 Trafficking of women and children**

In November 2004 DIMIA advised that of 21,000 people annually breaching visa conditions approximately 255 people are located in the sex industry. On 1 January 2004, the Bridging F and Witness Protection (Trafficking) Visas came into effect. Approximately 17 Bridging Visas F, the 30 day visa offered immediately to victims of trafficking, were issued this year.

There are two main pathways for identifying a victim of trafficking – through a person approaching DIMIA directly to inform them of their situation or during a DIMIA compliance operation (for example at an illegal brothel). The primary indicators of trafficking and sexual servitude used by DIMIA compliance officers in operations include coercion, confinement, no possession of documentation, and lack of freedom of movement (the victim cannot leave the premises on their own.)

Once a DIMIA compliance officer assesses someone as a possible trafficking victim they offer the victim an immediate Bridging Visa F. The victim is allocated a case manager and is provided with services and assistance to meet their needs during the 30 day period. They obtain access to 3 hour-long sessions of independent legal advice. The 30 day period gives the Australian Federal Police (AFP) time to consider whether the evidence presented by the victim is useful in an investigation. At the end of the period the victim can return home if they wish, or if they wish to assist an AFP investigation and the AFP supports this they are issued with a Criminal Justice Stay Visa.

Holders of Criminal Justice Stay Visas who have significantly contributed to the prosecution or investigation of people trafficking matters, and who may be in danger if they return to their home country as a result of the assistance they provided, may be invited by DIMIA to apply for a Witness Protection (Trafficking) Visa. A victim of people trafficking has no avenue to appeal a decision not to offer them this visa. The Witness Protection (Trafficking) (Temporary) visa is available for a 3 year period. At the end of this period a visa holder is assessed to establish whether they require permanent protection. If a person returns to their country of origin a reintegration package is offered by DIMIA. The reintegration process is being trialled in Thailand.

NSW government agencies are concerned about DIMIA's application of the term "significant contribution" to assess the merits of an application of a Witness Protection (Trafficking) Visa by a person who has assisted authorities with an investigation and has raised this issue with the Commonwealth.

NSW government agencies hold the view that the offering of a Witness Protection (Trafficking) Visa should not depend on the significance of the information that the person will provide (for example the information may not be sufficient to trigger prosecution) but on the danger that she or he is likely to face if one is not provided.

NSW government agencies previously received assurances from DIMIA officials that the term "significant" had been left undefined so as to allow for a broad interpretation, including "significant to the person making it" for example by placing themselves in danger. However there are current cases where trafficking victims who cooperated in an investigation with the Australian Federal Police (AFP) have been detained at Villawood detention centre, pending deportation and that a narrow definition of the term "significant contribution" was applied in their case.

### **Recommendations:**

- That the Commonwealth Government provide victims of trafficking, who are likely to be traumatised and fearful of their safety if they cooperate with authorities, with independent legal and migration advice in relation to their personal situation with no arbitrary limitations (currently the general allocation entitles a victim to three one-hour meetings with a solicitor).
- That the Commonwealth Government make Witness Protection (Trafficking) Visas available to any victims that are prepared to provide information to the authorities. The offering of a visa should not depend on the significance of the information that the person will provide but on the danger that s/he is likely to face if one is not provided. NSW government agencies support the inclusion of a wider definition of "significant contribution" in all relevant documentation and regulations.

## Summary of Recommendations

### **Recommendations relating to Term of Reference A.**

#### ***A-1-1 Detention of Children***

##### **Recommendation:**

That the Commonwealth take full responsibility towards children and their families adversely impacted by their experience of detention through providing or funding the additional support services required by these groups over the long term to remedy as far as possible any health, developmental and psychological impacts of detention.

#### ***A-1-2 Access to NSW schools and educational services by children in immigration detention***

##### **Recommendation:**

That the Commonwealth Government ensure that all school aged children who are placed into immigration detention be permitted to enrol in government schools.

#### ***A-1-3 Conduct of immigration compliance operations in schools***

##### **Recommendation:**

That the Commonwealth Government review the conduct of compliance operations outside of school premises involving school aged children enrolled in government school and develop agreed protocols in consultation with State/ Territory governments.

#### ***A-1-4 Use of NSW correctional centres for Immigration Detainees***

##### **Recommendation:**

That the Commonwealth Government should improve arrangements for the maintenance and transfer of immigration detainees and the exchange of information between jurisdictions for the purposes of managing immigration detention, in consultation with States and Territories.

#### ***A-2-2 Changes to Settlement Grants Program***

##### **Recommendation:**

That the Commonwealth continue to fund MRCs/ MSAs and CSSS agencies to provide migration advice.

#### ***A-3-1 Temporary Protection Visa (TPV)***

##### **Recommendation:**

That prior to the Commonwealth granting permanent residency status to all Temporary Protection Visa (TPV) holders en masse, the Commonwealth provide written advice outlining the impact that this will have on State/Territory services.

NSW has expressed the view that the Commonwealth should not abrogate its responsibilities to TPV holders.

### ***A-3-2 Domestic Violence provisions***

#### **Recommendations:**

- That the Commonwealth provide applicants and their dependents on bridging and temporary visas with access to Commonwealth funded income support, health care and housing services while their application is assessed or reviewed under the Domestic Violence provisions.
- That the impact of the current Commonwealth Domestic Violence provisions, particularly the assessment and review of claims, on the welfare and safety of applicants be scrutinised to ensure that applicants and their dependents are not exposed to any additional hardships due to the administrative and legal processes. This includes assessing whether administrative and legal processes constrain the ability of victims of violence or those in threatening or vulnerable domestic situations to report violence and/or leave a spouse without fear of losing their residency status.
- That guidelines be introduced to ensure that the use of the term assault in the Commonwealth Domestic Violence provisions be interpreted broadly so as to include all types of domestic violence offences included in State and Territory legislation, for example stalking and intimidation.
- That the assessment of doubtful claims be undertaken by qualified professionals with expertise in domestic violence matters, which could include contracting State and Territory specialist domestic violence services as well as engaging Centrelink social workers with the requisite expertise to provide accurate assessments of the existence of domestic violence.

### ***A-3-3 Impact of visa application processing times***

#### **Recommendation:**

That the Commonwealth Government expedite assessment of visa applications for asylum seekers on bridging visas.

### ***A-3-4 Issuing of standard appropriate identification***

#### **Recommendation:**

That the Commonwealth Government issue all long term and short term immigrants including refugees released from immigration detention with standard appropriate identification and documentation.

### ***A-3-5 Visa classes and conditions of enrolment in NSW Government Schools and TAFE NSW***

#### **Recommendations:**

- That the Commonwealth Government establish processes to ensure that State and Territory Governments are given the opportunity to comment on proposed changes to immigration regulations.
- That the Commonwealth Government develop LEGENDcom (DIMIA's on-line subscription service) so that subscribers are alerted in regards to any legislative changes, the introduction of new visas and regulations.
  - It would also be beneficial if the availability of LEGENDcom services, including training on the use of LEGENDcom, were made known to a broader range of service providers.
- That the Commonwealth Government acknowledge that immigration regulations are at times complex to interpret and provide training to State/Territory agencies about regulations, policies and visa conditions on a regular basis.

### ***A-3-6 Visa documentation and school enrolments***

#### **Recommendation:**

That the Commonwealth Government ensures that consultation between DIMIA and State/ Territory government agencies, including the NSW Department of Education and Training, occurs as a matter of priority to address the issue of an optional evidencing regime. That possible security risks be fully assessed and a risk management plan be developed with States and Territories.

### ***A-3-7 Employment of overseas trained teachers***

#### **Recommendations:**

That the Commonwealth Government introduce the following changes to assist the employment of overseas trained teachers:

- *Working While Studying* – Increasing the maximum number of hours that students on a visa can work from 20 hours to 24 hours would enable the NSW DET to employ them as teachers for three days per fortnight.
- *Working Holiday Visa* – This visa provides for a maximum stay of 12 months in Australia with a maximum of 90 days of casual work allowed with any one employer. The NSW DET suggests that the visa's conditions be amended to enable employment with an employer for more than 90 days within the 12 month stay, e.g. three school terms (150 days);
- That another class of visa be provided with conditions that allow a 12 month stay with employment with the one employer for the full 12 months. Such a visa would allow for flexibility in employment of teachers particularly for hard to



staff areas of NSW and in secondary teaching areas where there is a shortage of qualified teachers in areas of mathematics, technological and applied studies and science, particularly physics;

- *Tourist Visa* – It is recommended that this visa be amended to enable qualified overseas trained teachers to be able to work for the period of their stay so they can be employed by NSW DET to teach in NSW Government schools.
- That the Commonwealth Government cooperate with State /Territory agencies, including the NSW DET, to investigate ways in which overseas trained teachers can be better screened for criminal offences, including sex offences.

## **Recommendations relating to Term of Reference B.**

### **B-3 Deportation of Children enrolled in NSW schools**

#### **Recommendation:**

That the Commonwealth Government advise NSW DET of any action taken by DIMIA to detain or deport children enrolled in NSW Government schools or TAFE NSW.

## **Recommendations relating to Term of Reference C.**

### **C-1 Current provision of health services in the Villawood Immigration detention centre**

#### **Recommendations:**

- That the Commonwealth urgently increase the standards of health care to immigration detainees.
- That the review requests a full independent inquiry into the management of detention centres.

#### ***C-1-2 The health effects of detention***

#### **Recommendation:**

NSW government agencies recommend a full independent inquiry into the long-term impact of long-term immigration detention on the mental health and settlement of refugees in the community.

### **C-2 Adequacy of education services to school aged children in immigration detention**

#### **Recommendation:**

That all children in immigration detention be provided with Commonwealth funded enrolment in a government school.

## **Recommendations relating to Term of Reference D.**

### **D-1 Outsourcing of Law Enforcement Services**

#### **Recommendation:**

The Commonwealth should not abrogate its responsibilities in this area. The Commonwealth should clarify jurisdictional responsibilities for law enforcement within and around detention centres, increase flexibility by allowing for local service agreements and ensure appropriate responses to provide for the safety of detainees and staff.

### **D-2 Outsourcing of education and training services**

#### **Recommendations:**

The Commonwealth Government should consider:

- Changes to the *Detention Service Contract* to include the provision of vocational education and training programs to adult detainees.
- The contracting of appropriately qualified State/ Territory agencies (such as TAFE NSW) to deliver vocational education and training programs to adult detainees.

## **Recommendations relating to Term of Reference E.**

### **E-1-1 Sponsored Humanitarian Entrants**

#### **Recommendations:**

- That the Commonwealth Government reviews the Special Humanitarian Program, monitors its agreements with Proposers and expands its consultative processes with State/Territory, Local Government and community service providers to ensure SHP entrants are assisted effectively to settle in the community without cost shifting to States/ Territories. The Commonwealth should increase efforts to improve both the proposer arrangements and communication in advance about the location and timing of arrival of Special Humanitarian Entrants to assist settlement planning by service providers. That the Commonwealth Government notifies the NSW Government when SHP visas are issued and provide the postcode of the sponsors. The Commonwealth's monitoring of proposer support after the grant of a SHP visa needs to be more thorough. It is strongly recommended that the Commonwealth Government meets its duty of care to SHP entrants by meeting any costs of settlement where a proposer is not in a position to meet stated undertakings.
- That the Commonwealth Government provide community education programs that prepare potential sponsors and communities for the complexities and heighten their understanding of the responsibilities of humanitarian sponsorship.

- That the Commonwealth Government investigates the implications of NGOs operating loan schemes and of the impact and cost of service provision arising from their operations.

### ***E-1-2 Concerns about the new Settlement Grants Program***

#### **Recommendation:**

That the Commonwealth Government note the concerns of NSW government agencies regarding the new Settlement Grants Program and consider mechanisms to monitor the impact of the change in program funding and arrangements on the quality and range of services provided to migrants and new entrants.

### ***E-1-3 Settlement and Housing Needs***

#### **Recommendations:**

- That on arrival accommodation be provided by the Commonwealth Government to some refugee groups for an extended period determined perhaps by an assessment of individual household's readiness to move from on arrival accommodation.
- That the Commonwealth Government consider and advise the States/ Territories on the Commonwealth's role and programs in assisting humanitarian entrants to gain suitable housing, including program or funding enhancements necessary to rectify current housing shortages.

### ***E-1-4 Settlement needs of humanitarian entrants***

#### **Recommendations:**

- That the Commonwealth Government provide timely information to State/ Territory government agencies regarding the arrival and profile of humanitarian and refugee groups.
- That the Commonwealth Government extend the time period and level of support services through the Integrated Humanitarian Settlement Strategy to refugee groups identified as having increased support and settlement needs.

#### **Recommendations:**

- That the Commonwealth Government work with the Australian Department of Health and Ageing to develop a health assessment and promotion protocol. This protocol should ensure the provision of clinical advice on the indications for screening and immunisation. The protocol should also include information for health services' staff regarding culturally specific considerations and requirements, and information on health status and health service provision in the specific camps of origin.

That the Commonwealth Government:

- Notes the significant increase in the complexity of health care needs of Sub-Saharan refugees and recognises that a more organised and planned system of health care must be brokered for this group.
- Agree that an urgent review of the pre-departure, post-arrival and longer term health care needs of this refugee group be commenced with a view to specifically progressing the following recommendations:
  3. That the Commonwealth Government urgently finance a pre-departure medical assessment and treatment service for refugees similar to that provided by the Geneva-based International Organisation for Migration (IOM) for other countries.
  4. That the Commonwealth Government urgently inject extra funds into State and Territory Health Services to enable the provision of an appropriate level of screening and specialist care, and for health liaison services to the refugee group.
  3. That the Commonwealth Government recognise the shortage of general practitioners and that an urgent approach to the Health Insurance Commission (HIC) be made to progress a Medicare item which reflects the time and complexity required in the initial assessment of a refugee and their family (similar to the Indigenous Health Check item), and a separate item for continuing primary health care of newly arrived refugees with multiple complex health issues.
- Identifies funding sources for State and Territory health services to provide health screening and specialist care for newly arrived entrants with significant personal health issues which may impact on public health and the provision of adequate health care by State and Territory public health care services.
- Ensures the provision to current humanitarian entrants of individual hand-held health records detailing previous health screening results, immunisations given and any other important health information collected in African refugee camps.
- That the Commonwealth Government continues consultations and implements a national, evidence- based guidelines on the health screening and management of communicable and other conditions among newly arrived refugees.

### ***E-1-5 Language Needs of Newly Arrived Refugees***

#### **Recommendations:**

- That the Commonwealth Government provide fee-free interpreting to all agencies providing services to entrants under the Humanitarian Program in their first two years of settlement.
- That the Commonwealth Government considers a tax deduction equal to the cost of two NAATI examinations, on successful completion of the NAATI

test. This would provide a strong incentive to potential interpreters and translators, many of whom invest their own funds in undertaking training with little opportunity to recoup the cost in the short the medium term.

- That the Commonwealth Translating and Interpreting Service (TIS) develop strategies to recruit more professional interpreters for the identified languages.
- That the Commonwealth Government provides additional funding to community settlement services to engage professional interpreters in delivering services.

### ***E-1-6 English as a Second Language (ESL) – New Arrivals Funding***

#### **Recommendations:**

- That the Commonwealth Government cease to shift responsibility for the costs associated with its migration policies under the 2005-2008 quadrennial funding arrangements for schools by implementing the following resolutions agreed to at the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), in April 2004:
  - Increasing the per capita assistance to ESL - New Arrivals with high educational needs, in particular, refugees and humanitarian entrants (*Resolution 3a*), and
  - Expanding the visa classifications eligible for New Arrivals Funding to include:
    - Dependents and temporary residents who gain permanent residency as spouses after a waiting period (eg. visa classes 300, 302, 304, 309, 310, 210, 445, 446, 450, 826, 850) (*Resolution 3b (i)*).
    - Dependents of temporary residents who access services in Australia as part of international agreements, including New Zealand citizens and diplomatic and consular staff (eg. visa sub class 444, 461, 415, 426, 995.) (*Resolution 3b (ii)*).

### **E-1-7 Provision of TIS Services to Humanitarian Entrants**

#### **Recommendation:**

That the Commonwealth provide fee free interpreting to all agencies providing services to entrants under the Humanitarian Program in the first two years of settlement so as to enable positive settlement outcomes for those individuals in Australia.

### **E-2 Trafficking of women and children**

#### **Recommendations:**

- That the Commonwealth Government provide victims of trafficking, who are likely to be traumatised and fearful of their safety if they cooperate with

authorities, with independent legal and migration advice in relation to their personal situation with no arbitrary limitations (currently the general allocation entitles a victim to three one-hour meetings with a solicitor).

- That the Commonwealth Government make Witness Protection (Trafficking) Visas available to any victims that are prepared to provide information to the authorities. The offering of a visa should not depend on the significance of the information that the person will provide but on the danger that s/he is likely to face if one is not provided. NSW government agencies support the inclusion of a wider definition of “significant contribution” in all relevant documentation and regulations.

## Appendices

### **Appendix A – The NSW Department of Education and Training’s role and functions in relation to the administration and operation of the *Migration Act 1958*, its regulation and guidelines**

The NSW Department of Education and Training is involved in the implementation of the *Migration Act 1958*.

Each year, in response to Australia’s permanent and temporary migration programs, large numbers of non-Australian citizens apply to enrol in agencies of the NSW Department of Education and Training. The vast majority enrol in government schools and colleges/campuses of TAFE NSW.

Students who are non-Australian citizens are subject to the general enrolment policies of the agencies. In addition, non-Australian citizens, including permanent residents, temporary residents and visitors, have to meet other specific conditions. These conditions vary according to the type of visa held and the conditions applied to studying, living and working in Australia by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

Students who are non-Australian citizens must hold a valid visa and must meet the specific travel, entry and residency conditions set by DIMIA. These conditions are reviewed and amended on a regular basis and as a result agencies of the Department are required to regularly review their enrolment policies and specific conditions applying to the enrolment of non-Australian citizens.

#### Enrolment of Permanent Residents and Temporary Visa Holders in NSW Government Schools

The New South Wales Government provides public education for school-aged students residing in New South Wales. Under the *Education Act (1990)* all children of compulsory school age residing in New South Wales are required to attend school.

Students holding permanent and temporary visas enrolling in NSW Government schools are subject to the general enrolment policies of the NSW Department of Education and Training. Non-Australian citizens, including permanent residents, temporary residents and visitors, may enrol in NSW Government schools, subject to certain conditions.

Each year, in response to Australia’s permanent and temporary migration programs, large numbers of non-Australian citizens apply to enrol in NSW Government schools.

Between July 2000 and April 2005, some 13,700 temporary visa holders enrolled in NSW Government schools.

Schools play a direct role in the implementation of the Migration Act through assessing visas to determine eligibility for enrolment.

Schools are required to enrol permanent residents and temporary visa holders in NSW Government schools in accordance with specific conditions and procedures outlined in *Guidelines for Schools: Enrolment of Permanent Residents and Temporary Visa Holders in NSW Government Schools*

([http://www.schools.nsw.edu.au/media/downloads/schoolsweb/gotoschool/intnl\\_students/tempvisaholder/information.pdf](http://www.schools.nsw.edu.au/media/downloads/schoolsweb/gotoschool/intnl_students/tempvisaholder/information.pdf)).

These guidelines apply to all non-Australian citizens regardless of their country of origin or language background.

Students must hold a valid visa and must meet the specific travel, entry and residency conditions set by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). These conditions are reviewed and amended on a regular basis.

Students enrol directly at their local school, based on residential address, or they may request enrolment in another school. When enrolling, students must take their original passport or other travel documents with visa stamps or labels.

To ensure currency and validity of non-Australian citizens' residency, principals are required to ensure that original travel documents are sighted, dated and certified. School staff are responsible for determining eligibility to enroll based on visa status. This requires school staff to have high order skills in reading and interpreting visas, passports and other travel documents.

Schools are required to collect enrolment details of all non-Australian citizens and keep current enrolment records on the school's enrolment data system. Details include: passport number, visa sub-class, country of birth, visa expiry date, parent/guardian/carer arrangements.

Schools therefore are key agencies in the implementation of the Migration Act. Over the last decade, in response to changes in Commonwealth migration policy, principals now have responsibilities which include:

- ensuring that all relevant travel documents of permanent residents and temporary visa holders have been sighted and are valid
- retaining appropriate residency documents with student records
- entering all enrolment details of permanent residents and temporary visa holders in the Department's enrolment data system and maintaining accurate enrolment records
- Monitoring variations in temporary visa holders' visa status and residential and contact details.



## Enrolment of Student Visa Holders in NSW Government Schools

In addition to schools responsibilities in relation to enrolment of permanent residents and temporary visa holders the Department has particular responsibilities in relation to overseas full fee paying students (international students).

The Department, through its International Student Centre (ISC) is responsible for:

- the enrolment of international students
- monitoring student visa holders to ensure compliance across the system as required under the *Education Services for Overseas Students (ESOS) Act 2000* and the *National Code of Practice* which sets out obligations for providers of education for international students
- Reporting to DIMIA any student who fails to comply with student visa regulations. The ISC monitors student compliance through enrolment reports sent to schools each term.

The International Student Centre fulfils those obligations across government schools and colleges of TAFE.

## TAFE NSW

TAFE NSW is the major provider of vocational education and training in New South Wales. Products and services are developed for off-shore as well as on-shore delivery. Programs and services are also delivered to temporary residents eligible to study at TAFE NSW as well as for Australian citizens and permanent residents.

The *Migration Act* and *Regulations* impact on TAFE NSW functions related to:

- development and implementation of policy and procedures such as those related to the enrolment of temporary residents in TAFE NSW, and
- Program and service planning and delivery particularly in relation to skilled migrants, refugees and special humanitarian entrants.

The TAFE NSW Multicultural Education Unit (TAFE MEU) has responsibility for providing policy advice in relation to changes in immigration policy and their impact on TAFE NSW provision and services. The Unit is also responsible for developing and reviewing TAFE NSW policy for the enrolment of temporary visa holders (the *TAFE NSW Enrolments – Temporary Visa Holders Policy*).

## Enrolment of Permanent and Temporary visa Holders in TAFE NSW

Permanent visa holders are eligible to study at TAFE NSW under the same conditions as Australian citizens. Temporary visa holders are eligible to study at TAFE NSW subject to conditions and requirements outlined in the *TAFE NSW Enrolments – Temporary Visa Holders Policy* (2005)

([https://www.det.nsw.edu.au/policies/student\\_serv/equity/tafe\\_temp\\_visa/PD20050089.shtml](https://www.det.nsw.edu.au/policies/student_serv/equity/tafe_temp_visa/PD20050089.shtml).)

The *TAFE NSW Enrolments – Temporary Visa Holders Policy* and associated guidelines and procedures are reviewed each year to reflect changes to immigration regulations and to other Commonwealth policies and provisions. This function requires a regular analysis and interpretation of the *Migration Act* and *Regulations* to establish their impact on TAFE NSW provisions for the enrolment of temporary residents.

Holders of temporary visas enrol directly at TAFE NSW campuses. When enrolling at TAFE NSW temporary visa holders must produce their passport or documentation from Department of Multicultural and Indigenous Affairs (DIMIA) showing their current visa sub-class. TAFE NSW temporary visa holder officers (TVHOs) are available at TAFE NSW campuses to assist temporary visa holders. TVHOs are also required to confirm temporary visa holders' residency status and eligibility to study at TAFE NSW prior to the enrolment of temporary visa holders.

TAFE NSW enrolling officers determine temporary visa holders' eligibility for enrolment based on the *TAFE NSW Schedule of Permanent and Temporary Visas (Schedule of Visas)* which indicates each visa sub-class and related eligibility to study in TAFE NSW.

([https://www.det.nsw.edu.au/policies/student\\_serv/equity/tafe\\_temp\\_visa/PD20050089.shtml#Appendices](https://www.det.nsw.edu.au/policies/student_serv/equity/tafe_temp_visa/PD20050089.shtml#Appendices))

In addition, TAFE NSW staff are required to follow procedures for the enrolment of temporary visa holders that are outlined in the *TAFE NSW Temporary Visa Holders Procedures Guide-Including Audit Procedures*.

## Employment of teachers and assessment of visas for employment purposes

The Department employs suitably qualified overseas trained school teachers on a permanent, part time, temporary or casual basis to teach in NSW Government schools. These teachers enter Australia on a number of different visas.

Teachers who have migrated to Australia under the *General Skilled Migration Program (GSM)* can be permanently appointed as full time or part time teachers in government schools or teachers on a *Working Holiday Visa (WHV)* can be employed by the Department as temporary or casual teachers for up to 90 days.

The *General Skilled Migration Program* targets specific occupations with recognised qualifications and those occupations include early childhood, primary and secondary teachers.

Employment of teachers under the GSM Program and via the WHV Program requires the Department to remain abreast with current or proposed regulations and conditions applying to visas and entry to Australia for migration purposes and working holiday reasons.

## Adult Migrant English Service (AMES)

NSW AMES provides English language tuition and related services to adult migrants to assist them to participate in the community, education and work.

The major program delivered by AMES is the Adult Migrant English Program (AMEP), which is a national settlement program under the *Immigration (Education) Act, 1971*. The aim of the program is to help newly arrived migrants and refugees to develop the English language skills they need to settle successfully in Australia, participate effectively in the community and access services available in the general community. NSW AMES delivers this program as part of a Department of Education and Training Consortium under contract to the Commonwealth Government.

The Department of Immigration and Multicultural Affairs (DIMIA) determines eligibility for the Adult Migrant English Program (AMEP) on the basis of policy or legislation. A client's eligibility is indicated on DIMIA's AMEP Reporting and Management System data-base. AMES is required to establish a client's AMEP eligibility by sighting their passport and visa and entering identifying details in ARMS.

## Appendix B - Method for a Revised ESL New Arrivals Per Capita Grant

The regular per capita rate, calculated at \$6,242, represents the formula components of:

- notional teacher salary \$73,436<sup>18</sup>
- intensive instruction provided for 30 hours per week (full time)
- class sizes of ten students
- intensive English instruction for a period of 34 weeks.

The per capita rate for refugee students or those with disrupted, little or no previous formal schooling, calculated at \$12,117, represents the formula components of:

- notional teacher salary \$73,436
- intensive instruction provided for 30 hours per week (full time)
- class sizes of ten students
- intensive English instruction for a period of 66 weeks.

The methodology used in determining the revised ESL New Arrivals per capita grant is described below.

### *1. Determining a standard per student intensive English tuition rate*

The ESL New Arrivals per capita grant is determined by component calculations that reflect a certain frequency and duration of face-to-face ESL teaching support delivered within an averaged class size setting. The following component calculations are as follows:

- |           |  |
|-----------|--|
| <b>A</b>  | Number of hours of intensive English instruction per school week – first year of schooling<br>(30 hours out of 30 teaching hours per week)   |
| <b>B1</b> | Number school weeks per school year*<br>(34 weeks out of 40 week year [Regular new arrivals students])   |
| <b>B2</b> | Number school weeks per school year*<br>(66 weeks of instruction with 40 weeks being equated to one school year [Disadvantaged new arrivals students])<br>(40 weeks of instruction with 40 weeks being equated to one school year [Post intensive ESL students]) |
| <b>C</b>  | Class size - intensive ESL   |

	(Teacher to student ratio = 1:10)
<b>D</b>	Current teacher salary rate (\$73,436)
<b>E1</b>	Standard per capita rate (\$6,242)
<b>E2</b>	Per capita rate for educationally disadvantaged refugee and humanitarian entrant students (\$12,117)

A standard per capita rate is then calculated as follows:

$$A (30/30) \times B1 (34/40) \times C (1/10) \times D (\$73,436) = E1 (\$6,242)$$

## 2. *Determining a per student intensive English tuition rate for refugee students or those with disrupted, little or no previous formal schooling.*

The per capita grant is determined as above but adjusts the number of school weeks per year component (**B2**) to reflect the additional level of assistance required by refugee students or those with disrupted, little or no previous formal schooling. The relevant component calculation is as follows:

<b>B2</b>	Number school weeks per school year* (66 weeks of instruction with 40 weeks being equated to one school year)
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An educationally disadvantaged per capita rate is then calculated as follows:

$$A (30/30) \times B2 (66/40) \times C (1/10) \times D (\$73,436) = E2 (\$12,117)$$

\* This step determines the ESL Scale outcome measure newly arrived students need to achieve in order to be able to participate in mainstream educational activities. It then identifies the number of school weeks per year students need in order to achieve this outcome. An outcome level appropriate for new arrivals students is determined by:

1. identifying a minimum level of English on the ESL Scales that students need to achieve to be able to participate in the mainstream classroom;
2. identifying patterns of new arrival's students English language achievement on exit from intensive programs against the ESL Scales and equivalent measures;
3. equating ESL Scales outcomes with language and literacy demands of national literacy benchmarks (Level 3 oral, reading and writing outcomes on the ESL Scales equating to the Year 3 benchmarks);
4. identifying this level as an appropriate national foundational language and literacy standard for ESL New Arrivals students.

Available data on new arrivals students' period of intensive English instruction and ESL Scales outcomes is then analysed and modelled in order to identify the average time it would take for regular students and refugee students or those with disrupted, little or no previous formal schooling to achieve the specified ESL outcomes. This results in the following number of weeks for each student subgroup which is entered into the B component calculation.

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