

The Senate

Foreign Affairs, Defence and
Trade References Committee

The removal, search for and
discovery of Ms Vivian Solon

Final report

December 2005

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Table of contents

Members of the committee	iii
Recommendations	vii
Chapter 1	
Introduction	
Background	1
Establishment of the inquiry	2
Terms of reference	2
Conduct of the inquiry	2
Acknowledgment	2
Chapter 2	
The committee's response to the inquiry conducted by the Commonwealth Ombudsman	
Establishment of identity	3
Mr Comrie's findings	3
Record of interview	4
Use of DIMIA employees as interpreters	4
The removal process	5
Documentation of the process was inadequate	5
The need for comprehensive checklists	5
Investigation of any criminal acts against Ms Solon	7
Ensuring individuals are made fully aware of their rights regarding legal assistance	7
Ensuring DIMIA officers understand their powers under the <i>Migration Act 1958</i>	8
Mr Comrie's findings	8
Adequacy of s.189 of the <i>Migration Act 1958</i>	10
The health of Ms Solon	11
Fitness to travel	11
Mr Comrie's findings	11
DFAT involvement	14
Mr Comrie's findings	14
Inadequate reception arrangements	15
System deficiencies	16
Information was not passed to senior officers in 2003 and 2004	16
DFAT involvement in 2003	17
Mr Comrie's findings	17
DFAT response regarding remedial action	18
Other committee findings	18
Poor record keeping	18

Conclusion	19
Additional comments – Greens Senator Kerry Nettle	21
Appendix 1	
Public submissions	25
Appendix 2	
Public hearings and witnesses	27
Appendix 3	
Additional information, tabled documents, and answers to questions on notice	31
Appendix 4	
Recommendations of the Ombudsman's Report and relevant recommendations from the Palmer Report	39

Recommendations

Recommendation 1

2.10 The committee recommends that in relation to the interviewing of detainees, if a detainee is unable to sign the record, there must be certification by a third party that the record of interview is correct.

Recommendation 2

2.12 The committee recommends that DIMIA staff are reminded that independent and accredited interpreters must be used and that the use of a departmental officer as an interpreter should occur only in exceptional circumstances.

Recommendation 3

2.28 The committee recommends that DIMIA carefully consider the process to ensure someone in a distressed and confused state has access to legal advice.

Recommendation 4

2.29 The committee recommends DIMIA review checklists regarding identity checking and the decision to detain and remove process to ensure that the actions outlined above regarding contact with the police and advice regarding legal assistance are captured so they are addressed by DIMIA officers when effecting a removal.

Recommendation 5

2.44 The committee recommends that the Australian government review the adequacy of s.189 of the *Migration Act 1958* and/or the introduction of a regulation that stipulates the evidence required for a person to be detained as an unlawful non-citizen.

Recommendation 6

2.53 The committee recommends that the development of appropriate standards for health and care needs for detainees in transitional detention—identified in Recommendation 9 in the Ombudsman's report—specify mental health as an area to be addressed.

Recommendation 7

2.55 The committee recommends that the explanation of rights regarding the medical examination be included in a relevant checklist as discussed in recommendation 4 above.

Recommendation 8

2.61 The committee recommends that DFAT review internal processes regarding the treatment of concerns expressed by other governments that have the potential to affect bilateral relationships, with a view to ensuring that appropriate senior officers in Canberra and in relevant posts are made aware of these concerns.

Recommendation 9

2.67 The committee recommends that DIMIA review its procedures to ensure that formal procedures are in place for the reception of people being removed from Australia in circumstances similar to Ms Solon and that their final destination is recorded on file.

Recommendation 10

2.69 The committee recommends that DIMIA review and advise staff when their responsibilities for a detainee begin and end, noting there may be circumstances like that of Ms Solon where there may not be a strict legal obligation but a moral obligation to ensure their welfare.

Recommendation 11

2.73 The committee recommends that the independent investigation into whether the actions of individual officers breached the APS Code of Conduct include consideration of any systemic issues that may have contributed to the lack of action. Furthermore, if the investigation identifies any systemic issues that it make recommendations to address them.

Recommendation 12

2.80 The committee recommends that DIMIA and DFAT remind staff of the correct procedures to be followed when making requests for passport information.

Chapter 1

Introduction

Background

1.1 On 12 September 2005, the committee tabled the first of two reports in relation to its inquiry into protection visas and deportation matters. The first report examined the government's response to Mr Chen Yonglin's request for political asylum.

1.2 The second report, tabled on 15 September 2005, was an interim report on a second high profile case: that of Ms Vivian Solon, an Australian citizen who was removed from Australia to the Philippines in July 2001.

1.3 The committee did not have the opportunity to examine any of the officers directly involved in the removal, search for and discovery of Ms Solon because the Commonwealth Ombudsman was conducting an investigation into this matter at the same time. Mr Neil Comrie, who conducted the inquiry, requested that no officers involved in the Ms Solon matter be approached in relation to their dealings with her until his investigation was finalised. The committee decided to table its preliminary findings in an interim report and to await the publication of the Ombudsman's report before tabling a final report on this matter.¹

1.4 On 6 October 2005, the Commonwealth Ombudsman released the report prepared by Mr Neil Comrie.

1.5 This is the committee's final report which focuses on the committee's response to the report by Mr Comrie. Taking into consideration the findings and recommendations made by Mr Comrie and Mr Mick Palmer,² where relevant, the committee makes further comment and recommendations. The committee does this where certain issues were not addressed by the other two reports or where the committee considered comment needed to be further strengthened with a recommendation.

1.6 The committee was asked to examine issues surrounding Ms Solon's removal, search and discovery, concentrating in particular on the involvement of the Department of Foreign Affairs and Trade (DFAT). However, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) played the central role in Ms Solon's removal, and the decisions taken by DIMIA are critical to understanding the context for DFAT involvement. To provide this context for the

1 For a detailed discussion of this issue, please see pp. 1–6 of the committee's interim report.

2 Mr Palmer produced the report on the *Inquiry into the circumstances of the Immigration Detention of Cornelia Rau* in July 2005. It also contained preliminary comments and findings regarding Ms Solon.

reader and ensure clarification of the role played by each department, DIMIA's actions and questions arising from its actions are also addressed in this report.

Establishment of the inquiry

Terms of reference

1.7 On 16 June 2005, the Senate, on the motion of Senator Bob Brown, referred the following matters to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 9 August 2005:

- (a) The response of Department of Immigration Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade, Attorney-General's Department and their respective Ministers to Mr Chen Yonglin's approaches or requests to the Australian Government for asylum and/or a protection visa;
- (b) The application of the Migration Act 1958, its regulations and guidelines concerning the maintenance of confidentiality for any consular officials or staff (including Mr Chen Yonglin, and any other former consular officials or staff) who were applicants for territorial asylum and/or protection visas by Department of Immigration Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade and their respective Ministers;
- (c) The involvement of the Department of Foreign Affairs and Trade and the Minister in the deportation, search and discovery of Vivian Solon, and;
- (d) any related matters.

This report addresses terms of reference (c) and (d).

Conduct of the inquiry

1.8 The committee advertised the inquiry in *The Australian* on 22 June 2005 and on its website. It wrote to relevant Ministers and departments, interested individuals and groups inviting submissions. The committee received nine public submissions and one confidential submission from a range of organisations and individuals. A list of individuals and organisations who made a public submission or provided other information that was authorised for publication by the committee is in Appendix 1.

1.9 The committee held a public hearing in Sydney and four public hearings in Canberra. A list of witnesses who gave evidence at the public hearings is in Appendix 2.

Acknowledgment

1.10 The committee is grateful to, and wishes to thank, all those who assisted with its inquiry.

Chapter 2

The committee's response to the inquiry conducted by the Commonwealth Ombudsman

2.1 This chapter re-examines the committee's interim findings in light of the report produced by the Commonwealth Ombudsman and prepared by Mr Neil Comrie (known as the Comrie Report).¹ Under relevant headings, it compares the findings of each report and also considers the recommendations made by Mr Comrie and Mr Palmer.² The committee makes further comment and recommendations where it believes necessary.

Establishment of identity

2.2 Both the committee and Mr Comrie were highly critical of the processes followed by DIMIA compliance officers in attempting to establish Ms Solon's identity before she was removed in 2001.

2.3 The committee found that DIMIA failed to act diligently in its efforts to establish Vivian's identity. It found that, although Ms Solon insisted that she was an Australian citizen and had married an Australian, potential lines of inquiry were not pursued by DIMIA officials prior to making the determination that she was an unlawful non-citizen.

2.4 The committee found that the process followed to establish or verify her identity lacked rigour and it seemed that once the assumption was made that Ms Solon was an undocumented arrival in Australia, little serious attempt was made to test this assumption.

Mr Comrie's findings

2.5 Mr Comrie's report agreed with the above points made by the committee. He identified a number of lost opportunities to identify Vivian. He considered the failure to follow up on these opportunities 'through more rigorous investigation, considered analysis or database manipulation—highlights the limited capacity of some compliance officers to effectively fulfil their roles and responsibilities'.³ He also noted

1 *Inquiry into the Circumstances of the Vivian Alvarez Matter*, Commonwealth Ombudsman, 2005.

2 *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, July 2005. See from page 183 for the section relating to Ms Solon.

3 *Inquiry into the Circumstances of the Vivian Alvarez matter*, Commonwealth Ombudsman, 2005, p. 25.

that staff were inhibited in performing these duties as a result of having had little or no training in investigation techniques.⁴

2.6 Mr Comrie's recommendations to address the issue of establishing identity focused on the interview process and IT training (see appendix 4, Recommendations 3, 4, 5 and 6). Mr Palmer's recommendations addressed identification where identity remains unresolved after initial inquiries (3.4), development of minimum standards for identity checking (5.2) and the need to review decisions to detain people reasonably suspected of being an unlawful non-citizen (7.4).

Committee view

2.7 The committee agrees with the findings and recommendations proposed by Mr Comrie and Mr Palmer to address the apparent deficiencies in the process to establish Ms Solon's identity. The committee also notes the response by the department during hearings that measures have been taken to remedy the obvious shortcomings in its processes in this area, eg. the establishment of the National Identity Verification and Advice Unit.⁵

2.8 The committee, however, would like to note two further areas of concern in relation to the interview process as presented to the committee.

Record of interview

2.9 From the documentation made available to the committee it was clear that Ms Solon was unable to sign the record of the interview conducted on 13 July 2001. To ensure greater transparency and fairness, the committee considers that all records of interview must be signed by the interviewee and, if unable to be signed, must be witnessed and certified as correct by a third party.

Recommendation 1

2.10 The committee recommends that in relation to the interviewing of detainees, if a detainee is unable to sign the record, there must be certification by a third party that the record of interview is correct.

Use of DIMIA employees as interpreters

2.11 The committee was told that at the interview in May 2001, the interpreter used was a DIMIA employee. DIMIA further told the committee that they did not know if the person was an accredited interpreter.⁶ The committee considers that to ensure objectivity, fairness and avoid conflict of interest, independent, accredited interpreters must be used and DIMIA employees should only be used in exceptional

4 Comrie Report, p. 35.

5 see paragraph 2.15 of the committee's interim report.

6 *Committee Hansard*, 6 September 2005, p. 43.

circumstances. Migration Series Instruction (MSI) 234 (General Detention Procedures), para 3.1, notes that whenever the person has difficulty understanding and/or speaking English, DIMIA officers are to seek the assistance of a qualified interpreter such as from the Department's Telephone and Interpreting Service.

Recommendation 2

2.12 The committee recommends that DIMIA staff are reminded that independent and accredited interpreters must be used and that the use of a departmental officer as an interpreter should occur only in exceptional circumstances.

The removal process

2.13 The report will now re-examine a number of concerns the committee had with the removal process.

Documentation of the process was inadequate

2.14 The committee found that transparency and accountability were lacking in the process leading to the determination to remove Ms Solon and that the documentation accompanying this determination was inadequate. It believes that any officer involved in the process of depriving a person of their liberty must adhere to strict guidelines and that written records must substantiate that adherence. In particular, the committee has concerns about the checklists used by DIMIA.

The need for comprehensive checklists

2.15 DIMIA told the committee about a checklist for a person's removal that was described as a process list regarding obtaining travel documents, tickets etc attached to MSI 54.⁷ The committee noted this form did not evidence the actual decision-making process, but seemed to be a checklist of things to do once the decision to remove a person had been made. Recommendation 2 from Mr Comrie would require staff to comply with the requirement of MSI 267 that a compulsory checklist be completed to record the actioning of a removal.

2.16 In correspondence, DIMIA later clarified for the committee that two MSIs refer to the same checklist. MSI 54 titled 'Implementation of enforced departures' (replaced by MSI 361 in September 2002, which was replaced by MSI 376 in May 2003) and MSI 267 titled 'Advice of removal arrangements' refer officers to the same checklist which is titled 'removal checklist (Section 198 of the Migration Act 1958)'.

2.17 While the checklist requires the attachment of evidence that a person is an unlawful non-citizen (such as an extract from Movements Data Base),⁸ the committee

7 *Committee Hansard*, 6 September 2005, p. 39.

8 Removal Checklist (Section 198 of the Migration Act 1958).

remains concerned that it does not require the attachment of a comprehensive list of the checks and actions carried out prior to removal. The committee is concerned with both the lack of comprehensiveness and the failure to document the actions taken. This failure to require a person to demonstrate that adequate measures were taken before he or she determined a person to be an unlawful non-citizen means the process lacks rigour. It increases the risk that initial assumptions may not be tested. In Ms Solon's case, the assumption that she was an unlawful non-citizen was perpetuated. The committee considers that the checks undertaken to determine a person's identity, the evidence that they are an unlawful non-citizen, and other necessary actions prior to removal must be carried out diligently and properly documented, attached to the file and cross referenced with the removal checklist above.

Identity

2.18 In Ms Solon's case, DIMIA also had the problem of establishing Ms Solon's identity. The committee notes Mr Palmer's recommendation 5.2 that the DIMIA executive ensure the preparation for staff of a checklist to be used as a minimum standards template for conducting identification inquiries. The committee agrees with the recommendation which addressed the lack of rigour in the identity checking undertaken.

Determination of immigration status

2.19 MSI 376 states an unlawful non-citizen 'is a person who either entered Australia without being immigration cleared, who entered legally but no longer has permission to remain in the migration zone or is a person whose visa has been cancelled'.⁹

2.20 The committee was concerned that in Ms Solon's case, a relatively junior officer had the authority to determine that she was an unlawful non-citizen and as a consequence was to be removed. The committee noted information from DIMIA that now all decisions to remove unlawful non-citizens are cleared by a Senior Executive Service (SES) officer.¹⁰ The committee supports this initiative, which it believes should be standard practice.

Other actions prior to removal

2.21 After the identity checking was conducted and Ms Solon had been determined to be an unlawful non-citizen, there were a number of actions that the committee considered should have been taken. The written record, however, indicates these were not taken. From the evidence presented to the committee it would appear that this is not just a matter of enforcing record keeping but that these actions, considered

9 Migration Series Instruction 376: Implementation of Enforced Departure, issued May 2003, para 1.1.3.

10 *Committee Hansard*, 6 September 2005, p. 3.

essential by the committee to protect the rights of individuals, do not appear to be required by any checklist. These actions are outlined below.

Investigation of any criminal acts against Ms Solon

2.22 The committee's first report noted the extent of Ms Solon's injuries.¹¹ The committee was concerned that as the agency responsible for her well-being, DIMIA made no attempt to ensure that any possible criminal act against Ms Solon, such as assault or road accident, was thoroughly investigated by police. Apart from the fact that such an investigation may have brought to light more details about her identity¹² and facilitated a connection between Ms Solon and a missing persons investigation, the committee considers Ms Solon was not afforded natural justice.

2.23 The committee recommends that in cases where a criminal act is suspected, contact with the police be included as part of a checklist before removal action is commenced. The committee recognises that this action would not be required in the majority of cases (see committee recommendation 4 below).

Ensuring individuals are made fully aware of their rights regarding legal assistance

2.24 The committee found that DIMIA officers did not take adequate measures to ensure that Ms Solon was made fully aware of her legal rights and no person was made available to represent her interests. It would appear that this confused, infirmed woman, who may well have been the victim of an assault or road accident, who did not have any family or friends to support her, was destitute, without a known identity and facing removal to another country, was not afforded appropriate and proper legal assistance. The only direct reference in the written record to any attempt by DIMIA to obtain assistance for Ms Solon regarding her immigration status seems to have been made through a third person.¹³ DIMIA agreed at the hearings that there was no record on the file to confirm that information regarding Ms Solon's legal rights was provided to her.

2.25 The committee considered that the offer of legal assistance should have been made directly to Ms Solon as part of the removal process and was concerned that there was no evidence that this was done. The question in the interview on 13 July 2001 about the notice to people in immigration detention being read to Ms Solon did not allay the committee's concerns, as we know she was confused. The committee recommends including advice regarding legal assistance as part of a checklist to be completed before removal action is commenced (see committee recommendation 4 below).

11 See paragraphs 2.4 and 2.37 of the committee's interim report.

12 see p. 51 of Mr Comrie's report for a discussion of how Ms Solon could have been identified if her fingerprints had been submitted to CrimTrac for matching.

13 see paragraph 2.30 of the interim report.

Committee view

2.26 The committee considers that in cases where the person in question is clearly not in a position to make an informed decision (eg. when obviously confused as in Ms Solon's case), DIMIA should ensure the person has access to independent legal advice.

2.27 To ensure that issues such as the investigation of possible criminal acts and the protection of individuals' legal rights are at least considered by DIMIA compliance officers, the committee recommends that DIMIA review relevant checklists to ensure these actions are included and recorded on the file. The intention is for the list to be a safeguard for the individual and not an onerous paper burden on the DIMIA officer. Where an action is not required or not possible, this should simply be stated, along with a brief reason.

Recommendation 3

2.28 The committee recommends that DIMIA carefully consider the process to ensure someone in a distressed and confused state has access to legal advice.

Recommendation 4

2.29 The committee recommends DIMIA review checklists regarding identity checking and the decision to detain and remove process to ensure that the actions outlined above regarding contact with the police and advice regarding legal assistance are captured so they are addressed by DIMIA officers when effecting a removal.

2.30 The committee considers that the explanation of rights concerning medical examinations should also be included in checklists completed by DIMIA officers prior to removal. This is outlined in the section on the health of Ms Solon.

Ensuring DIMIA officers understand their powers under the *Migration Act 1958*

2.31 The committee was concerned that DIMIA officers did not demonstrate a good understanding of s.189 of the *Migration Act 1958*. The committee was told that 'because of the way the Act [*Migration Act 1958*] is structured, there is technically no decision to remove. Removal is a duty that an officer is required to carry out if a person is an unlawful non-citizen...'.¹⁴ This understanding was examined by Mr Comrie.

Mr Comrie's findings

2.32 Mr Comrie found that 'DIMIA officers, from field level to senior executive, seemed to have had little understanding of their responsibilities under the Act—other

14 *Committee Hansard*, 6 September 2005, pp. 8–9.

than a mistaken belief that they must detain a person and that when the person is detained the detention is absolute'.¹⁵ He noted that:

The power to detain under s.189 of the Migration Act is absolute—providing the 'reasonable suspicion' rule has been met—but the Inquiry found little evidence that DIMIA officers are either are trained to make a conscious decision to detain or are otherwise required to make such a decision by DIMIA policy.¹⁶

2.33 Mr Comrie noted that paragraph 7.2 of MSI 234 clarified that the 'power to detain is strictly limited to situations where knowledge or a reasonable suspicion has been established. It stated that the detaining officer must actually have the suspicion and that this suspicion must be a reasonable one based on objective evidence'.¹⁷

2.34 Mr Comrie's report provided a detailed discussion of the words used in the Act—'reasonable suspicion'—and found that the suspicion that led to Ms Solon's detention was not reasonable.

2.35 Section 189 of the *Migration Act 1958* states:

(1) If an officer knows or reasonably suspects that a person in the migration zone (other than an excised offshore place) is an unlawful non-citizen, the officer must detain the person...¹⁸

2.36 These are extraordinary powers that result in the deprivation of a person's liberty. Given these powers, the committee is concerned that the current wording of 'reasonable suspicion' in the Act is not sufficiently clear on the amount of evidence that is required before the person is detained. Mr Comrie's report outlined a number of cases in which courts have considered the meaning of 'reasonable suspicion'. In particular, he noted that in *Goldie v Commonwealth*, the Federal Court explained the principles governing the operation of 'reasonable suspicion'. Explaining that the operation of s.189 involved a more rigorous test than merely thinking that a person might be an unlawful non-citizen, the court said, in part:

...the officer is not empowered to act on a suspicion reasonably formed that a person may be an unlawful non-citizen. The officer is to detain the person whom the officer reasonably suspects is an unlawful non-citizen.¹⁹

2.37 Mr Comrie's report also noted:

The Court also made it clear that the exercise of 'reasonable suspicion' detention 'must be justifiable upon examination of relevant material' and

15 Comrie Report, p. 69.

16 Comrie Report, p. 68.

17 Comrie Report, p. 69.

18 The *Migration Act 1958*, Section 189 accessed at <http://www.scaleplus.law.gov.au/html/pasteact/0/436/0/PA003340.htm> on 14.10.05.

19 Comrie Report, p. 66.

that the detaining officer could not simply rely on information immediately to hand but must make 'efforts of search and inquiry that are reasonable in the circumstances'.²⁰

2.38 Mr Comrie drew attention to the recommendations made by Mr Palmer, which focus on:

- improving training for compliance officers and all other staff who might be expected to exercise the power to detain a person under s.189 (1) of the *Migration Act 1958* (see appendix 4, recommendation 3.1); and
- ensuring decisions are reviewed and assessed within 24 hours of the decision being taken (see appendix 4, recommendation 7.4).

2.39 Mr Comrie further noted that once the decision was taken, there was no ongoing review to validate or substantiate 'reasonable suspicion' in relation to her status.²¹

Committee view

2.40 The committee agrees with Mr Comrie and Mr Palmer's findings and recommendations to improve the lack of understanding of s.189 of the *Migration Act 1958*.

Adequacy of s.189 of the *Migration Act 1958*

2.41 The committee questions the adequacy of the Act as it stands to protect people such as Ms Solon from wrongful detention and removal, and to ensure that 'efforts of search and inquiry that are reasonable in the circumstances' are carried out. Given the different definitions that 'reasonable suspicion' allows regarding the amount of evidence required, the committee suggests that a review of the current wording of the Act is warranted to strengthen the Act to ensure the obligation to have substantial evidence is clear. Mr Comrie also noted that the seriousness of taking a person's liberty did not seem to be reflected in the actions of DIMIA officers, which lends weight to the committee's suggestion to review the Act.

2.42 It would also seem that departmental guidelines such as MSIs do not adequately highlight or clarify the steps required in the decision making process. The committee acknowledges and supports the review of MSIs recommended by Mr Palmer (see appendix 4, recommendation 7.2) but considers that the promulgation of a regulation to clarify or even specify the steps required may be necessary. This checklist would clarify, particularly for junior officers, actions which must be at least considered in the process. If actions are not required, the checklist would require a reason to be noted.

20 Comrie Report, p. 66.

21 Comrie Report, p. 68.

2.43 The government could consider a number of options to better capture these requirements:

- Option 1 – examine strengthening s.189 of the *Migration Act 1958* to remove 'reasonable suspicion' and replace it with 'believes on reasonable grounds'. This is the requirement in other Acts relating to the deprivation of liberty, such as powers of arrest in the *Crimes Act 1914*. MSI 234, para 2.1, notes 'the detention of a person under the Act is analogous to the action which constitutes an arrest by the police or other law enforcement agency. As with police arrest, immigration detention is brought about by depriving the person of his or her liberty'.²²
- Option 2 – along with strengthening the Act the government may wish to consider the introduction of an appropriate regulation which refers to a checklist of actions that must be completed before any decision to detain and remove a person can be made.
- Option 3 – the government may wish to consider the introduction of the regulation only, as described in the paragraph above.

Recommendation 5

2.44 The committee recommends that the Australian government review the adequacy of s.189 of the *Migration Act 1958* and/or the introduction of a regulation that stipulates the evidence required for a person to be detained as an unlawful non-citizen.

The health of Ms Solon

2.45 There are a number of issues regarding the health of Ms Solon prior to her removal about which both the committee and Mr Comrie expressed serious concerns.

Fitness to travel

2.46 The Philippines Deputy Head of Mission in Canberra raised concerns about whether Ms Solon was fit to travel.²³ It would appear that these concerns prompted DIMIA to seek medical advice in order to obtain a certificate that she was 'fit for travel'. On 19 July 2001, at the request of a DIMIA officer, a local doctor provided a report that she was fit to travel.²⁴

Mr Comrie's findings

2.47 Mr Comrie found that 'taking into account the extent of Vivian's physical disability, the Inquiry considered that a more thorough medical examination was

22 MSI 234 (General Detention Procedures), paragraph 2.1.

23 Document S23, DIMIA email titled Removal of Filippino – Vivienne Alvarez, dated 19.7.01 (page 15, paragraph 2.41 of interim committee report)

24 *Committee Hansard*, 8 August 2005, p. 16.

warranted and that the locum GP should have had the opportunity to obtain details of Vivian's medical history from Lismore and Liverpool Hospitals'.²⁵

2.48 After speaking to the people directly involved, Mr Comrie also drew attention to another area of concern regarding how DIMIA officers dealt with Ms Solon's physical condition. He believed her detention for one week in a single motel room was inappropriate:

Her privacy, dignity and welfare were compromised by the fact that she was guarded in this room at all times by two contracted security guards and had no access to the medical facilities available to people held in immigration detention centres.²⁶

2.49 Mr Comrie's report noted a response from DIMIA acknowledging that 'there is a lack of clarity about the question of the application of the standards 'Health Care Needs' to detainees who are in transitional detention between their Bridging Visa E expiring and the Department making appropriate arrangements for the person to depart Australia, such as in the Ms Alvarez case'.²⁷ Mr Comrie's recommendations focused on achieving a greater awareness of mental health problems, development of appropriate standards of health care for detainees in transitional detention and ensuring that efforts are made to provide a medical history to medical practitioners determining the fitness to travel of an unlawful non-citizen²⁸ (see appendix 4, recommendations 8 and 9).

Committee view

2.50 The committee also found that DIMIA officers paid inadequate attention to Ms Solon's welfare needs and supports the recommendations made by Mr Comrie. As the committee was unable to speak with the people directly involved, the additional information obtained by Mr Comrie about the accommodation in Brisbane and the health of Ms Solon cause the committee even greater concern. In particular, the committee notes the information obtained by Mr Comrie that shows Ms Solon's physical needs were even greater than the committee was able to determine. Mr Comrie notes that:

...staff of Australasian Correctional Management contacted their supervisor and asked that a nurse be made available to assist with Vivian's care (The staff kept a daily log, recording that Vivian was unable to see to her basic hygiene needs such as toileting and showering without help).²⁹

25 Comrie Report, p. 60.

26 Comrie Report, p. xi.

27 Comrie Report, p. 61.

28 Comrie Report, p. 63.

29 Comrie Report, pp. 58–59.

2.51 There are three additional issues regarding Ms Solon's health which the committee will now consider.

No counselling/psychological assessment was sought

2.52 No counselling/psychological assessment was sought for Ms Solon. Vivian was initially admitted to the psychiatric unit of Lismore Base Hospital and it was later discovered she had been diagnosed as suffering from 'a paranoid psychotic illness'. The department has acknowledged that there is a lack of clarity regarding the application of the standards 'Health Care Needs' to detainees in transitional detention and Mr Comrie made a recommendation to address this (see appendix 4, recommendation 9). The committee considers that this recommendation should specifically include mental health as an area to be addressed.

Recommendation 6

2.53 The committee recommends that the development of appropriate standards for health and care needs for detainees in transitional detention—identified in Recommendation 9 in the Ombudsman's report—specify mental health as an area to be addressed.

Explanation of rights regarding medical examination

2.54 The committee was concerned to hear that there was no evidence that Ms Solon had been explained her rights regarding the medical examination, which was undertaken to determine her fitness to travel. The committee notes the response from DIMIA that there are some cases where the early notification of a removal may pose a significant risk to the detainee and/or other person's safety, and the person may not be informed of the reason why they have been requested to undertake a medical examination. In these cases the committee suggests this is noted on the checklist.

Recommendation 7

2.55 The committee recommends that the explanation of rights regarding the medical examination be included in a relevant checklist as discussed in recommendation 4 above.

No formal response to concerns raised by the Philippines government

2.56 The committee was also concerned that there was no evidence on file to indicate that a formal response to the health concerns raised by the Philippines Embassy had been provided.³⁰ The press release from the Embassy of the Philippines indicates that the Embassy instructed the [Brisbane] consulate to make representations with DIMIA to provide Ms Solon with 'therapeutic counselling and further treatment

30 *Committee Hansard*, 8 August 2005, p. 34.

for trauma before sending her home'.³¹ The committee suggests that there should have been a formal response to these concerns outlining how they were being addressed.

DFAT involvement

2.57 During the week that Ms Solon was in immigration detention, the deputy head of the Philippines Embassy in Canberra raised concerns not only about Ms Solon's health but also that the issue had the potential to affect the bilateral relationship. An email from a DFAT officer shows that the deputy head of the Embassy made representation to DIMIA that the removal of Ms Solon could damage bilateral relations between Australia and the Philippines.³²

2.58 The committee was surprised that the mention of a threat to bilateral relations did not appear to have been acted on by DFAT with any degree of seriousness. The committee was told that senior officers in Manila were made aware of the concerns but it would seem not in Canberra. It appears unusual, and is of concern, to the committee that something that may impact on bilateral relations would not have been brought to the attention of senior management in Canberra and the Minister. DFAT's explanation that the concerns did not warrant a judgement and they were waiting for more information did not allay the committee's concern.

Mr Comrie's findings

2.59 Mr Comrie's findings relate to the removal process and he found that as DIMIA was entirely responsible for this process, no criticism should be levelled at DFAT in connection with this aspect of its involvement.³³

Committee view

2.60 The committee agrees with Mr Comrie's finding but remains concerned that the issues raised by the Philippines Embassy about the bilateral relationship did not appear to have been treated seriously. The committee cannot understand why DFAT did not take this matter more seriously.

Recommendation 8

2.61 The committee recommends that DFAT review internal processes regarding the treatment of concerns expressed by other governments that have the potential to affect bilateral relationships, with a view to ensuring that appropriate senior officers in Canberra and in relevant posts are made aware of these concerns.

31 Embassy of the Philippines Press Release #050517/AU dated 17 May 2005.

32 See paragraph 2.48 of the committee's interim report; *Committee Hansard*, 25 July 2005, p. 28.

33 Comrie Report, p. 45.

Inadequate reception arrangements

2.62 The committee and Mr Comrie both found that reception arrangements for Ms Solon in the Philippines were inadequate, given she was confused, had no family to meet her, no money and was clearly in need of medical assistance.

2.63 Mr Comrie noted 'it was more a matter of good luck than good planning that Vivian found herself in the care of the Overseas Workers Welfare Association at Manila airport'.³⁴

Committee view

2.64 The committee was told that records were unclear as to the arrangements made for Ms Solon's return to the Philippines.³⁵ The committee believes that, given Ms Solon's circumstances, DIMIA failed in its duty of care to ensure that there was adequate assistance and care for Ms Solon on arrival in the Philippines. The committee repeats the findings of Mr Comrie that Ms Solon required assistance for 'basic hygiene needs such as toileting and showering'.³⁶ There is no doubt that Ms Solon was in need of assistance on her arrival. The committee could find no excuse for DIMIA's failings in their duty of care obligations towards Ms Solon.

2.65 It is quite clear that DIMIA was ultimately responsible for Ms Solon's removal, which includes all the associated arrangements on arrival. Records on who was to meet her were confusing. It would appear that these arrangements were left to third parties and were not even checked or confirmed by DIMIA officials. A phone call from the escort and a rough handwritten note on file, indicating that Ms Solon had been handed over, demonstrated a rather casual attitude to her welfare. Moreover, the information recorded on the file note was incorrect in that Ms Olajay was not from the Australian Embassy. This incorrect information would later cause some confusion in the search for Ms Solon.³⁷

2.66 The committee was also concerned that the records show there was no formal hand-over and no follow-up to determine where she went from the airport or that she was safe. The committee considers that DIMIA should review removal processes to ensure that formal and proper procedures are in place for the reception of people being removed from Australia in circumstances similar to Ms Solon. Furthermore, it believes that clear and comprehensive records of arrangements must be kept.³⁸

34 Comrie Report, p. 61.

35 see paragraph 3.4 of the committee's interim report.

36 Comrie Rreport, pp. 58–59.

37 see paragraph 3.9 of the committee's interim report.

38 see paragraph 3.10 of the committee's interim report.

Recommendation 9

2.67 The committee recommends that DIMIA review its procedures to ensure that formal procedures are in place for the reception of people being removed from Australia in circumstances similar to Ms Solon and that their final destination is recorded on file.

2.68 The committee also noted the lack of clarity over when DIMIA's responsibility for a detainee formally ends.³⁹ The committee is firmly of the view that there should be no 'grey area' with regard to Australia's responsibility for those persons removed from Australia. There must be an indisputable and identifiable point at which Australia's responsibility to these people starts and ends. Ms Solon's circumstances have highlighted the need for the Australian government to review and clarify this area of responsibility.

Recommendation 10

2.69 The committee recommends that DIMIA review and advise staff when their responsibilities for a detainee begin and end, noting there may be circumstances like that of Ms Solon where there may not be a strict legal obligation but a moral obligation to ensure their welfare.

System deficiencies

2.70 The committee has already noted the system deficiencies which contributed to Ms Solon not being identified before she was removed. These deficiencies also contributed to the connection not being made between the names Solon and Alvarez until 2003. This area has been dealt with extensively in the Palmer report and the Ombudsman's report and the committee supports the recommendations made in both.⁴⁰

Information was not passed to senior officers in 2003 and 2004

2.71 The most damning finding by the committee and Mr Comrie was the failure of DIMIA officers to take action when they discovered that an Australian citizen had been wrongfully removed. After speaking with the individuals involved, Mr Comrie has referred the matter to the Secretary of DIMIA for investigation of a possible breach of the Australian Public Service (APS) Code of Conduct.⁴¹

2.72 The committee agrees with this course of action but it is still concerned that this failing in communication needs to be thoroughly examined. The reasons for this lapse may include the department's culture, resources, training of staff, systems of

39 see paragraph 3.3 of the committee's interim report.

40 see appendix 4, Comrie recommendations 4 and 5 and Palmer report recommendations 3.1, dot point 2.

41 see appendix 4, recommendation 12 of Mr Comrie.

checks and balances or its reporting regime. Systems must be in place to ensure that senior staff are made aware of what is happening in their areas of responsibility.

Recommendation 11

2.73 The committee recommends that the independent investigation into whether the actions of individual officers breached the APS Code of Conduct include consideration of any systemic issues that may have contributed to the lack of action. Furthermore, if the investigation identifies any systemic issues that it make recommendations to address them.

DFAT involvement in 2003

2.74 In 2003, DFAT received a request from the missing persons unit of the Queensland police force for information on the identity of the person who met Ms Solon when she arrived in Manila in 2001. The committee was told that the request was not formal but 'came through a telephone conversation' and it did say that 'she was an Australian who had been removed or may have been unlawfully removed in 2001'.⁴²

2.75 The committee understood that the request from the Queensland police was couched in specific terms and that the DFAT officer handling the matter in Manila treated the matter as confined strictly to identifying the person who met Ms Solon at the airport in 2001. It is clear, however, that DFAT officials both in Canberra and the Philippines were aware in 2003 that an Australian citizen had been removed. The committee could not understand why further questions were not asked. The committee considered that although it was not the responsible department, in this instance DFAT showed a lack of initiative and good judgement in failing at the very least to make enquiries of DIMIA about this extraordinary case of an Australian citizen being removed from Australia. There must also have been broader diplomatic implications that had the potential to affect both the Australian and Philippines governments. These seem to have been ignored.

Mr Comrie's findings

2.76 Mr Comrie also found that although the handling of the matter was consistent with the Consular Handbook, he was of the view that 'important obligations to an Australian citizen were not met'.⁴³ He found that:

The unlawful removal of an Australian citizen is a grave error, and it should have motivated any government official learning of the situation to do whatever was necessary to resolve the problem. It is reasonable to suggest that the DFAT officers, in Canberra and Manila, who were involved in the incident would ask of their readily accessible DIMIA colleagues 'How

42 *Committee Hansard*, 8 August 2005, p. 53.

43 Comrie Report, p. 46.

could this have happened?' and, more importantly, 'What is being done to resolve the problem?' No such questions were asked.⁴⁴

DFAT response regarding remedial action

2.77 DFAT told the committee and Mr Comrie that it is in the process of strengthening their cooperation arrangements with the AFP for the handling of such inquiries. The department also said they have taken steps to ensure the cable system is used for communication with posts, which has a wider distribution than email and ensures other officers who need to know about important matters learn about them.⁴⁵

Committee view

2.78 The committee and Mr Comrie agree on this issue. However, the committee would like to note a further concern regarding the interaction between DIMIA and DFAT.

2.79 In 2004, DIMIA asked DFAT for a copy of Ms Solon's passport dossier. The request did not comply with established protocols and DIMIA was advised to resubmit the request. This was not followed up by either DIMIA or DFAT. The committee considers that this was another lost opportunity to start the process of searching for Ms Solon.

Recommendation 12

2.80 The committee recommends that DIMIA and DFAT remind staff of the correct procedures to be followed when making requests for passport information.

Other committee findings

Poor record keeping

2.81 The inquiry process exposed poor record keeping in DIMIA and this has been emphasised in the two reports of the committee. During the hearings DIMIA officers tried unsuccessfully to answer questions from the committee based on the written record and while examining documents, committee members were able to see the gaps in the record for themselves.

Mr Comrie's findings

2.82 Along similar lines, Mr Comrie found that there were gaps in the records kept by DIMIA and recommended that the Secretary take steps to ensure that email business records are kept in accordance with the requirements of the *Archives Act*

44 Comrie Report, p. 46.

45 see para 4.58 of the committee's interim report.

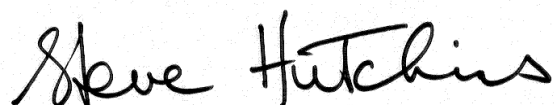
1983 (see appendix 4, recommendation 10). Mr Palmer also recommended a review of file management (see appendix 4, recommendation 5.1).

Committee view

2.83 The committee agrees with the findings of Mr Palmer and Mr Comrie and supports their recommendations.

Conclusion

2.84 The committee was pleased to note that there was a large degree of overlap with the findings of the Palmer, Senate committee and Comrie reports on this matter. Despite being unable to speak with the individuals directly involved, from documentation the committee identified the same systemic issues and supports all recommendations made by Mr Palmer and Mr Comrie to address them. The committee has only made further comment and recommendations where issues were not addressed by the other two reports or where the committee considered Inquiry comment needed to be further strengthened with a recommendation. It was not the committee's intention to place an additional burden on DIMIA officers already planning and implementing the recommendations by Mr Palmer and Mr Comrie. Rather, the committee's input is intended to ensure that all systemic problems are addressed, that there is greater transparency, clarity and evidence-based decision making with the detention and removal processes and greater protection for people in circumstances similar to Ms Solon.



SENATOR STEVE HUTCHINS
CHAIR

Additional Comments

Greens Senator Kerry Nettle

The Australian Greens Senators acknowledge the committee's findings and are in agreement with its recommendations. The Australian Greens also acknowledge the work of Mr Palmer, Mr Comrie and the Commonwealth Ombudsman's office and are in agreement with their findings and recommendations, while noting the limited terms of reference they were given by the government.

The Australian Greens conclude that the unlawful detention and deportation of Ms Solon, her treatment in the care of the Department of Immigration and the negligent lack of response after the error had been discovered, are indicative of a Department that is out-of-control and failing the Australian public.

The committee received evidence about, and Mr Palmer uncovered a series of system failures. However, the case of Vivian Solon indicates more than a series of system faults. It is clear that the prime contributor to the unlawful detention and deportation of Vivian Solon was the system of mandatory detention that sees people locked up first and then somewhere down the track questions may be asked about their detention later. The other significant contributing factor was the culture of suspicion and lack of discretion and regard for human welfare within the compliance branch of the Department of Immigration.

Mr Comrie summarised this culture, concluding:

“It is difficult to form any conclusion other than that the culture of DIMIA was so motivated by imperatives associated with the removal of unlawful non-citizens that officers failed to take into account the basic human rights obligations that characterise a democratic society.” (page 31)

The Australian Greens note that the Department of Immigration has agreed to implement the recommendations of the Palmer and Comrie Reports and is attempting cultural change. However, we believe the culture that produced the frightful case of Vivian Solon, and numerous other scandals that have come to light, is the result of Departmental officials wanting to implement the wishes of the Howard Government, which is to be ‘tough on illegals’. Until the culture of the Government and the policy of mandatory detention and related policies change, the Australian Greens are not convinced that the attempt at cultural change will be successful.

Until the culture of the Government and the policy mandatory detention and related policies change, the Australian Greens are not convinced that the attempt at cultural change will be successful.

The Australian Greens are in agreement with the recommendations of the committee's report, but believe that they do not go far enough. The Australian Greens recommend that regulations and legislation should be altered to ensure proper independent oversight of the decisions of departmental officials.

The powers of arrest, detention and deportation vested in Department of Immigration officers are equivalent of state police forces, yet the oversight of these powers is virtually non-existent. State police officers must bring a detained person before a court within hours to gain consent to continue to detain a person. The validity of the decision to detain or deport by a Department of Immigration official is not tested by an authority outside the Department of Immigration and a detainee may be detained indefinitely under current legislation.

Various Crimes Acts detail a series of minimum standards of treatment of prisoners and the rights of prisoners that police must follow. The standard of treatment and rights of detainees is not detailed in the Migration Act.

Additional Recommendations:

- 1) That the conclusion of paragraph 2.17 be upgraded to a formal recommendation: “The committee recommends that the checks undertaken to determine a person's identity, the evidence that they are an unlawful non-citizen, and other necessary actions prior to removal must be carried out diligently and properly documented, attached to the file and cross referenced with the removal checklist above.”
- 2) The Australian Greens believe that the committee’s recommendation 3 should be strengthened to ensure that the right to legal assistance (as well as other basic rights) be legislated similar to the rights of people placed under arrest by state police forces and the Federal Police are legislated under the relevant Crimes Acts. Therefore the Greens propose to replace recommendation 3 in the main committee report with: “The committee recommends that basic rights, such as the right to legal assistance, be legislated similar to the rights legislated by Part IC Division 3 Crime Act 1914 (Cth) ‘Obligations of investigating officials’.
- 3) In relation to section 189 of the Migration Act, Mr Comrie noted that:
“properly based exercise of discretion in the determination of ‘reasonable suspicion’ constitutes the only protection in the section against indefinite arbitrary detention.”(page 65)

The Australian Greens believe that Section 189 of the Migration Act must be amended to ensure that unlawful detention can not happen again.

The Australian Greens recommend that Section 189 of the Migration Act be amended to end the practice of mandatory detention, we believe this would be the best way to ensure unlawful detention does not occur again and to ensure that an element of humanity is injected back into the immigration system.

Falling short of this solution, The Australian Greens recommend that Section 189 of the Migration Act be amended to compel the Department of Immigration to seek the consent of a court to continue to detain before the expiration of a set time period. This form of judicial review, which is

similar to the requirements for state police forces and the Federal Police, would ensure that the evidence on which the knowledge or reasonable suspicion that a person is an unlawful non-citizen (and therefore must be detained) is tested by transparent and fair methods and is found to be proper.

The Australian Greens believe that if the decision to detain Vivian Solon or Cornelia Rau had been brought before a court, the evidence and basis of the Department's suspicion would have been found lacking.

- 4) The Australian Greens believe that detainees should be informed of the reasons for any medical examination and that all medical examinations should be conducted with the overt consent of the detainee. Any associated risks regarding early notification can be accommodated by DIMIA. Avoiding such a risk is not a valid reason for conducting non-consensual medical examinations or deceiving the examinee. If a detainee does not consent then following medical advice, DIMIA may still apply to a relevant authority for non-consensual medical examination and treatment.
- 5) The Australian Greens recommend that the explanation of rights regarding the medical examination, including the right to refuse an examination and the right to be informed of the reasons for an examination, be included in a relevant checklist and in regulations as discussed in recommendation 4.
- 6) The callous disregard for Vivian Solon after she was deported from Australia is perhaps the most shocking aspect of her story. The recent revelations about long-term permanent residents having their visa cancelled under Section 501 of the Migration Act and being detained and deported to countries they do not know has also highlighted a disturbing practice. The case of Robert Jovicic raises some parallel issues about the Department of Immigration's disregard for human welfare in executing deportations and the interaction of the Department of Immigration with the Department of Foreign Affairs and Trade.

The Australian Greens are also aware and are concerned about reports of cases of failed asylum seekers being deported to the countries they have fled, or third countries, who have faced renewed persecution and abuse on their return.

The Department of Immigration has stated on record that it does not monitor people it has deported.

The Australian Greens recommend that the Department of Immigration investigate the possibility of identifying deportees at risk after deportation and instituting a system where the welfare of these deportees is monitored – either directly by Australian Government agencies or through third parties (such as the Red Cross).

- 7) The Australian Greens recommend that DFAT and DIMIA establish a protocol, including notification and a division of responsibilities between departments, to deal with DIMIA operations that involve the deportation or

removal of people who are or were Australian citizens, permanent residents or other persons facing potential risk.

I met with Vivian on her return to Australia. Her sad and yearning eyes showed the sadness and pain of her experience. Her story should be a warning to us all that human rights and human welfare should always be the priority. Conferring the title of ‘unlawful non-citizen’ on a person does not excuse any bureaucracy or individual from their responsibility to respect other people’s human rights. When the Parliament makes laws it must not infringe on the human rights and dignity of Australian citizens.

Borders and citizenship are an artificial construction. We must never forget we are all human beings.

**SENATOR KERRY NETTLE
AUSTRALIAN GREENS**

Appendix 1

Public Submissions

(Tabled, 12 September 2005, with the report titled Mr Chen Yonglin's request for political asylum)

- P1 Federation for a Democratic China
- P2 United Nations High Commissioner for Refugees (UNHCR)
- P3 Dr Klaus Neumann
- P4 Falun Dafa Association of NSW Inc.
- P5 Australian Security Intelligence Organisation
- P6 Mr Bernard Collaery
- P7 Refugee Advice + Casework Services (Aus) Inc.
- P8 Mr R B Wilson
- P9 Dr Ann Kent

Appendix 2

Public hearings and witnesses

Monday, 25 July 2005 - Sydney

Chin, Mr Jin, Chairman, Federation for a Democratic China

Daniels, Ms Yole, Assistant Secretary, Compliance and Analysis Branch, Border Control and Compliance Division, Department of Immigration and Multicultural and Indigenous Affairs

Deller, Mr John, President, Falun Dafa Association of New South Wales Inc.

Freedman, Mr Harry, Legal Team for Ms Vivian Solon

Hughes, Mr Peter Gerard, First Assistant Secretary, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs

Illingworth, Mr Robert Laurence Mark, Assistant Secretary, Onshore Protection Branch, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs

Liang, Mr John, Vice Chairman, Federation for a Democratic China

Lindsay, Ms Louise, Business Manager, Onshore Protection, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs

Newhouse, Mr George, Legal Team for Ms Vivian Solon

O'Callaghan, Mr James Gerard, State Director, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs

Tuesday, 26 July 2005 - Canberra

Chen, Mr Yonglin, Private capacity

Collaery, Mr Bernard Joseph Edward, Legal representative of Mr Hao, CC Law

Foskett, Mr Douglas, Director, Consular Operations, Department of Foreign Affairs and Trade

Gilding, Mr Simeon Richard, Assistant Secretary, Consular Branch, Department of Foreign Affairs and Trade

Green, Mr Mark Grenville, Coordinator, Refugee Advice and Casework Service (Australia) Inc.

Hao, Mr Charles Feng Jun, Private capacity

Larsen, Mr James Martin, Legal Adviser, Department of Foreign Affairs and Trade

Luo, Ms Serene, Interpreter for Mr Hao

Lynch, Ms Philippa, First Assistant Secretary, Information Law and Human Rights Division, Attorney-General's Department

Manne, Mr David Thomas, Coordinator, Refugee and Immigration Legal Centre Inc

Morton, Ms Lydia, First Assistant Secretary, North Asia Division, Department of Foreign Affairs and Trade

Neumann, Dr Klaus, Private capacity

Peace, Mr Brendan Scott, Associate Legal Officer, United Nations High Commissioner for Refugees, Regional Office

Robinson, Mr Jeff, Assistant Secretary, East Asia Branch, Department of Foreign Affairs and Trade

Russ, Miss Jenny, Manager, Economic and Special Operations, Australian Federal Police

Sheedy, Ms Joan Marie, Assistant Secretary, Information Law Branch, Attorney-General's Department

Wei, Ms Junling, Interpreter for Mr Hao, CC Law

Wright, Mr David Neill, Regional Representative, United Nations High Commissioner for Refugees, Regional Office

Monday, 8 August 2005 – Canberra

Daniels, Ms Yole, Assistant Secretary, Compliance and Analysis Branch, Department of Immigration and Multicultural and Indigenous Affairs

Foskett, Mr Douglas, Director, Consular Operations, Department of Foreign Affairs and Trade

Gallagher, Mr Patrick James, Assistant Director, Compliance, Department of Immigration and Multicultural and Indigenous Affairs

Gilding, Mr Simeon Richard, Assistant Secretary, Consular Branch, Department of Foreign Affairs and Trade

Hughes, Mr Peter Gerard, First Assistant Secretary, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs

Illingworth, Mr Robert Laurence Mark, Assistant Secretary Onshore Protection Branch, Department of Immigration and Multicultural and Indigenous Affairs

Larsen, Mr James Martin, Legal Adviser, Department of Foreign Affairs and Trade

Lindsay, Ms Louise Jean, Business Manager, Onshore Protection, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs

Robinson, Mr Jeff, Assistant Secretary, East Asia Branch, Department of Foreign Affairs and Trade

Smith, Mr Rod, First Assistant Secretary, Public Diplomacy Consular and Passports Division, Department of Foreign Affairs and Trade

Tuesday, 6 September 2005 – Canberra

Daniels, Ms Yole, Assistant Secretary, Compliance and Analysis Branch, Department of Immigration and Multicultural and Indigenous Affairs

Illingworth, Mr Robert, Assistant Secretary, Onshore Protection Branch, Department of Immigration and Multicultural and Indigenous Affairs

Kennedy, Mr Matt, Deputy Chief Information Officer, Department of Immigration and Multicultural and Indigenous Affairs

Rizvi, Mr Abul, Acting Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs

Storer, Mr Des, First Assistant Secretary, Parliamentary and Legal Division, Department of Immigration and Multicultural and Indigenous Affairs

Tyler, Ms Deborah Anne, Director, Response Coordination Unit, Department of Immigration and Multicultural and Indigenous Affairs

Williams, Mr Jim, Assistant Secretary, Unauthorised Arrivals and Detention Operations Branch, Department of Immigration and Multicultural and Indigenous Affairs

Wednesday, 7 September 2005 – Canberra

Gilding, Mr Simeon Richard, Assistant Secretary, Consular Branch, Department of Foreign Affairs and Trade

Grigson, Mr Paul, First Assistant Secretary, South and South East Asia Division, Department of Foreign Affairs and Trade

Smith, Mr Rod, First Assistant Secretary, Public Diplomacy, Consular and Passports Division, Department of Foreign Affairs and Trade

Appendix 3

Additional information, tabled documents, and answers to questions on notice

Tabled Documents

Department of Immigration and Multicultural and Indigenous Affairs:

- correspondence dated 14 September 2005 – answers to questions on notice from hearing on 6 September 2005

Department of Foreign Affairs and Trade:

- correspondence dated 16 September 2005 – answers to questions on notice from hearing on 7 September 2005

The following were tabled (15 September 2005) with the interim report titled The removal, search for and discovery of Ms Vivian Solon:

Department of Foreign Affairs and Trade (documents made public)

- email dated 9 September 2003 from DFAT re call from QLD police missing persons unit
- background briefing "consular in confidence" undated (2005) by Assistant Secretary, Consular Branch, DFAT
- letter dated 5 May 2005 from Consul, Australian Embassy Manila to Chief Record Division, National Center for Mental Health, Mandaluyong City
- letter dated 11 May 2005 from Principal Migration Officer, Australian Embassy Manila to Director, Passports Division, DFAT
- letter dated 16 May 2005 from Director, Consular Operations, DFAT to First Secretary, Embassy of the Philippines, Canberra
- note no. 143/05 dated 17 May 2005 from Australian Embassy Manila to the Philippines Bureau of Immigration
- email dated 17 May 2005 from First Assistant Secretary, Public Diplomacy, Consular and Passports Division, DFAT re Philippines media release
- case notes on Vivian Alvarez dated 18 May 2005 from Overseas Workers Welfare Administration, Manila (3 pages)
- correspondence "consular-in-confidence" dated 17 May 2005 from DFAT Canberra to Adelaide and Manila re Palmer Inquiry request for files
- email dated 19 May 2005 from DFAT officer to Secretary, DFAT re file search
- email dated 20 May 2005 from Assistant Secretary, Consular Branch, DFAT re recollection of dealings with QLD police in September 2003

- emails dated 17 and 18 May 2005 from Principal Migration Officer, First Secretary (Immigration), Australian Embassy Manila re inquiries with OWWA (2 pages)
- email dated 19 May 2005 from Head of Mission, Australian Embassy Manila re response to news reports (2 copies)
- email dated 19 May 2005 from Consular Operations Section, DFAT re documents from Philippines Embassy
- email dated 19 May 2005 from Consular Operations Section, DFAT re story on page 1 of *The Australian*
- email dated 23 May 2005 from Head of Mission, Australian Embassy Manila re contacts with OWWA and DFA (2 pages)

Department of Immigration and Multicultural and Indigenous Affairs (documents made public)

- S230 – file note (undated) re Lismore Base Hospital notification
- S534A – facsimile dated 3 April 2001 from Compliance Manager, Southport Area Office, DIMIA to Lismore Base Hospital
- S109 – file note dated 23 April 2001 by Compliance Section, Southport Area Office, DIMIA re discussions with Lismore Base Hospital and a social worker at Liverpool Hospital
- S93 – file note dated 7 June 2001 by Southport Area Office, DIMIA re discussions with Lismore Base Hospital and St Vincents Hospital
- S239 – file note dated 21 June 2001 by Parramatta office, DIMIA re social worker
- S562A – email dated 12 July 2001 re detention of Vivien Alvarez
- S46–S57 – Record of interview with suspected unlawful non-citizen between DIMIA Southport officer and Vivian Alvarez dated 13 July 2001 (12 pages)
- S36 – email dated 16 July 2001 re removal of Vivian Alvarez
- S29 – letter dated 17 July 2001 from Compliance Section, DIMIA re removal arrangements
- S26 – email dated 18 July 2001 re detention and removal of Vivien Alvarez
- S432A – file note dated 19 July 2001 re conversation with SBICLS
- S431A – file note dated 19 July 2001 re arrangement of medical examination for fitness to travel
- S23 – email dated 19 July 2001 re removal of Vivien Alvarez
- S376A – facsimile dated 19 July 2001 from Investigations, DIMIA to QPS re arrival and departure records for Vivian Alvarez
- S14 – handwritten file note dated 20 July 2001 re conversation with escort, Jane Beare
- S105A – handwritten file note dated 20 July 2001 re removal
- S427A – Direction to accompany and restrain dated 20 July 2001 from DIMIA to Officer-in-charge, Arthur Gorrie Correctional Centre, WACOL

- S422A – Escort Instructions dated 20 July 2001 for escort, Senior Constable Jane Beare
- S423A – Agreement for Escort Service
- S424A – Agreement by Escort dated 20 July 2001
- S425A – For the Information of the Escort
- S15 – file note dated 20 July 2001 by Manager Investigations re conversation with embassy staff in Manila
- S419A – movement details for Vivian Alvarez, departed 20 July 2001
- S656 and S657 – briefing note dated 20 July 2001 re Alvarez (2 pages)
- S103A – movements details for Vivian Alvarez, departed 20 July 2001
- S413A–S414A – minute dated 16 August 2001 from Assistant Finance Officer, DIMIA to Manager, Investigations and Enforcement Section re writeoff of irrecoverable removee debts (2 pages)
- S643 – movements details for Vivian Alvarez Young, arrived 7 July 1984
- S652 – email dated 21 August 2003 re Vivian Solon Young
- S450A – email dated 9 September 2003 re Vivian Solon
- S653 – movements details for Vivian Solon Young between July 1984 and June 1992
- S654 – part of email (undated) from Entry Systems and Movement Alert Section
- S245 – email dated 4 April 2005 sent to Minister for Immigration from Robert Young requesting an investigation into the disappearance of his ex-wife Vivian Solon Young
- S275 – email dated 21 April 2005 from Deputy State Director, QLD re passport photo of Vivian Young
- S214–S217 – draft chronology dated 21 April 2005 re Vivian Solon Young (4 pages)
- S325A–S327A – Consular Branch talking points "Whereabouts inquiry: Vivian Alvarez Solon/Vivian Solon Young" dated 23 April 2005 (3 pages)
- S328A–S331A – Provisional DIMIA talking points and DIMIA chronology re Vivian Solon Young dated 22 April 2005 (4 pages)
- S931–S932 – restricted correspondence dated 23 April 2005 from Canberra to Ambassador, Manila, cc: DFAT, PM&C, AFP re instructions on handling the Alvarez/Young matter (2 pages)
- S207 – email dated 22 April 2005 from Assistant Secretary, Compliance and Analysis Branch, Border Control and Compliance Division re chronology and media points
- S208–S210 – Chronology: Vivian Solon Young (4 pages)
- S211 – draft media points dated 22 April 2005
- S202–S203 – email dated 22 April 2005 from Chief of Staff, Office of the Minister for Immigration and Multicultural Affairs and Indigenous Affairs re points for discussion with Mr Robert Young (2 pages)
- S204 – media points

- S280 – email dated 22 April 2005 re proposed DFAT amendments to media points
- S281 – draft revised media points dated 22 April 2005
- S451–S452 – restricted correspondence dated 22 April 2005 to DFAT, PM&C, AFP, Foreign Minister's Office re urgent request to locate Australian citizen (2 pages)
- S311A – file note dated 11 May 2005 re attempts to locate Ms Grace Olajay
- S309A–S310A – email dated 25 April 2005 from Consul General re attempts to locate Vivian Solon-Young (2 pages)
- S194 and S192–S193 – email dated 26 April 2005 from Assistant Director, Compliance Section re request for passenger cards for Vivian Solon Young (3 pages)
- S278A – email dated 27 April 2005 from Consul General re attempts to locate Vivian Solon Young
- S476–S480 – emails sent between 27 and 28 April 2005 re media points for Alvarez case and whether the Alvarez case has been formally referred to the Palmer Inquiry (5 pages)
- S481 – media release "Extension of the Palmer Inquiry" dated 30 April 2005
- S927 – email dated 3 May 2005 re telecon with Manila and movements search
- S174 – email dated 3 May 2005 re movements checks
- S482 – email dated 5 May 2005 re media points for the Philippines Embassy
- S485 – email dated 9 May 2005 re talking points
- S486 – talking points
- S488–S489 – email dated 9 May 2005 re talking points (2 pages)
- S493 – email dated 5 May 2005 from Entitlements Verification Policy Section, Identity Fraud and Biometrics Branch re report from movements
- S496 – email dated 5 May 2005 from State Director, South Australia re request for briefing from Palmer Inquiry
- S497 – email dated 5 May 2005 from Entitlements Verification Policy Section, Identity Fraud and Biometrics Branch re draft talking points for the Minister
- S498–S499 – Talking points re attempts to locate Vivian Alvarez (2 pages)
- S500–S506 – Table "Vivian Solon Young – Location – Log of enquiries with external information sources (last updated 9 May 2005) (7 pages)
- S507 – email dated 9 May 2005 from Assistant Director, Compliance Section re access to QLD police missing persons file
- S509 – email dated 9 May 2005 from Public Affairs Manager, Australian Embassy Manila re media article "Militant group won't accept PM Howard's apology on Pinay's 'wrong' deportation"

- S510 – media article re Filipino community in Australia being up in arms over the wrongful deportation of Vivian Alvarez
- S511 – email dated 10 May 2005 from Director, DIMIA Response Coordination re request for briefing on steps taken to locate Vivian Alvarez
- S514–S515 – email dated 10 May 2005 re transcript of Lateline interview (2 pages)
- S545 – email dated 10 May 2005 from Parliamentary Coordination Section re briefing PMQ AO18 Australian citizens removed
- S925–S926 – emails dated 9 and 10 May 2005 from Principal Migration Officer, First Secretary (Immigration), Australian Embassy Manila re engaging NGOs to assist in locating Vivian Alvarez (2 pages)
- S554–S555 – emails dated 9 and 10 May 2005 from Legal Policy Section to State Director, South Australia re bridging visa regulations and the use of regs 2.25 and 2.20 (2 pages)
- S589 – email dated 11 May 2005 from DIMIA Response Coordination re media report in *The Age* and talking points
- S577 – email dated 11 May 2005 from Assistant Director, Compliance Section re systems search for Alvarez and Solon/Young
- S594 – email dated 11 May 2005 from Entitlements Verification Policy Section, Identity Fraud and Biometrics Branch re Vivian Solon-Young
- S595 – email dated 11 May 2005 from Assistant Director, Compliance Section re passport application lodged with Philippines authorities
- S602–S603 – Consular Branch talking points "Whereabouts inquiry: Vivian Alvarez Solon/Vivian Solon Young" and background dated 12 May 2005 (2 pages)
- S616 – emails dated 13 and 16 May 2005 re specialist medical assessment for Mrs Alvarez
- S662 – email dated 17 May 2005 re papers faxed
- S663–S665 – emails dated 17 May 2005 re transcript of ABC radio interview with Alexander Downer (3 pages)
- S213A – email dated 17 May 2005 from Principal Migration Officer, First Secretary (Immigration), Australian Embassy Manila to Assistant Director, Compliance Section re claims about an embassy official meeting Vivian Alvarez on arrival at Manila airport on 20 July 2001
- S214A – email dated 17 May 2005 from Adviser, Office of the Minister for Foreign Affairs re claims about an embassy official meeting Vivian Alvarez on arrival at Manila airport on 20 July 2001
- S215A – email dated 17 May 2005 from Consul General re claims about an embassy official meeting Vivian Alvarez on arrival at Manila airport on 20 July 2001
- S100A – emails dated 18 and 19 May 2005 re DIMIA record check
- S109A–S130A – briefing 'consular in-confidence' re "Manila post inquiries to locate Vivian Young" dated 20 May 2005 (22 pages)
- S763 – email dated 24 May 2005 re Alvarez Q&A

- S764–S777 – draft talking points for Senate Estimates "Alvarez Matter – possible questions" dated 24 May 2005 (14 pages)
- S405–S426 – draft talking points for Senate Estimates "Alvarez Matter – possible questions" dated 24 May 2005 (22 pages)
- S427–S432 – questions and answers re attempts to locate Vivian Alvarez (6 pages)
- S239A–S241A – briefing from Ambassador re action taken by post to locate Vivian Alvarez Solon (3 pages)
- S609–S610 – media release dated 1 June 2005 from Australian Embassy Manila re Vivian Alvarez Solon (2 pages)
- S129–S130 – email dated 31 May 2005 re systems information (2 pages)

Department of Foreign Affairs and Trade

- correspondence dated 13 September 2005 – answers to questions on notice from hearing on 7 September 2005

The following were tabled (12 September 2005) with the report titled Mr Chen Yonglin's request for political asylum:

Department of Foreign Affairs and Trade

- correspondence dated 18 July 2005
- opening statement prepared for public hearing, 26 July 2005

Federation for a Democratic China

- opening statement prepared for public hearing, 25 July 2005
- additional information provided at the Committee's hearing on 25 July 2005

Falun Dafa Association NSW Inc.:

- undated letter of complaint concerning Chinese radio program "Good day Sydney" broadcast on radio 2000
- summary of issues for Falun Gong practitioners seeking refugee protection in Australia – 8 July 2005
- Additional information, dated 11 August 2005, arising from the 25 July 2005 hearing.

Mr George Newhouse

- correspondence dated 4 August 2005

The Epoch Times Australia Inc.

- *Interference with the Epoch Times' normal business by the Chinese Government's personnel and agents in Australia – July 2005*

Attorney-General's Department

- answers to questions on notice at public hearing on 5 August received 8 August 2005

Department of Immigration and Multicultural and Indigenous Affairs

- answers to questions taken on notice at the Committee's hearing in Sydney on 25 July 2005
- response dated 12 August 2005, to questions on notice arising from the 8 August 2005 hearing
- response dated 16 August 2005, to questions on notice arising from the 8 August 2005 hearing
- response dated 19 August 2005, to questions on notice arising from the 8 August 2005 hearing in relation to Vivian Solon.
- response dated 23 August 2005, to question on notice asked by Senator Ludwig arising from the 8 August 2005 hearing.

Tabled (6/9/05) papers including Secretary's briefing – 8 August 2005; People. Our Business; copy of Ms Alvarez Qantas travel form.

Tabled at the Committee hearing on 6 September 2005:

- Minute - Deputy Secretary Correll - 25 August
- Removals Quality Assurance Forms – Description
- Removal Availability Assessment (revised)
- Draft MSI extract - 5.2 - Unresolved Identity or Nationality
- Air travel forms.pdf)
- Draft MSI extract - Notification of Proposed Air Travel
- Notice of Your Removal from Australia
- Request for Removal from Australia (revised)
- General Information for Escorts
- Progressing and Effecting Removal

Mr Mark Green

- Letter from Minister Vanstone dated 14 June 2005, tabled 26 July 2005
- Letter from Minister Downer dated 14 June 2005, tabled 26 July 2005

Australian Security Intelligence Organisation

- Letter from Mr Paul O'Sullivan dated 24 August 2005

Sen the Hon Amanda Vanstone

- Letter from Minister Vanstone dated 2 September 2005

Commonwealth Ombudsman

- Covering letter dated 5 September 2005-09-09
- Letter to Senator the Hon Amanda Vanstone, 1 September 2005
- Letter to Secretary of the Department of Immigration and Multicultural and Indigenous Affairs

Appendix 4

Recommendations of the Ombudsman's Report and relevant recommendations from the Palmer Report

Ombudsman's report: inquiry into the circumstances of the Vivian Alvarez matter

Recommendation 1 - The Inquiry recommends that the Secretary of DIMIA take all necessary steps to:

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

Recommendation 2 – the Inquiry recommends that the Secretary of DIMIA instruct staff to comply with the requirement of Migration Series Instruction 267 that a compulsory checklist be completed to record the actioning of a removal and that the actioning of a removal be approved by a senior compliance officer—the Officer in Charge of Compliance. The checklist should be attached to every compliance file.

DIMIA response - agreed

Recommendation 3 – The Inquiry recommends that the formal interview of detainees be constructed in such a way as to require that, where necessary, responses from a detainee be further investigated. The interview process should be dynamic and designed to elicit information useful to the making of decisions about detention and removal.

DIMIA response – agreed.

Recommendation 4 - The Inquiry recommends that as an urgent priority, DIMIA commission a thorough, independent review and analysis of its information management systems. The review should be carried out by an experienced, qualified IT systems specialist and should aim to do the following:

- Identify the real organisational policy and operational information management requirements—particularly requirements for interconnectivity, compliance management, functionality, and growth
- Explore the potential for single-search entry to all DIMIA databases

- Formulate an implementation plan for consideration by the DIMIA executive.

DIMIA response - agreed

Recommendation 5 - The Inquiry recommends that DIMIA commission a thorough, independent review and analysis of the IT training requirements for the Border Control and Compliance Division and the Unlawful Arrivals and Detention Division. The review should identify the requirements for the various functional responsibilities within the divisions.

DIMIA response - agreed

Recommendation 6 - The Inquiry recommends that in the training program for compliance and investigations officers there be a focus on objectivity in decision making and a strong warning that false assumptions will contribute to poor decisions. Further, all staff at DIMIA should be reminded of the need for great care in the spelling and recording of names in files and records.

DIMIA response - agreed

Recommendation 7– The Inquiry recommends that DIMIA institute a review of the operations of contact centres, to determine more effective procedures for dealing with information those centres receive.

DIMIA response - agreed

Recommendation 8– The Inquiry recommends as follows:

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

DIMIA response - agreed

Recommendation 9– The Inquiry recommends as follows:

- That DIMIA take all necessary action to ensure that appropriate standards for health and care needs are developed and introduced for situations involving detainees in transitional detention.
- That, where it is necessary or appropriate to conduct a medical examination to determine the fitness to travel of an unlawful non-citizen, DIMIA officers make all reasonable efforts to ensure that the medical practitioner concerned receives the medical history and record

of the unlawful non-citizen and that the medical practitioner—who, if possible, is someone who has previously treated the patient—is advised of the factual circumstances, including the behaviour of the unlawful non-citizen, that have led to the need for the medical examination.

DIMIA response - agreed

Recommendation 10 - The Inquiry recommends that the Secretary of DIMIA take all necessary steps to ensure that email business records are kept in accordance with the requirements of the *Archives Act 1983*.

DIMIA response – agreed

Recommendation 11– The Inquiry recommends that the Minister for Immigration and Multicultural and Indigenous Affairs write to Mr Robert William Young to commend him for his diligence in pursuing the matter of Vivian Alvarez and bringing it to the attention of the Australian Government.

DIMIA response – agreed

Recommendation 12– The Inquiry finds that the conduct of officers A,B and C, as described in this report, might constitute a breach of one or other of the requirements of the Australian Public Service Code of Conduct as detailed in s.13 of the *Public Service Act 1999*. The Inquiry recommends that this opinion be brought to the attention of the Secretary of DIMIA, in accordance with s. 8(10) of the *Ombudsman Act 1976*.

DIMIA response – Noted. It has been determined that an investigation is needed and will commence as soon as possible.

Relevant recommendations from the inquiry into the circumstances of the immigration detention of Cornelia Rau

Recommendation 3.1.

The inquiry recommends that DIMIA:

- Design, implement and accredit—for all compliance officers and other staff who might reasonably be expected to exercise and power to detain a person under s. 189 (1) of the Migration Act 1958—a legislative training package that provides the officers with the requisite knowledge, understanding and skills to fairly exercise their power
- Ensure that the training comprehensively covers the use of DIMIA and other agencies' databases and search capability and the conduct of searches to support investigations
- Restrict the authority to exercise the power to detain a person under s.189 (1) to staff who have satisfactorily completed the training program

and who are considered to be otherwise sufficiently experienced to exercise that power

- Ensure that a component on 'avenues of inquiry' be included in the Certificate IV in Government (Statutory Investigation and Enforcement) Training Program delivered to DIMIA officers.

Recommendation 3.4

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

- Review the continued validity of 'reasonable suspicion' based detention on a regular basis—and at least every month—against the background of accumulating information
- Be staffed by people who have wide experience in compliance and detention policy and operations, are familiar with the associated Commonwealth and state and territory legislation and arrangements, and have skills in investigation and analysis
- Have the authority, responsibility and accountability for conducting and /or overseeing all necessary inquiries to establish the identity and immigration status of unidentified detainees
- Report monthly to executive management on the status of individuals still in immigration detention, the reason why they are being detained, what is currently being done to resolve the situation, and the expected date for resolution.

Recommendation 5.1

The Inquiry recommends that the DIMIA Secretary:

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

Recommendation 5.2

The Inquiry recommends that the DIMIA executive ensure the preparation for staff of a checklist to be used as a minimum standards template for conducting identification

inquiries. The checklist should provide a menu of avenues of inquiry, specify a sequential order for investigations, be included as an attachment to the DIMIA Interim Instruction of Establishing Identity in the Field and in Detention, and form part of the personal investigation file. The DIMIA executive should also:

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

Recommendation 5.3

The Inquiry recommends that, as a matter of urgency, the Commonwealth Government take a leadership role with state and territory governments to develop a national missing persons policy to guide the development of an integrated, national missing persons database or capacity. Initial policy developments could be carried out under the guidance of the Australasian Police Minister's council, with the output submitted to governments for consideration and agreement.

Recommendation 5.4

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

Recommendation 5.5

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

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

Recommendation 5.6

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

Recommendation 5.7

The Inquiry recommends that DIMIA ensure that:

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

Recommendation 7.1

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

Recommendation 7.2

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

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

Recommendation 7.3

The Inquiry recommends that the Minister commission the Secretary of DIMIA to institute an independent professional review of the functions and operations of DIMIA's Border Control and Compliance Division and Unlawful Arrivals and Detention Division in order to identify arrangements and structures that will ensure the following:

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

Recommendation 7.4

The Inquiry recommends that DIMIA:

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

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

- Objectively determine the reasons and facts upon which a decision to detain is made

- Verify the validity of the grounds of 'reasonable suspicion' and the lawfulness of the detention
- Take immediate remedial action as necessary and report the circumstances of any unresolved matter to the Identity and Immigration Status Group.

Recommendation 8.3

The Inquiry recommends that DIMIA:

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