



**Australian Government**  
**Department of Immigration and Multicultural Affairs**

**Australian Corporate Lawyers Association**  
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**An overview of organisational change, and the provision of legal services,  
within the Department of Immigration and Multicultural Affairs**

**Andrew Metcalfe**  
**Secretary, Department of Immigration and Multicultural Affairs**

**Introduction**

In July it will be 12 months since Mick Palmer reported on his inquiry into the Cornelia Rau case. In the time since then there has been a lot of change in DIMA – short term wins, longer term development, structural change, an expanded SES, improved governance and an emphasis on planning for a DIMA which has a service ideology that integrates policy, programmes and delivery. There is much more to do – our focus is very much on the future. We are working very closely with our Minister and our Parliamentary Secretary in driving this reform and improvement programme. A renewed focus on our legal services is part of that agenda.

Today I want to share with you the key parts of this story because, while much of what we have done has been specifically about the way DIMA delivers its programmes, some of the issues will resonate with all of you. I will also seek to outline the important role of our legal services team in our process of reform and in supporting our programmes.

The Palmer Report, and the later Comrie Report on the Vivian Alvarez case together with other reports from the Ombudsman and the ANAO, shone a spotlight on areas where DIMA had clearly made mistakes.

The Palmer and Comrie reports both had concerns that certain areas of the department had an assumption-based, unquestioning culture. They pointed to a culture that was overly self-protective and defensive, a culture largely unwilling to challenge organisational norms or to engage in genuine self-criticism or analysis. But more broadly the reports raised issues beyond immigration compliance and detention: they focussed more generally on leadership, governance, training, systems support, the relationship between policy development and implementation, client service delivery and records management. These are issues which we all confront every day in each of our agencies.

## **Where have we come from?**

Change is a fact of life in any organisation, only the drivers and the speed it is implemented vary.

Before discussing the recent past, present and future I believe a little bit of history and context needs to be set. Immigration law has always been a dynamic, controversial and highly contested area of public policy. One of the first Acts of the Federal Parliament in 1901 was the Immigration Restriction Act. Immigration laws on “who constituted a constituent member of the Australian community” were a feature of constitutional litigation in the 1920s and remain so today. The application of the dictation test attracted much attention in the 1950s. The advent of the administrative law package in the late 1970’s put immigration policy and decision-making at the forefront of administrative law contestability leading, in part, to the explosion in litigation, especially in the refugee law area, in the 1980s which continues today.

The dynamism of the immigration law environment is reflected in the changes in the immigration legislation in the past 20 years. In 1986 the Migration Act was a slim volume of provisions predominantly dating back to the Act’s inception in 1958, with its principal operative provisions being simple discretions such as, “the Minister may grant visas and entry permits”. It is perhaps worth noting that the radical changes in immigration legislation which began in the late 1980’s were enacted, in part, in response to a number of critical external reports, which recommended the codification of immigration rules into legislative provisions.

Today’s legislation is very different.

Our Act now encompasses more than 550 provisions, more than 1900 pages of Regulations and 130 visa subclasses. The legislation regulates detention of unlawful non-citizens, the operation of our borders, offences in relation to facilitation of illegal entry, search and seizure of people and things, judicial review, merits review, procedural requirements, eligibility requirements, the actions of sponsors, removal and deportation and a plethora of other matters.

It is complex – reflecting the sophisticated policy and operational environment. It is large – representing real challenges for supporting staff in decision-making. And it is highly contested – reflecting the nature of the decisions involved affecting as they do the lives of individuals.

In 1986 our litigation cases were in double figures. In 2006 we will receive more than 3000 applications for AAT and judicial review.

In 1986 our Legal area consisted of two small sections. Now it is a division of around 150 people (most of them lawyers) handling 5000 litigation matters, providing more than 5000 pieces of legal advice, administering provision of legal services by a number of panel firms and barristers, of approximately \$45m each year. In 2005, 1100 amendments to the Migration Regulations were made and we administer, in addition to the Migration Act and Regulations, eight other pieces of portfolio legislation. Our legislative programme is extensive and often controversial, as illustrated recently by the Government’s T category Bill on Unauthorised arrivals. Our Legal area now also has oversight of our procurement and contract management processes.

Where we have come from is important. Our operating environment is volatile and dynamic. Electronic visa processing and moving much of the overseas visa application processing to our offices in Australia has changed the way we work. Large numbers of unauthorised boat arrivals from the late 1990s and the subsequent policy changes meant we have needed to be flexible and responsive. The legal framework needed to support these policy changes. It was perhaps in meeting those challenges that we let ourselves concentrate too much on crises and took our eye, in some key areas, off “business as usual”.

When an organisation exercises powers of deprivation of liberty, it is clearly essential that these powers are exercised properly, carefully and confidently by well trained, well supported, and well led staff. They must understand their decision-making powers and have access to clear guidelines. Similarly, where we contract out delivery of essential services, we need to ensure our purchasing and contract management arrangements work very well.

### **Who are we in DIMA?**

I want to talk for a moment about “business as usual”, effective corporate governance in DIMA, and the kind of organisation we are. It is the organisation our Legal area must support.

We are both a policy and a programme agency and a service delivery agency. Many services we deliver directly. However, much is outsourced. In terms of procurement, we are the second largest Commonwealth agency by number of contracts and fourth largest by dollar value.

Staff numbers are currently around 6000.

We have a presence in every State and Territory and in some of the most remote parts of Australia – about half of DIMA staff work in the State and Territory network.

Over 160 Australian based staff work with about 700 locally engaged staff in our overseas network, located in more than 60 countries.

The people who work in this wide network are our most valuable asset. They are rightly proud of the work we do in delivering the Government’s strong migration, citizenship, settlement and multicultural programmes. And in many of these programmes we are widely recognised as world leaders.

In many areas we are years ahead of other countries, which are only now introducing points based immigration systems. DIMA is recognised by the OECD as having an immigration system par excellence.

On a typical working day, DIMA will:

- receive more than 12,000 visa applications – that’s over 4.5 million per year;
- grant around 11,500 temporary visas and 500 permanent migrant visas, the latter including about 35 humanitarian visas;
- grant citizenship to around 375 people;
- handle nearly 7,000 calls to our general and citizenship enquiry lines;
- meet around 560 clients face-to-face at scheduled interviews;

- process more than 60,000 people across the border at air and sea ports – that’s around one person per second; and
- provide accommodation, meals, activities, health care and other services to around 750 immigration detainees.

These are just a few snapshots of the crucial role our staff perform all around the world, every day, for the benefit of the Australian community and our many direct clients.

### **Developing the change agenda**

The conundrum for me on my appointment to this job last July was to recognise this excellence and level of achievement, but at the same time to be clear to staff right across the department that Mick Palmer’s very significant and critical findings and recommendations were not just about isolated pockets of activity or one specific case. Mr Palmer talked about an organisation that was “process rich and outcomes poor”. Reform was clearly required across the organisation and I needed all staff to understand this and help me achieve the necessary changes and improvements.

As we all know, to be truly effective the change agenda needed to address the broader issues – around leadership and governance, staff training and support, developing a client service focus and better systems to allow these things to happen.

I also knew that there would be further scrutiny of the department’s past activities, so our response had to position DIMA for the high likelihood of further criticism. It had to be a comprehensive response, but one that is easily understood, both internally by my staff and externally by those who have a legitimate interest in DIMA.

### **The framework for change**

Implementing change within any business context needs very clear objectives and a simple framework, one that will stand the test of time and meet the needs of all our stakeholders.

We decided very early on that we needed to do three key things to meet the expectations placed on us. We needed to:

- develop and maintain an open and accountable culture;
- promote fair and reasonable dealings with clients; and
- ensure well trained and supported staff.

All of the work we have done since last July can be mapped to these strategic themes and our tagline – **people** our business. It’s a framework that is grounded in our three main stakeholder groups – the Government and wider community, our direct clients and our staff.

### **What’s in Palmer Plus?**

The Palmer Plus package comprises well over 60 separate initiatives split into those we made a commitment to achieve in the first 100 days effectively by the end of 2005 and initiatives that we would develop in that time and implement in 2006 and beyond.

The 100 day initiatives included a number of things I clearly needed to do. I needed to restructure our National Office to ensure that there were clearer lines of responsibility and

accountability. I needed to ensure that those areas which posed the highest levels of risk to organisational outcomes were restructured to provide more realistic spans of control.

One structural reform was the bringing together of our legal services into a single dedicated Legal Division under the control and direction of the newly created position of Chief Lawyer. Robyn Bicket, a lawyer from within DIMA with more than 17 years of experience in DIMA's business across national, state and overseas operations was appointed in December 2005 to the position. Working closely with the Chief Lawyer but providing us with a source of independent, expert advice is our Special Counsel, Ian Deane. The relationship between the Special Counsel and the Legal Division permits the Chief Lawyer to focus in particular on the management of our legal services and risks.

For years there had been virtually no external SES appointments to the department. Late last year, over 40 appointments, promotions and transfers were made to our SES ranks, including many from outside the department: there was the need to fill the existing positions that were substantially vacant and quite a few positions established in recognition of the huge agenda in front of us. External appointees brought with them new skills and perspectives to add to the experience within the department. This included new positions in the Legal Division.

Improved governance also needed to be a priority. We established an Executive Management Committee (EMC) which meets weekly and comprises myself, the deputy secretaries, and four key division heads – in strategic policy, national communications, finance and the Chief Lawyer. The EMC has a strong governance role around whole of department strategic planning and integration. The Corporate Leadership Group meets monthly and comprises the EMC members, all of our division heads plus all of our state and territory directors. This group discusses and agrees on key governance issues across DIMA's entire range of policy, programmes and service delivery.

An expanded Audit and Evaluation Committee, with an independent chairman and a second external member, is rigorously overseeing an enhanced internal audit programme. The audit programme is focusing on making sure that we are making decisions in line with our legislation and instructions.

I have also established a Values and Standards Committee which includes four external members – the Deputy Commonwealth Ombudsman, the Deputy Australian Public Service Commissioner and two community members. This committee is well placed to ensure that DIMA is meeting the expectations of the wider community.

The Chief Lawyer and her team are playing an important role in the revised governance framework, with the Legal Division represented on nearly all governance committees with the chief lawyer participating in no less than 12 at the current time.

These measures, and the strong commitment of the Minister, the Parliamentary Secretary and the DIMA senior executive, mean that we have already achieved much. But there is still very much more to do. 2006 is a year where we are consolidating the change agenda and implementing some of the major initiatives – those around case management, systems improvements through the *Systems for People* programme; staff training and the College of Immigration, improvements to detention infrastructure – things like the Baxter Plan; and service delivery to immigration detainees especially comprehensive health services. We also

have much work ahead of us to improve the client service focus and client service delivery options.

While many of these issues may be specifically relevant to us, I know that many are applicable in the wider sense to many other public sector agencies. These lessons we are learning in DIMA are lessons for us all.

### **The future – the new “DIMA Plan”**

There is a great deal of change underway. There is a very big business to run. We are re-engineering the way we do much of our work, and how we lead and govern the department.

We are taking all that, together with the ongoing feedback from staff, clients and other stakeholders as key inputs to developing a new corporate plan – the DIMA Plan.

Stripped of the business planning language, what the DIMA Plan covers is simple. What difference will we create (our purpose)? What we will value? How we will behave as leaders? What is our commitment to government? What are our priorities?

My SES officers are now discussing the draft Plan with their staff and will provide me with feedback so that the Plan can be finalised with broad agreement and ownership across the organisation.

We will then establish divisional business plans, and state and territory and overseas regional service delivery plans. All will come to EMC for discussion and endorsement. The Legal Division is as much a part of this as any policy or programme area.

This process will provide the clarity of goals that all staff need; allow us to flush out and resolve ambiguity, gaps or overlaps; and establish individual plans, making clear people’s responsibilities and accountabilities. We will then move into an annual planning cycle, with periodic and detailed reviews, to ensure ongoing effective performance management.

### **What role is the Legal area playing in this reform process?**

As I mentioned before, the Legal area has a tremendous amount of “business as usual” operations delivering services to the Government and department but it is also playing a critical role in our reform process.

I mentioned earlier the important role the Legal Division is playing in departmental governance.

The creation of the new Legal Division under the Chief Lawyer also provides me with a direct line of advice and management for the legal risks of the agency. It assists in ensuring that our legal services are integrated and managed appropriately and consistently with the Legal Services Directions. It will assist us to improve the client focus of the delivery of legal services and ensure that they are aligned with our strategic directions.

## **What are the challenges for Legal services in this environment?**

The reform process and the nature of our business present a number of challenges for us and in particular our Legal area in supporting our business.

Let me touch on just three today – the complexity of the legislation; contracting and procurement and governance of legal services.

### **Complex legislation**

One of the matters highlighted in both the Palmer and Comrie reports was the “process rich, outcomes poor” nature of aspects of our operations. The complexity of our legislation presents us with real challenges – it is one reason that one of our strategic themes is “well trained and supported staff”. Without adequate training, and decision support we cannot expect our 6000 staff in locations around the world to deliver fair, reasonable and lawful dealings with our clients.

Our Legal area has always played an important role in training and decision-support – providing as they have lawful decision-making training, a legal advice helpdesk for staff and as the central repository of our departmental instructions systems for Portfolio legislation.

This role is receiving renewed focus with the Legal Division playing a central part in developing and delivering training in response to Palmer and Comrie and developing curriculum for the new College of Immigration. As we move into a major revamp of our systems environment through the *Systems for People* programme, the Legal area will have a critical role in working with our IT and business areas to develop the new role-based portal approach and decision support tools for staff, including the redesign of our instructions and reference material.

The Legal Division has an important cultural role in helping the organisation to understand and administer our legal framework as well as supporting our client service aims.

Just because we hold a monopoly over the permission for foreign nationals to enter and stay in Australia doesn't mean we have to act like it.

Neither does our strong legislative framework mean that we shouldn't be fair and reasonable in our dealings with clients. Mr Palmer quite rightly criticised us for our focus on process, which meant we lost sight of the individuals who are at the heart of all our business.

I have been very keen to make sure staff in DIMA understand what it means to be fair and reasonable and how to apply it in every day work situations. It means providing clients with:

- accurate, consistent and relevant information about our products and processes;
- a clear view of next steps, remaining requirements and likely timeframes for finalising the matter at hand;
- options as to how they might contact us;
- timely resolution of their issues;
- helpful responses to their follow-up; and
- lawful, sensible decisions based on all of a client's circumstances, including special needs or exceptional circumstances.

Being fair and reasonable doesn't mean that the client will always achieve their desired outcome, but they should feel they were treated fairly, as should a reasonable member of the public if the circumstances were explained.

We will also renew our focus on our legislative framework with a view to looking for ways to redesign our business so that opportunities to rationalise or simplify the legal framework can be achieved. However, this will always present us with tensions. There are areas of our operations which almost inevitably will require greater legislative regulation, such as our detention environment, and there will always be unexpected situations, to which we will need to respond consistently with the Government's priorities.

### **Procurement and Contract management**

The Palmer and Comrie Reports, recent ANAO and other reports have highlighted deficiencies in our procurement and contract management arrangements.

One of the structural reforms we made with the creation of the Legal Division was to bring our contract and procurement advice area into that division. This was done to strengthen our legal support for that function and to pursue reforms of our oversight and governance framework for procurement. That small unit is being expanded to create a centre of excellence within the department to support our devolved contracting environment. The Legal Coordination and Procurement Branch is implementing a revised contract and procurement framework recently endorsed by the Executive Management Committee, which will see a range of measures implemented including:

- establishment of a Procurement Oversight Committee chaired by the Chief Lawyer or an independent person to provide governance oversight of strategic procurements;
- the application of a gateway review assurance model to strategic procurements;
- establishment of a procurement reference group within the agency to support best practice development across the agency; and
- enhanced training, guidance and IT services to support procurement and contract management processes.

We have been consulting widely amongst other agencies and with ANAO to draw upon best practice and experience. We have been very grateful for the input to this process from other departments and ANAO, which has been most valuable.

The detention services tender process we are embarking on will be the first application of the revised arrangements.

### **Governance of Legal services**

One reason I created the new Legal Division with the Chief Lawyer position was to provide a clear line of service and accountability for legal services. The Chief Lawyer has a direct line of reporting to me, whilst being part of our client services group under the relevant deputy secretary. I believe as we bed these arrangements down it will help us bring greater coherence and accountability to the provision of legal services and avoid the risk associated with a proliferation of legal service avenues through a single source of advice and oversight.

Our legal services have been well managed and I believe our panel arrangements in relation to litigation services are in many respects best practice. But we can always seek to improve.

Certainly we are already examining the implications of the ANAO best practice guide on legal services, which will be issued shortly, to see how we can improve and we will be reaching out to other agencies to learn from them as well.

A key direction in improving our legal service will be a client service focus – both in terms of supporting our strategic theme of fair, reasonable and lawful dealings with clients but most importantly in providing services to our internal clients, including our Minister, myself and business areas. A well-managed, professional and client focused Legal area is, I believe, critical to our aims of being an open and accountable organisation with well-trained and supported staff.

The Chief Lawyer is working with her team to develop a framework of Chief Executives Instructions on legal services as part of a range of approaches to ensure that:

- the governance arrangements for legal services are well understood and followed;
- the services available are accessed and client focused; and
- the lawyers can fulfil their critical oversight and assurance role.

### **In summary**

When I arrived as Secretary of the Department on 18 July last year, I didn't have a blueprint for change in my briefcase. I couldn't have told you then where we would be on 2 June 2006, but I did have a sense of the course we needed to chart.

It was important to recognise the best of DIMA, while acknowledging the grave mistakes that had been made.

I believe that the events of the last year – the damning reports we have received mean that we are very conscious of our faults. We're now addressing them – we have a strong improvement programme. That is cause for some pride. If we are going to continue to deliver on the strong policies and programmes that the Government has set for us, we cannot afford to be down on ourselves all of the time.

There is more criticism to come. The Ombudsman has only reported on one of the 200 or so additional cases that have been referred to him. We have also had reports from the ANAO, from the Joint Parliamentary Committee on Migration, and the Australian Transport Safety Board that criticise many aspects of our operations. These ongoing reports about our mistakes can be a serious dampener on staff morale and our wider image. Thus, one of the key objectives we have been working towards is to be in a position to respond positively to these reports and their recommendations. In many cases, we can now say "we already have an answer, which is being implemented, for the problems you have identified".

### **Wider Implications**

The implications for the wider Australian Public Service – for each of us here in this room – are broad.

We can never be complacent about the way our organisations operate – there is always room to improve.

While we respond to crises or unanticipated events we cannot afford to lose sight of the bigger legislative picture and impact changes will make on other parts of the framework.

We need to make sure our staff are given all of the skills and support they need to do their jobs properly – to get the best out of our teams. This means that support areas of the department, such as legal services, must be closely linked in to planning processes.

We need to make sure we have systems which are robust, aligned with our business processes and able to respond to change.

We can't forget the basics, like records management, strong financial management, including sound contracting and procurement practices, and refresher training.

Good governance is critical to managing and controlling the business effectively.

We should constantly question our assumptions self assessment and change are the key signs of a healthy organisation.

Finally, we must talk, we must listen, including to our lawyers, we must think. We must keep things in perspective; we must – always – stay positive and committed.

Thank you.