



Australian Government
Department of Immigration and Citizenship

Speaking notes
‘Immigration referred cases: lessons for government’
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Introduction

I’m very pleased to be here with the Commonwealth and Immigration Ombudsman to consider the lessons learned from the 247 cases referred to him in 2005 and 2006, and the implications of these for my department and for the public sector as a whole.

Firstly, can I congratulate John and his office on celebrating thirty years last month of effective service to the government, the parliament and the community. This anniversary is a reminder that the accountability mechanisms in the Commonwealth public sector — such as the Ombudsman, the Australian Law Reform Commission and the Freedom of Information Act — have not all been in place since Federation. We might think of accountability as unchanging, whereas it is very much evolving along with every other public sector activity. Having said that, the office of the Ombudsman is clearly here to stay, having proven its effectiveness over thirty years.

Secondly, I commend the IPAA for hosting and organising this forum in conjunction with the Ombudsman’s office. The events we are speaking about today were a watershed for my organisation and for the public sector as a whole, and we should take every opportunity to promote the lessons learned to a wider audience.

The environment leading to the 247 referred cases

I need to preface my remarks today by acknowledging the clear and substantial mistakes made in the past by the then Department of Immigration, Multicultural and Indigenous Affairs. These mistakes were most significant for Cornelia Rau and Vivian Alvarez, but have also had serious impacts on a large number of the people represented in the other cases we are considering today.

While we can’t undo those errors, I want to remind everyone that I and my predecessor have apologised fully and frankly for those mistakes, as well as making other reparations, with more to be done. We have also worked closely with the Ombudsman and his office over the past two years to ensure appropriate changes are made to our systems and processes.

At this distance of some two years since the Palmer and Comrie reports, the temptation might be to consign those grave mistakes made to the history books and put them out of mind.

However, as George Santayana reportedly said: 'Those who cannot remember the past are condemned to repeat it.'

If we are to avoid repeating the past mistakes and avoid making similar mistakes in the future, we need to understand what occurred and why.

We should recognise the department had been operating at a high pace for a very long time.

And there were a number of significant external shocks and unexpected events, which diverted the resources and attention of senior managers and had effectively put the organisation into crisis mode.

For instance, there were substantial operations such as the evacuation of the Kosovars, and the ongoing issues around East Timor including the successful processing of the people given safe haven.

Then there was the complex work around unauthorised arrivals and detention which culminated in the arrival of the Tampa in 2001, but then continued into the development of the offshore processing strategy.

And at the same time, the 'business as usual' scenario included changes such as the introduction of electronic visa processing which moved much of the visa application processing from the overseas posts to our offices in Australia.

The department was also managing steadily increasing numbers in some of our visa programmes.

It was in meeting these challenges that senior managers probably concentrated too much on the crises and took their eye off some key areas. There was also a 'can-do' culture to be responsive to government which meant that as the crises continued, managers focussed on these issues at the expense of comprehensive and effective management oversight of the whole organisation.

Further, the department clearly had an inward-looking culture, which Mr Mick Palmer AO commented on in his report on the detention of Cornelia Rau. For instance there had been virtually no outside appointments to the ranks of the Senior Executive Service for many years. The management and staff culture was also inconsistent across the wide range of programmes the department delivered and our 80 or so locations in Australia and around the globe.

We went wrong in not realising that unless we define and constantly reinforce appropriate behaviour and values for our staff, there is the possibility that staff will develop their own value set, especially if they have unusually demanding or confronting work.

For instance, many of the roles in the compliance and detention functions are very personally and emotionally demanding, especially where clients exhibit difficult or confronting behaviour. For anyone who has watched the programme 'Border Security' on television recently, this provides a glimpse into the difficulty of this work. In earlier times, our staff in these areas were not getting the guidance on values and personal support needed to undertake this work appropriately and manage the emotional demands of their job.

We should also note the extraordinary complexity of some of the decision-making required by my officers. The High Court judgement late last year in *Nystrom v Minister for Immigration and Multicultural Affairs* provides a glimpse of some of the complex issues, concepts and legislation my officers are often required to administer. The court commented on the 'tortuous legislative history' and the evolution of the legislation we administer.

As the Ombudsman notes, the challenge for agencies is to manage the complexities of the current legal environment.

In considering these issues, we should also recognise that there were many areas of administration in which the department was performing well and indeed, was a world leader in some instances. These included our settlement programmes, our border technology systems such as the electronic visa and the Advanced Passenger Processing systems, and our broader planned migration and humanitarian visa programmes.

The department's response

In terms of the lessons learned and our response in the department, I want to endorse everything the Ombudsman has said to you today.

Since my appointment as secretary in July 2005, we have initiated an extensive business and cultural transformation which has touched every aspect of our operations and our people.

As a consequence of our reforms, we actively apply the 10 lessons outlined by the Ombudsman in our day to day business operations.

And as I set out recently in a speech to the Australian New Zealand School of Government, a central focus of the department's reform program has been to ensure that the department's coercive powers are always exercised lawfully and appropriately.

Another focus of this work has been to establish a strong and consistent culture among our 7000 staff, across our 80 offices around Australia and the globe.

Wherever our staff work and whatever they are doing, we expect them to adhere to our three strategic themes of:

- being an open and accountable organisation
- having fair and reasonable dealings with clients, and
- ensuring we have well-trained and supported staff.

To support this culture, we have identified the DIAC-specific values we will work to — which build on the Australian Public Service values. These are teamwork, service excellence, respect, openness and commitment. We have also specified the leadership behaviours we expect of our managers:

- provide vision and meaningful direction
- operate consistently with our values
- communicate constantly and meaningfully
- create the environment for success
- function as team players, and
- persist to achieve good outcomes.

We have also rolled out programmes to establish a consistent culture and improve the way we work, most notably the College of Immigration, and other training packages on ethical decision-making and leadership.

And I communicate frequently on these matters to my staff.

On the business side, we have programmes rolling out such as our *Systems for People* programme to enable our IT to support our business and better outcomes, extensive policy guidance, the Client Service Improvement Programme, the introduction of case managers for clients with complex circumstances or who are vulnerable, and improved accommodation and health services for detainees.

We also maintain a continuing commitment to critical self-appraisal and review, with internal governance, complaints handling and review processes now in place — including processes for monitoring the implementation of the Ombudsman's recommendation on the 247 referred cases. We have a substantially strengthened internal audit programme chaired by an independent member.

And we have introduced new approaches and expanded programmes in supporting areas such as in planning our business, stakeholder engagement, quality assurance and risk management.

I don't have time to go into further detail on these reforms today, and I encourage anyone with an interest to follow up by speaking to me afterwards or looking at our website. In particular, some of our key achievements over the past two years are set out in an information kit called '*Palmer Report: Two Years of Progress*' which we released recently and is on our website. And our *DIAC Plan 2007-08* sets out what we will do and how we will work over the coming year.

I emphasise that no aspect of the department's operations or people has been untouched in the transformation process we have driven over the past two years. It has not been about change for change's sake but an integrated approach which reflects our aim to be a high-performing organisation, providing excellent client service and being an employer of choice.

All of these initiatives, in one way or another, relate back to the 10 lessons that John McMillan has identified.

Before concluding, I would like to mention that as a member of the Administrative Review Council, I will be participating in the launch this Friday of five guides covering:

- making lawful decisions
- making fair decisions
- fact-finding
- statements of reasons, and
- accountability for decisions.

In recognition of the project's merit and importance, my department has contributed significant resources to the development of these publications and seconded an officer to work with the Council in preparing both the generic guides and a tailored version of the guides that is specifically relevant to DIAC decision-makers.

We anticipate that the DIAC-annotated guides will be a valuable training tool for DIAC officers in our service delivery network around Australia and overseas, who are regularly called upon to make complex decisions in a pressured and time-critical environment.

Conclusion

Ladies and gentlemen,

The Ombudsman identified 10 lessons, but I believe there is one more.

I believe the 11th lesson that we can learn from these cases is about culture and values. We can have the most perfect systems and processes in place but they will not be effective unless we also have a strong set of values in place, which is consistent across an organisation's roles and locations. We have identified, in addition to the APS values, core business values for DIAC of teamwork, service excellence, respect, openness and commitment.

This need was highlighted in the removal from Australia of Vivian Alvarez. As concluded by Neil Comrie in his report, two officers at the Executive Level 1 in Canberra and Brisbane knew Ms Alvarez was an Australian citizen and did not act on that information. The only explanation I can offer for this serious oversight is a failing in the culture in their workplace — with a can-do, assumption based culture in place instead.

I recently addressed my department's twice-yearly dialogue with non-government organisations on humanitarian issues, where I explained the focus my department has now adopted in the case-management of our most vulnerable clients. Whether these clients are interacting with our refugee and humanitarian settlement, border security, protection, detention or compliance programmes or charting a path through a number of these, case managers can follow them from one programme to another, always applying consistent approaches and values in terms of being fair and reasonable.

I also explained that our strategic theme of being fair and reasonable relates to attitude and judgement, as well as process. And that I have asked all my staff to apply a simple test and always ask themselves whether their next proposed action is the decent thing to do.

Last week I received an email from a senior lawyer who heads a non-for-profit immigration casework service. His clients are frequently applicants for refugee status or have other complex visa issues. His email read:

‘...I had cause to be at compliance in Casselden Place (Melbourne) for some time today and observed consistently excellent dealings by departmental officers with clients. What was particularly noteworthy was the way in which people were consistently treated respectfully, humanely, and fairly, and that information was imparted very clearly and with common sense.’

If there is a single lesson that I would offer to the broader public sector from the cases investigated in the Ombudsman's reports, it is that good process and procedure needs to be complemented with a strong organisational culture and value set — constantly reinforced — in which all staff seek to ensure fair and reasonable dealings with clients.