

## **Response to Recommendations in *Report into Referred Immigration Cases – Mr G***

**Recommendation 1:** DIMA should issue an instruction to provide guidance to police officers and DIMA officers on the exercise by police of the power conferred by s 189 of the Migration Act. The instruction should state that a DIMA officer must be contacted before a person is detained under s 189, unless there are exceptional circumstances. Either before a person is detained by a police officer under s 189, or as soon as practicable thereafter, a DIMA officer should speak to the person and document the conversation. The instruction should provide guidance on what might constitute an exceptional circumstance to warrant a departure from this practice.

**DIMA's response:** *Agreed in principle*

Section 5(1) of the *Migration Act* 1958 defines officer, for the purposes of the Act, to include “a member of the Australian Federal Police or of the police force of a State or an internal Territory”. This recognises the important role that the large number of state and federal police dispersed throughout Australia play in assisting with border security and compliance under the Act. The obligation outlined under s 189 - to detain a person if an officer knows or reasonably suspects that a person is an unlawful non-citizen - therefore applies equally to departmental and police officers.

The department is strongly focussed on providing police officers all possible support when exercising powers under s 189 and is working closely with police to achieve this, including engaging with police at senior level, through the Australasian Police Ministers' Council Senior Officers' Group, regarding police involvement in compliance operational activities. This work is designed to assure both the department and police that detention powers are appropriately used and to support police through nationally consistent education and through the 24/7 Immigration Status Service (ISS). The ISS, which is now operational nationally, provides police with real-time advice on the immigration status of persons considered to be of interest to DIMA. ISS procedures are being progressively reviewed in the light of operational experience and DIMA's continued liaison with police. In this context the department is focussing on the guidance it will provide in order to encourage police to consult with DIMA before a decision to detain under s189 is made, and the circumstances in which prior contact may not be practicable.

In providing the response, I note that police officers have been ‘officers’ under the Act since it commenced operation in 1958. This recognises the integral role that the large number of state and federal police dispersed throughout Australia play in border security and immigration compliance. Unlike DIMA staff, federal and state police officers report to the relevant State or Federal Police Commissioner. While DIMA can issue instructions to DIMA staff and implement quality assurance procedures to ensure compliance, it is not a role that DIMA has in relation to state and federal police officers. Accordingly, it would be a matter for Government to consider whether DIMA's role in relation to federal and state police officers could be altered in the way envisaged by this recommendation.

**Recommendation 2:** In light of the serious problems exposed by this investigation concerning the administration of s 34, DIMA should ensure that:

- compliance officers are properly trained about the Absorbed Person visa under s 34 of the *Migration Act 1958* and that they have access to a specialist advice service concerning Absorbed Person visas
- compliance officers are trained about the implications of s 34 for detention under s189 of the Act
- Migration Series Instruction 116 is reviewed and revised in a manner that affords practical assistance and guidance to compliance officers, including appropriate checklists and pro-forma documentation
- All Absorbed Person visa assessments are comprehensively recorded and evidenced.

***DIMA's response: Agreed – implementation underway***

#### Instruction and advice about absorbed person visas

The College of Immigration, which provides training for immigration compliance officers, commenced its pilot course on 3 July 2006. It will further the knowledge and skills of compliance officers to enable them to better understand and exercise the powers available under the *Migration Act 1958*. The training will also improve consistency in our practices and procedures, and in the way decisions are undertaken.

The course provides a framework for understanding the visa system under the *Migration Act 1958*, which includes the absorbed person visa. Guidance is also provided on assistance available to officers including the Legal Opinions Helpdesk, which provides specialist advice about absorbed person visas. In addition to this, the department established an Enhanced Compliance Helpdesk in December 2005 as a national, centralised contact point developed specifically to provide compliance officers with consistent and timely advice on issues they face day-to-day, including queries about specific visas.

#### Review of MSI 116: Absorbed person visas

The department is reviewing Migration Series Instructions (MSIs) consistent with the Rau Inquiry recommendation 7.2, and the policy guidance contained in MSI 116 is also being reviewed and revised to afford practical assistance and guidance about absorbed person visas.

As advised in the department's response to Mr T, the manner in which departmental instructions are accessed by DIMA officers is under review. It is proposed that policy and procedural guidance will be integrated into *Systems for People*. This will provide compliance officers with greater practical assistance through on-line access to departmental instructions, checklists, policies and legislation that are most relevant to the case.

#### Recording and evidencing absorbed person visas

*Systems for People* will also provide a single client view that includes visa status and highlighted circumstances, such as absorbed person status. This new system will provide for the recording of reasons for decisions and the evidence or information relied upon to reach that decision.

The department has, through its partnership with the National Archives of Australia (NAA), developed a records management improvement programme. In line with the NAA's recommendations, the department has upgraded its records management systems, a process that was completed in early July 2006. These initiatives will be further supported through records management that recognises the importance of:

- recording the extent of an officer's individual responsibility for decisions taken and their role in that decision;
- evidencing transactions; and
- explaining the decision or action that could be questioned in many years from now.

Awareness campaigns, training and quality assurance programs will assist in achieving good records management practices.

**Recommendation 3:** DIMA should ensure that all officers:

- are trained to pursue relevant information from all available sources
- are accurately informed of the terms of the *Privacy Act 1988*
- document and appropriately disseminate all relevant information about detainees which comes to their attention, regardless of their role within DIMA and the source of that information.

***DIMA's response:*** *Agreed – implementation underway*

Pursuit of information from all available sources

The department has already taken steps forward to address this issue with the introduction of MSI 409: *Establishing identity – in the field and in detention* which came into effect on 20 December 2005. That instruction, together with MSI 411: *Establishing immigration status - in the field and in detention*, advises that officers should take all reasonable steps to obtain information relevant to identifying clients and their immigration status. MSI 409 includes a list of potential sources of further information.

The advice provided in both instructions is supported by comprehensive training units on Information Collection, Information Sources and Effective Searching of DIMA Systems provided in the department's recently commenced College of Immigration.

Detention Review Managers (DRM), located at each State and Territory Office, review the circumstances where it has been decided by the department that a person should be placed in detention. The DRMs then undertake ongoing reviews of all information gathered. This ensures that the reasonable suspicion which led to a person being detained under s 189 was present at the time of their detention, and that thereafter the person is held in detention only for as long as this reasonable suspicion continues to exist or their migration status is resolved.

In December 2005 the department issued instructions to compliance staff to provide additional guidance on the interviewing of unlawful non-citizens following their

location and subsequent detention. It contains instructions that all information obtained during the interview that provided clues to resolving the person's identity and/or migration status be followed up.

To ensure that all cases involving identity issues are referred to the National Identity Verification and Advice team (NIVA) in accordance with departmental instructions, training has been provided to over 300 operational staff around Australia. In recent months, follow-up training was provided to reinforce the key messages, and to emphasise the importance of implementing the escalation and referral mechanisms managed by NIVA.

In recognition of the need to quickly and accurately identify individuals, all specialist identity management resources, including NIVA, were co-located into the Identity Branch on 1 July 2006.

Officers accurately informed about terms of *Privacy Act 1988*

The department agrees that the *Privacy Act 1988* does not prevent it from following-up on leads and pursuing available sources of information to assist in determining a person's immigration status.

Our current induction training addresses staff obligations under the *Privacy Act 1988*. More detailed information regarding the terms of the *Privacy Act 1988* will be provided to all officers through the national Privacy Training Strategy, due for commencement in October 2006. Privacy training is also part of the curriculum for compliance officers attending the College of Immigration.

In addition, the department has recently entered into a Memorandum of Understanding (MoU) with the Office of the Privacy Commissioner. As part of the work being undertaken by the Office of the Privacy Commissioner under the MoU they will be commenting on the department's training material. These comments will help the department to ensure the accuracy of the material in relation to privacy issues and assist the department in ensuring the training material meets both our obligations and operational requirements.

Document and disseminate all relevant information about detainees

As discussed above, the department has introduced procedures to ensure that information about detainees is followed-up on and escalated where appropriate.

The department is also in the process of implementing its major *Systems for People* initiative to integrate a single system view of all clients' records. This will include all available information needed for DIMA officers to make reliable and accurate decisions. This consolidated view of a person's records is expected to be in place in April 2007.

**Recommendation 4:** As discussed in previous reports, DIMA should conduct comprehensive training for staff that addresses the following issues:

- the recognition of mental illness
- the implications of mental illness for DIMA compliance and detention activity

- legal issues arising from a person’s lack of mental capacity
- steps that should be taken by compliance officers where they suspect that someone may lack the ability to understand the nature and effect of any documentation or processes for which their consent is required.

***DIMA’s response:***    *Agreed – implementation underway*

It is agreed that additional training and an increased awareness about mental health issues will assist with recognition of the implications of interviewing or detaining a person with a mental illness. Accordingly, DIMA is focused on providing a significantly increased level of support to compliance and detention staff through the College of Immigration.

In conjunction with the development of the curriculum, the National Training Branch of DIMA has established a Panel of Learning & Development Service Providers, including those with experience and capability in developing training in the recognition of mental illness. Proposals from appropriate training providers on the DIMA Learning & Development Service Provider Panel will be requested to develop and deliver this training, which will include scenarios that will assess officers’ ability to recognise mental illness and respond quickly and appropriately.

Practice Management Groups have been established to implement nationally consistent best practice and quality assurance measures in compliance processes both prior to and after detention. These groups will address procedures that should be taken by compliance officers where a person’s ability to understand or provide informed consent may be impeded.

**Recommendation 5:** DIMA should ensure that officers who conduct interviews in the course of their work:

- take detailed notes or make a consensual recording of the interview, taking care to note the date, time and duration of any interview
- have the record of interview endorsed as an accurate record by the interviewee and provide a copy to that person
- are cognisant of, and comply with, the requirements of the *Migration Act 1958* and the relevant Migrant Series Instructions
- are trained in investigative interviewing techniques
- are instructed in the role of interpreters and techniques for effectively working with interpreters
- are informed of, or have access to and consider, relevant information that is already in DIMA’s possession before commencing an interview
- are mindful of the health and capacity of the interviewee before commencing an interview.

***DIMA’s response:***    *Agreed – implementation underway*

Existing administrative instructions on detention procedures, and further instructions currently being drafted, require officers to make detailed records of interview, to have them endorsed as accurate by the interviewee, and provide the interviewee with a copy of the interview record. Officers are also required to take account of all relevant available information about the interviewee before conducting the interview. These processes are all reinforced in training modules in the College of Immigration Program.

A significant component of the training and instruction provided by DIMA's College of Immigration will also focus on skills in preparing and conducting interviews, and awareness of the roles of interpreters and translators. This will be supplemented with client interview formats and procedures. Quality assurance mechanisms will be implemented to monitor compliance.

As indicated in the department's response to recommendation 7 in the report on Mr T, the College of Immigration will also include practical instruction on the difference between interpreters and translators, and of the importance of using accredited individuals.

As mentioned in the department's response to recommendation 4, training will increase officers' sensitivity to mental health issues in their general management of both pre and post-detention processes. Practice Management Groups will also be addressing the issue of procedures for dealing with clients with mental health issues. These steps will ensure DIMA's processes are both open and accountable.

**Recommendation 6:** DIMA should instruct its staff in the potential value of information held by the detention services contractor and medical subcontractors. Information deficiencies about a person in detention should be flagged for the attention of the detention services provider.

***DIMA's response:*** *Agreed – implementation underway*

The department recognises that both recommendations 3 and 6 emphasise the importance of officers acting upon information relevant to a person's circumstances, no matter the source. The continuing role of Detention Review Managers, along with the Case Management Framework, provides the impetus for gathering and analysing information at the earliest opportunity, with the objective of ensuring quicker resolution of immigration status. In February 2006, case managers were given access to the Immigration Services Information System (ISIS), which is the detention services contractor and medical subcontractor's core business system for recording client information.

The establishment of the Detention Health Branch within the Detention Services Division has also led to an improved operational liaison process between the health and psychological service provider and DIMA. This has resulted in better communication processes and provision of detainee care.

In April 2007, ISIS will be incrementally replaced by *Systems for People*. Existing ISIS data and records will be integrated into the new system and will be accessible to

appropriate staff from DIMA, detention service providers and medical subcontractors through the *Systems for People* Case Management portal and Detention Services portal. These will allow appropriate staff in DIMA, the detention service providers and medical subcontractors to access all relevant data relating to detainees (including paper records that have been digitised) and to share information. The Case Management portal will be operational in April 2007, and the Detention Services portal in mid-2007, before the beginning of the new detention services contract. As a result of the consolidated view of a client's records that will be available through these computer portals, officers will have immediate access to information recorded by the detention services provider, and any deficiencies will be more readily apparent to officers of both the department and detention service provider.

**Recommendation 7:** DIMA should take steps to ensure that the ICSE system enables the entry of accurate immigration status information. The ICSE system should be capable of clearly indicating the correct visa type and duration of any such visa. Until such time as the immigration status information in ICSE can be relied upon, DIMA should issue an instruction in which officers are directed to examine and consider all relevant fields in ICSE and not simply rely upon the immigration status information contained in the client details screen.

***DIMA's response:*** *Agreed – implementation underway*

Under *Systems for People*, data quality will be improved so that the occurrence of multiple Personal Identifiers and opportunities for data entry error are minimised and capture of quality data is increased. This will include alerts that will draw an officer's attention to special circumstances such as absorbed person status.

In the interim, instructions regarding the checking of a person's immigration status are set out in MSI 411: *Establishing immigration status – in the field and in detention* which came into effect on 20 December 2005. The instruction directs officers to carry out checks of relevant departmental systems to confirm a person's claimed immigration status and to be aware that:

- departmental systems may be inaccurate or not up to date;
- some people may require special consideration because they are members of a class of people affected by certain court decisions;
- even where departmental systems appear to show that a non-citizen does not have a visa, an officer may have information about a particular case or other knowledge that would make it unreasonable for the officer to suspect that the person is an unlawful non-citizen; and
- if a person claims to be lawfully in Australia, but the departmental systems show otherwise, officers should conduct all reasonable systems checks and, where practicable, arrange for the person's client file to be checked.

The recently commenced College of Immigration includes training relating to advanced interrogation of DIMA systems.

**Recommendation 8:** DIMA should develop a policy for informing its staff and the East Timorese community about the circumstances surrounding the arrival and current status of East Timorese refugees who arrived in Australia in 1975.

**DIMA's response:** *Agreed - implementation underway*

The department agrees that it should inform the East Timorese community and DIMA staff about the circumstances surrounding the arrival of East Timorese evacuees in 1975 and is in the process of doing so.

There are a number of measures and processes that can contribute to achieving these outcomes. The department has made contact with leaders of the East Timorese community to inform them of the circumstances surrounding the 1975 arrival. The ongoing communication channels established through this process enables members of the community who might consider themselves affected to make contact with the department to clarify their situation. In devising this strategy, the department has considered its record-keeping in relation to the 1975 East Timorese evacuation.

**Recommendation 9:** DIMA should take all necessary steps to initiate remedial action to redress the detention of Mr G. This action should include consideration of whether he qualifies under the Commonwealth Compensation for Detriment Caused by Defective Administration (CDDA) scheme, for an act of grace payment, an ex gratia payment, under legal liability principles, and under the Reconnecting People Assistance Package.

**DIMA's response:** *Agreed - implementation underway*

On 21 December 2005, the department corrected Mr G's records in ICSE to reflect his lawful status.

The department has delivered a letter of apology and advised Mr G, through his representative, about possible remedies. We have initiated discussion with his representative about fair and reasonable remedies for Mr G.