QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(201) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

Many experts share the opinion expressed by psychiatrist Dr Jureidini that "the Baxter environment itself was a primary cause of mental illness" (Finn 237). Does the department acknowledge that detention centres are making detainees, particularly long-term detainees, mentally ill?

Answer:

Many factors impact on the mental health of individuals such as their prior history, cultural issues, change in family dynamics and uncertainty regarding the future. As such, mental health issues affect people from all walks of life, living in a variety of circumstances.

The Department acknowledges that some detainees experience difficulties in immigration detention. However, it should be remembered that some immigration detainees arrive in Australia having experienced several risk factors to mental health, including traumatic events in their country of origin and on their dangerous journeys to Australia.

Clearly, institutionalised living in an immigration detention facility and uncertainty about visa status presents challenges for immigration detainees. However, immigration detention is not the only institutionalised place of care in Australia. For example there are hospitals, nursing homes, prisons, boarding schools and military camps and many Australians live with a high level of uncertainty (for example health concerns, or job insecurity). Moreover, the unauthorised boat arrivals remaining in immigration detention have generally been found not to be refugees by the Department and a review tribunal and it is arguable that the uncertainty could have ended for most of these detainees if they accepted these decisions and cooperated in their return to their country of origin.

The Department and the Detention Services Provider (DSP) seek to ensure that wherever possible, the effects of risk factors to mental health are minimised and protective factors are maximised. In this context on entering immigration detention detainees undergo a broad mental health screen to determine both their mental state and where necessary, need to continuing care.

The Department is working to improve mental health services to immigration detainees and is involved in ongoing negotiations with the DSP to look at ways to enhance the existing arrangements for mental health care in immigration detention facilities.

On 25 May 2005, the Minister announced enhancements to health care services at Baxter IDF with more frequent visiting of a psychiatrist and the establishment of 2 new psychiatric nursing positions to achieve seven day coverage and on-call arrangements at night.

In addition, the Department is implementing procedural changes and service delivery enhancements flowing from the decision, improved access to care outside detention facilities and is reviewing monitoring and oversight arrangements for health care services.

The Department is also accessing further specialist medical expertise to assist in these processes

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(202) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

The Minister, Senator Vanstone, was quoted in the Australian Financial Review on 11 May 2005 as saying: "I'm not aware that any consideration has been given to legislating away anyone's rights like this" in response to a question whether the Commonwealth government would legislate to remove detainees' rights to compensation when it takes control of the Senate in July 2005.

(a) Can the Minister provide a guarantee that the Commonwealth will not legislate to diminish the rights of a person (regardless of visa status) to sue the Commonwealth and/or any other person for damages in respect of personal injuries suffered in immigration detention?

(b) Can the Minister guarantee to applicants for a substantive Australian visa that taking legal action in relation to personal injuries suffered in immigration detention will have no negative repercussions upon the Department's assessment of their application for a substantive visa?

Answer:

(a) This is a matter of Government policy and the Department is therefore not in a position to comment.

(b) All visa applications will be assessed on their merits according to legal requirements.

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(203) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

(1) How many immigration detainees have been held in state prisons or other correctional facilities over the past five years? Provide a breakdown by prison or facility.

(2) Does DIMIA pay state correctional bodies for holding immigration detainees in their facilities? If so, how much per detainee per day? How much has been paid since 2000?

(3) Does DIMIA monitor conditions in prisons where immigration detainees are being held? If so, how? If not, why not?

(4) What is the longest period that an immigration detainee has spent in state correction facilities? Provide details of these facilities and the length of time in each facility

Answer:

1. This table provides the number of immigration detainees held in correctional facilities between 1 July 2000 and 27 May 2005.

STATE	NUMBER OF DETAINEES
ACT BELCONNEN REMAND CENTRE	4
NSW CORRECTIONAL FACILITIES	136
NT CORRECTIONAL FACILITIES	429
QLD CORRECTIONAL FACILITIES	923
SA CORRECTIONAL FACILITIES	272
TAS CORRECTIONAL FACILITIES	22
VIC CORRECTIONAL FACILITIES	69
WA CORRECTIONAL FACILITIES	405
TOTAL	**2260**

2. Yes, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) pays state correctional bodies for holding immigration detainees in their facilities, but only where no custodial sentence is being served at the same time.

Current rates are as listed below.

New South Wales	$181.60 per day
Victoria	$176.80 per day
Queensland	$95 per day
South Australia	$265.48 per day
Western Australia	$253 per day
Northern Territory	rates vary between $140.69 and $546.54 per day depending on the facility
Tasmania	$162.86 per day
Australian Capital Territory	$308 per day

$15.64 million has been paid for the period 1 July 2000 – 27 May 2005.

3. All immigration detainees taken into or transferred to a correctional facility are visited by DIMIA as soon as possible and in any case within 48 hours.

DIMIA officers contact the relevant State or Territory correctional facility where possible in person, but if not, by phone every three to five days to ascertain the general welfare of the detainee. This includes, wherever possible, contact with the detainee in person or by phone.

In addition to the initial and any subsequent visits, within 28 days of the date of initial transfer, a DIMIA officer visits the detainee in person and undertakes a formal, documented review of the detainee's placement at the correctional facility.

4. According to DIMIA records the longest time spent by a person in a state correction facility while in immigration detention is 2468 days from 22 December 1994 to 24 September 2001 at Fremantle and Albany Prisons in Western Australia. The person was taken into criminal custody on 29 April 1994 after receiving a four to nine year prison sentence for the production of drugs. He was taken into immigration detention on 22 December 1994 under section 253 of the *Migration Act 1958* which provides for the deportation of criminals while he was still serving his custodial sentence.

He completed his custodial sentence on 4 December 1998 after which he remained in prison in immigration detention while deportation was pursued. He was released from immigration detention when the deportation order was overturned at the Administrative Appeals Tribunal on 24 September 2001. He was effectively held solely in immigration detention from 4 December 1998 until 24 September 2001.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(204) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

(1) (a) Has DIMIA ever requested a psychiatric assessment of a suspected unlawful person in order to ascertain the veracity of their claim to be an unlawful immigrant? (b) On how many occasions since 2000 has this occurred? (c) On how many of these occasions has the person been found to have mental illness? (d) If or when DIMIA finds out that a suspected unlawful person has a mental illness how does that affect the veracity of their claim to be an unlawful non-citizen and DIMIA's reliance on their claim when it forms the main basis of DIMIA's suspicion that they are a unlawful non-citizen?

(2) Please explain under what circumstances DIMIA can request a psychiatric assessment to ascertain whether a person's claim to be an unlawful non-citizen may be affected by mental illness or physical trauma.

(3) If such an assessment cannot be carried out and the person's claim to be an unlawful non-citizen is the main reason for DIMIA's reasonable suspicion that they may be an unlawful non-citizen, does DIMIA still have authority to detain in these circumstances?

(4) Are linguistic experts ever used by DIMIA to determine someone's nationality? On how many occasions has this occurred since 2000?

(5) Did a linguistic expert ever assess Ms Cornelia Rau's German and Australian accents? If so, what was the conclusion? If not, why not?

Answer:

(1) (a) A psychiatric assessment is sought to determine the mental health of those in immigration detention. In some circumstances the information obtained during the process will impact on the weight that the Department will give to the information provided by the person about their immigration status.

(b)-(c) All persons entering immigration detention are given a broad mental health screen. It is not possible to say in how many instances that screen, or subsequent assessments, would impact on the veracity of a person's claims and their immigration status.

(d) The information that is available to DIMIA, from information provided by the person, departmental databases and external agencies, is usually sufficient to know whether the person is a lawful or un-lawful non citizen. In some unusual

circumstances, such as in the case of Ms Cornelia Rau, a reasonable suspicion is formed that the person is an unlawful non-citizen, but further inquiries are required to ascertain their actual migration status. If a person has a mental illness, then the reliability of the information provided by them may be affected, but must be checked, in order to ascertain their migration status.

(2) DIMIA or GSL officers stationed at immigration detention facilities (IDF) are advised to be alert to recognise signs of distress or psychiatric disturbance, and to report suspicions of mental illness or other psychological conditions to their supervisors or to IDF medical practitioners. A report of a suspected mental health concern would be referred to the Detention Service Providers medical subcontractors and an assessment would be arranged.

(3) Where a reasonable suspicion exists, sufficient to justify a person's detention under section 189, it should, if it persists, be sufficient to justify the person's continued detention until the reasonable suspicion is displaced through further inquiry.

(4) No. Language analysis is not determinative of a person's nationality. The language analysis services used by the Department aim to identify the geographical area from which a person may have originated, or in which they had spent some time.

(5) Professional Language Analysis was not engaged for Ms Cornelia Rau, although, in one of the earliest attempts to establish German nationality, German Consular officials commented that their belief was that she was not a naturally speaking German, and possibly Russian.

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(205) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

In relation to discussion and questions raised on page 85 and 86 of Hansard,

(1) Does DIMIA consider the conditions for detainees in detention, particularly in compounds such as the Management Unit and Red One at Baxter detention centre, to amount to punishment? If not, why not?

(2) How do conditions in detention centres, particularly in compounds such as the Management Unit and Red One at Baxter detention centre, differ from conditions in a state correctional facility?

(3) Has DIMIA or GSL sought legal advice as to whether the conditions in the Red One compound and Management Unit amount to punishment?

(4) Has DIMIA or GSL sought legal advice as to whether the treatment of detainees in the Red One compound and Management Unit amounts to punishment?

(5) Does the department consider the GSL Behaviour Plan (for Red One and the Management Unit) to be based on a system of reward and punishment? If not, what system is it based on?

(6) (a) Has DIMIA officially approved the GSL Behaviour Plan? (b) Does it fulfil all requirements of the DIMIA-GSL contract? (c) Has the DIMIA or GSL sought or received legal advice as to whether this plan amounts to punishment? (d) If not, why not? If so, please provide this advice.

(7) Does DIMIA believe that the GSL Behaviour Plan is an appropriate treatment for mentally ill detainees?

(8) Has the GSL Behaviour Plan been subject to legal advice as to whether it breaches the rights of detainees or falls outside the scope of the Migration Act?

(9) What section of the Migration Act allows GSL and DIMIA to implement the GSL Behaviour Plan?

Answer:

(1) No. DIMIA does not consider the conditions for detainees in detention to amount to punishment. Nor does DIMIA have the power to punish immigration

detainees. This was made clear by the High Court in *Lim v Commonwealth* (1992), and again in *Behrooz v Secretary, DIMIA* (6 August 2004).

Management Support Units (MSUs) and the Baxter Red 1 Compound are not places of punishment. Their purpose is solely to support the good order and security of the detention facility and the safety of those within it. Transfer of detainees to these more restricted environments is subject to daily review. A detainee *must* be removed from the MSU or from Red 1 when he or she is assessed by officers on site, including medical practitioners, as no longer presenting a threat to themselves, to others or to the facility.

If a detainee who presented a threat to their own well-being, the well-being of others, or the security of the facility was *not* temporarily segregated from the general detainee population, it would be very likely that the Commonwealth would be in breach of its duty of care to that detainee as well as to others at the facility. It is clear from the decision of the Federal Court in *S and M v Secretary and Commonwealth* (5 May 2005) that the Commonwealth's duty of care is extensive.

These arrangements can be contrasted with State correctional institutions, in which a prisoner can be punished for breach of prison rules by being placed in a more restrictive place of detention for a set period of time.

(2) The main difference between prisons and places such as MSUs or the Red 1 Compound is that immigration detainees are not transferred to MSUs or Red 1 for the purpose of punishment, nor for a set period of time. See answer to (1) above.

(3) and (4) Yes. Advice was sought from DIMIA's Special Counsel on this matter in March 2005. He confirmed that the current use of the Baxter IDF Red One compound is lawful, and that detainees may be placed in the Management Support Unit (MSU) to ensure their own safety and well-being as well as the good order and security of the facility as a whole and the safety of all those within it.

(5) The special care plan (the term "Behaviour Plan" is no longer used at the Baxter IDF) is not based on a system of reward and punishment. As explained in the answer to question (1) above, placement in a MSU or the Baxter Red 1 Compound is based on a system of risk assessment. That is, a detainee who has been assessed as presenting a danger to the good order and security of the facility or a risk to themselves or to others will remain in more restrictive detention until that assessment is lifted. Also as noted above, the placement of detainees in these environments is subject to constant review, which is not an indicator of a system based on reward and punishment.

The special care plan is designed to provide maximum access and freedom. Restrictions are only applied as far as they are necessary to maintain safety and security as outlined above.

(6) (a) No. The content and form of each individual's special care plan is a matter for GSL to determine, based on the individual circumstances and care needs of the detainee. DIMIA is, however, able to comment on the content of each individual care plan.

(b) Each individual plan must comply with all aspects of the Detention Service Contract. No aspect of an individual's plan should amount to a system of reward and punishment, which would not only offend general Constitutional principles (see the reference to *Lim* in the answer to part (1) above), but would be a breach of a number of provisions of the Detention Services Contract.

(c) No formal advice has been sought or received.

(d) DIMIA is confident from its reading of authorities such as *Lim* and *Behrooz* that a system of risk management of detainees, based on an initial assessment of risk and subject to constant review, is not a form of "punishment" in the normal usage of that word. Further, DIMIA has sought and obtained advice on the use of MSUs and Baxter Red 1 generally – see the response to parts (3) and (4) above.

(7) DIMIA will follow the recommendations of mental health practitioners wherever it is lawful to do so. Where there are conflicts in medical advice provided to DIMIA, DIMIA will seek a third opinion, and will follow the recommendations of the majority opinion, again provided it is lawful to do so.

(8) As outlined in 6(a) above, the content and form of each individual care plan is a matter for GSL to determine, based on the individual circumstances and care needs of the detainee. No individual care plan has been the subject of legal advice in and of itself.

(9) The implementation of risk management plans are not based on the *Migration Act*. Instead they are based on the Commonwealth's duty of care to detainees, and on the Commonwealth's rights and responsibilities as the lawful occupier of IDFs. That is, they are based on the common law and not legislation. As noted above, the failure to introduce care or risk management plans for detainees assessed as presenting a risk to themselves or others would very likely amount to a breach of the Commonwealth's duty of care to all detainees, particularly given the decision of the Federal Court in *S and M v Secretary and Commonwealth* (Finn J, 5 May 2005).