

## APPENDIX 13

### SUMMARY OF RECOMMENDATIONS REQUIRING INPUT FROM DIMA AND OTHER BODIES

The Committee acknowledges that it has recommended that certain organisations undertake audits, research papers and other work. It also acknowledges that it has made a number of recommendations that will affect DIMA's operation and current practices.

Those recommendations requiring DIMA to commission or undertake studies or other work are as follows:

#### **Recommendation 2.2**

The Committee **recommends** that the Attorney-General's department, in conjunction with DIMA, examine the most appropriate means by which Australia's laws could be amended so as to explicitly incorporate the *non-refoulement* obligations of the CAT and ICCPR into domestic law.

#### **Recommendation 3.1**

The Committee **recommends** that DIMA investigate the provision of videos or other appropriate media in relevant community languages, explaining the requirements of the Australian onshore refugee determination process. This material should be available to those in detention, and to IAAAS providers.

#### **Recommendation 3.5**

The Committee **recommends** that an independent evaluation of the administration of IAAAS, including the quality of work performed by contractors and the effectiveness of the complaints mechanism, be undertaken and completed by a qualified body within two years.

#### **Recommendation 5.7**

The Committee **recommends** that DIMA and the Department of Finance and Administration acknowledge the changing workload of the RRT, and the differing complexity of its cases. This information should be used to assess appropriate funding levels and/or systems.

#### **Recommendation 6.2**

The Committee **recommends** that DIMA commission an independent analytical report on State parties' incorporation into domestic law of international legal obligations requiring access to courts and tribunals and judicial oversight of the

refugee determination process. The Committee further **recommends** that DIMA provides that report to the Parliament.

### **Recommendation 6.3**

The Committee **recommends** that an analysis of the cost of fulfilling Australia's international legal obligations be provided by DIMA to the Committee within three months of the completion of the inquiry referred to at Recommendation 6.2. The analysis should include a comparison of the cost of the administration of both migration and refugee applications under the current two-tiered administrative determination and judicial review system.

### **Recommendation 9.1**

The Committee **recommends** that policies and practices be developed by DIMA to ensure the Minister is made aware of all relevant facts about detainees prior to their removal from Australia.

### **Recommendation 9.2**

The Committee **recommends** that, in respect of removals from Australia, a protocol on the 'fitness to travel' of pregnant women (especially those in later stages) be developed as a matter of urgency.

### **Recommendation 9.5**

The Committee **recommends** that all steps be taken and put in place to ensure that the situation of Ms Z never occurs again in Australia.

### **Recommendation 10.3**

The Committee **recommends** that appropriate protocols be developed between carriers and contract removal service providers. These protocols, and the implementation of them, should be subject to audit by an external and independent body.

In addition, the Committee notes that it has recommended that DIMA:

- Arrange for the IAAAS to provide a separate fund for translation and interpretation services (See Recommendation 3.3);
- Arrange for the IAAAS to provide a separate fund for medical and psychiatric assessments (See Recommendation 3.4);
- Retain all information provided by non-citizens on arrival (See Recommendation 4.1);

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- Continue to use the current Australian Public Service level case officers to make decisions at the primary determination stage (See Recommendation 4.2);
  - Ensure that primary decision-makers have specialist training (See Recommendation 4.3);
  - Ensure that primary decision-makers provide reasons for decisions where applicants do not proceed to interview stage (See Recommendation 4.4);
  - Retain responsibility for refugee determination (See Recommendation 4.5);
  - Ensure that the CIS is resourced with accurate and up-to-date information from a broad cross-section of Government and non-government sources (See Recommendation 4.6);
  - Maintain an up-to-date comparative database of international refugee determination systems in a number of countries which are State parties to the relevant international conventions (See Recommendation 6.1);
  - Provide an information sheet to explain the provisions of s417 and the accompanying Guidelines (See Recommendation 8.3);
  - Ensures that the s417 process is completed quickly and the result of the request advised to the relevant person (See Recommendation 8.4);
  - Ensures that the subject of the request should not be removed from Australia before the initial or first s417 process is finalised (See Recommendation 8.5);
  - Ensure that appropriately trained staff consider all convention related cases that have been referred for consideration by the Minister under s417 against CROC, ICCPR and CAT (See Recommendation 8.6);
  - Advise persons with possible humanitarian claims of the procedures available to them under s417 (See Recommendation 9.4);
  - Ensure that officers have a thorough understanding of the relevant international conventions in the refugee determination process (See Recommendation 10.2).

Recommendations requiring action from the Government or Minister/s:

### **Recommendation 1.1**

The Committee **recommends** that the Government arrange for a detailed cost-benefit analysis of the concept of the provision of temporary safe haven, including estimates of all services likely to be provided by both Government and non-government agencies.

### **Recommendation 2.1**

The Committee **recommends** that the Government ensures decision-makers are well enough resourced to facilitate proper assessment of claims for refugee status in accordance with the Convention definition of 'refugee'.

### **Recommendation 3.7**

The Committee **recommends** that the Government amend the legal aid guidelines to enable the Legal Aid Commissions to provide limited legal advice to help applicants consider the value of an appeal.

### **Recommendation 4.8**

To facilitate the preparation of more complete and accurate applications, the Committee **recommends** that sufficient resources be made available to ensure that applicants are better able to understand the requirements of Australia's refugee and humanitarian program and to provide the necessary detailed information required. (See **Recommendation 3.1**)

### **Recommendation 6.4**

The Committee **recommends** that the Government commission an independent study on the benefits of modifying the current on-shore refugee determination process. These studies should assess, among other matters, the feasibility of moving to a wholly judicial determination process, including the costs of any such process.

### **Recommendation 6.5**

This inquiry and report is evidence of the fact that Australia has not escaped the pressures placed on refugee-receiving countries. In light of these developments, the Committee **recommends** that the Government continue to monitor the attitudes of other signatory nations in relation to the terms and protocols of the Refugee Convention.

### **Recommendation 8.1**

The Committee **recommends** that the Minister should note the concerns expressed about the s417 Guidelines and consult widely with stakeholders on a regular basis to

ensure that the content of the Guidelines remains contemporary and addresses the specific purposes of Australia's obligations under the CAT, CROC and the ICCPR.

### **Recommendation 9.3**

The Committee **recommends** that pregnant women subject to removal should be given special consideration by the Minister, or a senior delegate, to remain in Australia until after the birth to ensure that no woman is returned pregnant to a country in circumstances where there is a risk the woman will be coerced to undergo an abortion.

### **Recommendation 9.5**

The Committee **recommends** that all steps be taken and put in place to ensure that the situation of Ms Z never occurs again in Australia.

### **Recommendation 11.1**

The Committee **recommends** that the Government should place the issue of monitoring on the agenda for discussion at the Inter-Government/Non-Government Organisations Forum with a view to examining the implementation of a system of informal monitoring.

Recommendations requiring action from the Refugee Review Tribunal:

### **Recommendation 5.1**

The Committee **recommends** that a clear statement should be available on the nature and operation of the RRT and this should be freely available, including to detainees.

### **Recommendation 5.2**

The Committee **recommends** that further training be provided for RRT members in the use of those inquisitorial methods accepted as integral to the Tribunal.

### **Recommendation 5.3**

In carrying out its task to determine whether a person is a refugee, the Committee recognises that the RRT's assessment of a claim for refugee status will and should be influenced by matters that go to an applicant's credibility. The Committee **recommends** that credibility continue to be a factor in the determination of refugee status.

### **Recommendation 5.4**

The Committee **recommends** that the RRT be able to sit as a single member body and as a panel of two and up to three members as appropriately determined by a Senior, or the Principal, Member. Members would be drawn from people with appropriate backgrounds for considering refugee and humanitarian applications.

### **Recommendation 5.5**

The Committee **recommends** the Principal Member of the RRT should be a person with judicial experience.

### **Recommendation 5.6**

The Committee **recommends** that officers from DIMA, Attorney-General's or DFAT should not be RRT members. Officers seeking such placements should move to the unattached list.

### **Recommendation 5.8**

The Committee **recommends** that members of the RRT be drawn from a broad cross-section of the Australian community, including the legal profession, with experience in refugee and humanitarian issues.

### **Recommendation 8.2**

The Committee **recommends** that the RRT continue the current practice whereby members informally advise the Minister of cases where it is considered there may be

humanitarian grounds for protection under international conventions, as opposed to grounds under the Refugee Convention.

Recommendations requiring organisations such as the Australian National Audit Office and the Australian Law Reform Commission to commission or undertake work, are as follows:

### **Recommendation 3.2**

The Committee **recommends** that an appropriate body such as the ANAO undertake an efficiency audit to determine if community-based protection visa applicants, eligible for IAAAS assistance are not receiving it. The audit should assess if funds could be managed more efficiently to provide additional services.

### **Recommendation 3.6**

The Committee **recommends** that a body such as the Australian Law Reform Commission be asked to undertake a comprehensive study of:

- the causes of appeals to the courts in refugee matters, and whether increases in legal assistance would serve to reduce the numbers of unmeritorious claims; and
- the costs associated with unrepresented litigants in refugee matters, and whether increases in legal assistance would be an effective means of reducing the costs to the wider system.

### **Recommendation 4.7**

The Committee **recommends** that the ANAO conduct an efficiency audit to determine if improved primary decision-making will reduce program costs.

### **Recommendation 10.1**

The Committee **recommends** that an inquiry be undertaken into the use of sedation and other means of restraint in detention centres and in the removal of unauthorised non-citizens from Australia.