

**SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE**  
**Inquiry into the administration and operation of the Migration Act**

---

**Questions on Notice**

**Question 1: I have received information that two people have complained to the Ombudsman about a sexual assault by guards at Baxter detention centre in December 2004. Has this complaint been investigated by the Ombudsman? If so, what was the result?**

**Response:** The office received a complaint in relation to an alleged sexual assault of a detainee by GSL staff at Baxter in December 2004. The matter had been referred to the SA Police by GSL. The Ombudsman's office considered that the Police was the most appropriate body to undertake such an investigation. We were advised that the SA Police investigated the allegation of assault, decided that there was no case to answer and declined to investigate the case further.

**220 investigations**

**Question 2: Do the cases being investigated for unlawful detention involve people who have voluntarily returned to another country?**

**Response:** Yes, in some cases.

**Question 3: Can you provide a matrix of the gender, age, nationality and main place of detention for the 220 people that have been referred to you for investigation by DIMIA?**

**Response:** As the Ombudsman's office does not yet have all this information, this question is best referred to DIMIA.

**Question 4: What definition of unlawful are you using? For example, with the recent Nystrom decision, would those in detention who should not have had their permanent visas cancelled, would the detention only after the court decision be unlawful, only after DIMIA determined that that person was unlawful, or would the entire term of detention be deemed unlawful?**

**Response:** We are investigating matters referred to us where DIMIA has defined the person as being 'not unlawful' and released from detention. Hence this question is best referred to DIMIA. At this stage we have not completed the investigation of the cases so are not in a position to comment on whether any or all of the periods of detention were unlawful in any of the cases. The Ombudsman will be guided by the requirements of the Migration Act in evaluating whether or not a period of detention

was unlawful. The Committee may also wish to take into account the discussion of the issue of unlawfulness in Chapter 3 of the Palmer Report.

**Question 5: I am aware of a case of an Iranian man who has now been released on a permanent protection visa. He was successful in a Federal Court case, but was not released until one year later when DIMIA lost its appeal. Would that year be deemed unlawful? Would his case be included in the 220 referred to the Ombudsman?**

**Response:** As the Ombudsman's office does not have enough information to identify this case or the legal issues involved, this question is best referred to DIMIA.

**Question 6: What is the timeline for finishing the investigation into the 220 cases?**

**Response:** We aim to complete the bulk of the investigations in 2005-06 and consider we have the capacity to achieve this goal. However, this timeframe may change due to matters beyond the control of this office as the investigations proceed, for example, due to the unforeseen complexity of some matters or the availability of information from DIMIA.

**Question 7: What is Mr Comrie's role at the Ombudsman's office?**

**Response:** Mr Comrie is leading the team conducting the investigation into the referred immigration matters.

**Question 8: Is Mr Comrie permanently employed by the Ombudsman or is Mr Comrie on a contract? If Mr Comrie is on a contract, what is the term of that contract? What is Mr Comrie's daily rate under the contract?**

**Response:** Mr Comrie is working on a contract that was signed with DIMIA and commenced on 28 February 2005. It expires on 23 December 2005. The contract between Mr Comrie and DIMIA was varied so that it became one between Mr Comrie and the Commonwealth Ombudsman. Mr Comrie's per diem rate is \$2,500 including GST.

**Question 9: What is the estimated total budget for the investigation of the unlawful 220?**

**Response:** Funding for this process is subject to Additional Estimates processes and details will be released in due course.

### **Investigations into long-term detainees**

**Question 10: What is the estimated budget for the investigations of detainees in detention for over two years?**

**Response:** Funding for this process is subject to Additional Estimates processes and details will be released in due course.

**Question 11: Please produce a table of those people you have investigated, their nationality and age, the length of detention, the reason for detention (asylum seeker, over-stayer, 501 cancellation etc) and the recommendations made on these cases**

**Response:**

Data in relation to investigations completed follows:

ID	Age	Nationality	Date detained	Date released	Reason for detention
1	36	Iran	21-Jun-00	23/10/05	Unauthorised boat
2	24	Afghanistan	30-Dec-00	04/10/05	Unauthorised boat
3	45	PR of China	05-Aug-03	Still in detention	Over stayer
4	38	Afghanistan	24-Aug-01	Still in detention	Unauthorised boat
5	36	Possibly Moroccan	20-Aug-01	Still in detention	Unauthorised boat
6	45	Vietnamese	17-Apr-01	08/08/05	Unauthorised boat
7	45	Vietnamese	17-Apr-01	08/08/05	Unauthorised boat
8	22	Possibly Afghanistan	15-Mar-01	13/10/05	Unauthorised boat
9	42	Lebanese	3/07/2002	25/08/05	s 501 cancellation
10	62	British	29-Oct-01	Still in detention	Criminal deportee
11	28	Congo	18-Jan-01	17/10/05	Stowaway
12	29	Sri Lanka	20-Sep-01	12/10/05	Unauthorised boat
13	25	Afghanistan	22-Jan-01	04/10/05	Unauthorised boat
14	Unknown	Unknown	22-Sep-02	Still in detention	Suspected unlawful
15	25	Fiji	15-Jul-03	Still in detention	s 501 cancellation
16	39	Unknown	14-Nov-01	Still in detention	Suspected unlawful
17	33	Bangladesh	28-Sep-99	Still in detention	Unauthorised boat

The first two reports were tabled in Parliament, as required by s 486P of the *Migration Act 1958*, on 6 December 2005. The recommendations in these reports are available on the Ombudsman's website.

The recommendations in relation to the other 15 assessments will be tabled in Parliament within 15 sitting days from the date of the Ombudsman's report to the Minister.

**Question 12: How many detainees have been assessed?**

**Response:** Reports on detainees are in various stages of completion with about 70 assessments currently in progress.

**Question 13: How many recommendations have gone to the Minister?**

**Response:** 17 reports have been sent to the Minister, which contain various recommendations.

**Question 14: Have/will the recommendations be going to the detainee and their lawyer? In what detail?**

**Response:** The Ombudsman has indicated that his report to the Minister will be provided to individual detainees at the time of tabling in Parliament pursuant to s 486P of the Migration Act or when the Minister makes a decision on the Ombudsman's recommendations, whichever is earlier. If it is known that the person is legally represented or has indicated they want a copy of the assessment sent to other people, such as their migration agent, a copy will be sent to that person as well. The Ombudsman's approach is explained in the Covering Statement tabled in Parliament with his first reports and in the various Immigration Bulletins on our website.

**Question 15: Has the Minister been implementing your recommendations?**

**Response:** The Minister has tabled the first 2 reports with her response which is available on the Ombudsman's website. In respect of the first person, he voluntarily returned to his home country due to family problems and in respect of the second person, the Ombudsman suggested a permanent visa but before the Ombudsman's report was provided to the Minister, a temporary protection visa was granted.

**Question 16: Have your investigations raised questions about the viability of long-term immigration detention? Should there, for example, be a statutory limit on the length of detention?**

**Response:** This is not an issue that the Ombudsman has covered in the reports. Nor is he looking at the issue as part of the process under s 486O, as assessments are limited by law to recommendations relating to individuals or 'general recommendations relating to the Department's handling of its detainee caseload.' It is possible that the Ombudsman will identify broader issues of concern that arise in conducting assessments, which might be issues on which the Ombudsman will comment or he may suggest that they be more appropriately addressed in other fora.

**Question 17: DIMIA supplied a table at November estimates relating to the nationality of long-term detainees referred to the Ombudsman. This table indicates that one person is classed as nationality "unknown". Please explain why this person's nationality is unknown.**

**Response:** The table was supplied by DIMIA and the question is one for that Department. As indicated in the table in answer to Question 11 above, the Ombudsman has reported on two people of unknown nationality, one of whom was undoubtedly the person referred to in the DIMIA table as "unknown". The Ombudsman did not fully investigate the nationality of these people but restricted his investigations to the appropriateness of their detention arrangements and made certain recommendations about those arrangements.

**Question 18: The table also indicates 7 long-term detainees from Palestine. Is the Ombudsman treating these people as 'stateless' and how will this affect recommendations?**

**Response:** The Ombudsman has not completed any reports yet on people from Palestine and is yet to consider this issue.