QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(1) Inquiry into the Administration of the Migration Act 1958

Senator Bartlett (L&C 8) asked:

In relation to the Edmund Rice Centre allegations, which have been raised before in estimates, is the department looking at giving a comprehensive response to what they have put forward?

Provide responses to the allegations made about the cases that Mrs Le identified in her evidence.

Answer:

The evidence provided to the Committee by the Edmund Rice Centre (ERC) is based on its earlier published report "Deported to Danger". This evidence makes a number of assertions which are not substantiated. The report seeks to identify what it considers to be returns from Australia to dangerous or unsafe situations, but does not clearly acknowledge that the broad concepts of danger or safety it uses do not correlate with international obligations to provide protection. Nor does it indicate why the authors believe that general disadvantage or hardship experienced by a person after return to their homeland, which are broadly similar to those experienced by many people in these countries, should become Australia's responsibility.

People in many countries can face generalised dangers, hardships and uncertainty. This does not mean that Australia has obligations to them under the quite specific terms of the Refugees Convention or other international instruments. Generalised considerations of danger, hardships and uncertainty do not equate to the criteria for grant of a protection visa which are set out in legislation and which must be applied by departmental and Tribunal decision makers. The fact that an individual may experience some hardship on return does not automatically establish any entitlement to obtain residence in a country of choice.

The ERC report does not appear to test the assertions in the report. It relies heavily on the self assessment by individuals themselves to indicate the existence of danger without assessment of whether subjective views have any objective basis. Importantly, the report does not disclose the identity of the persons cited as case studies and the ERC has not separately passed this information to the department. This seriously limits any prospect of exploring the claims in the report and accordingly substantially diminishes any value the report might have as a resource to the department for identifying any aspects of processing which might be improved. To the extent that there is sufficient information in the report to enable some exploration, the department has found nothing to substantiate assertions that such people have been removed in breach of any international obligations owed by Australia.

Australia does not return anybody who is found to be a refugee and asylum seekers are **not** returned if they have a real chance of facing persecution. Australia does not monitor those returned on the basis that monitoring, by its very nature, would be intrusive and could draw unwelcome attention to the individuals concerned and to those with whom they associate. These concerns are not unique to Australia. It is not general international practice for countries

returning failed asylum seekers to their country of origin to monitor those individuals. Allegations in the ERC report that DIMIA and Australasian Correctional Management (ACM) officers encouraged detainees to obtain false passports and pay bribes to travel to third countries are not true and have been categorically denied by the department. These claims were investigated by the department and the Australian Federal police (AFP). The AFP has advised that its investigation found no evidence that staff of either the department or ACM had committed any offences. The AFP investigation found that the documentary evidence **did not** support the claims being made to the ERC by returned asylum seekers.

A thorough internal investigation of two cases that the department could identify has also **not** revealed any misconduct or criminal behaviour by departmental staff.
The department has been looking at the ERC's final document which was released in November 2004. DIMIA officers met with the ERC on Monday, 23 May 2005 and again on Thursday 8 September 2005 to seek further information, which might enable the investigation of any residual matters not covered in the first investigation.

The department is waiting for information promised by the ERC of contact details of further witnesses.

General allegations

Ms Le made some broad assertions to the effect that decision makers are not trained and are not aware of the situation in the home countries of those persons being assessed.

A separate Question on Notice (No 12) deals specifically with the issue of country information. In summary, Australia has a comprehensive country information and research capability. At the end of June 2005, the department's Country Information Service held some 7,690 hard copy publications and documents dealing with human rights and refugee issues in other countries. The Country Information Service also maintains a systems database of country information standing at some 87,500 individual items drawn from over 2,600 different sources. Some 26,500 of these information items were added during 2004-2005, with over 25 percent of them added within one day of publication and two-thirds within five days of publication. This information is accessible and searchable from the decision maker's desktop computer.

Decision makers also have desktop access to the internet and are free to conduct their own research provided that information used in decision making is referred to the Country Information Service to be accessioned into the department's holdings.

Where information is not immediately available to case managers, they are able to make research requests to the Country Information Service, which maintains a team to conduct research on behalf of the decision makers.

Where advocates provide relevant information as part of the assessment process, it must be considered by the decision maker. Where this is new information, it is able to be added to the Country Information Service holdings. The selection and weighting of country information by advocates seeking a positive outcome for their clients will not always align with the selection and weighting of information by decision makers who have a statutory obligation to objectively assess applications.

Protection visa decisions are made by senior departmental officers who have undertaken comprehensive induction training and regular refresher training for this work including:

- Refugee law and international obligations.
- Cultural, gender and age sensitivities.

- Legal requirements of administrative decision making.
- Policy and procedures; and
- Selection and use of country information.

In addition, the Country Information Service organises regular country information seminars for decision makers, often drawing on visiting international experts or local commentators and academics.

In total, between 280 and 300 hours of training courses are provided for protection visa decision makers each year. This training is additional to corporate, systems, staff management and personal development training provided to all DIMIA employees. It is noted that advocates representing protection visa applicants are also required to undertake training for their continuing professional development. For example, lawyers are required to undertake 10 hours of continuing legal eduction per annum.

Australia's protection visa approval rates compare favourably with those in many European countries. For example, for the unauthorised boat arrivals between 1999 and 2001, DIMIA approved some 85 percent of applications from Afghan nationals and some 89 percent from Iraqi nationals in the first instance. More recently, the department's approval rates in 2004 for Iraqi nationals was some 79 percent, and for Afghan nationals some 70 percent. Approval rates in comparable European countries in 2004 for these nationalities ranged from less than 1 percent to some 66 per cent, with approval rates in many countries being below 20 percent.

Refugee Review Tribunal (RRT) set aside rates historically and currently compare with merits review tribunal rates in other jurisdictions. It needs to be recognised that the RRT is making a *de novo* decision, providing applicants with the opportunity to present new claims and taking into account any changes in country information that have occurred since the department's decision.

Even with these factors, in the period from 2001-2004, the RRT set aside rate has been between 6 and 13 percent. Remit rates for other tribunals, such as the Migration Review Tribunal, the Social Security Appeals Tribunal and the Veterans Review Board over the same period have been between 28 and 50 percent.

Case specific allegations

<u>2 young Iraqi men on Nauru (not named)</u>

The two young Iraqi men at the Nauru Offshore Processing Centre (OPC) have been identified to the department.

One arrived on Nauru as an unaccompanied minor and was assessed and found not to be a refugee by UNHCR. The other arrived on Nauru and was assessed and found not to be a refugee by the department. The UNHCR and the department respectively affirmed the decisions at review in 2002.

In evidence to the Committee, Ms Le raised concerns over the processing of the claims of the unaccompanied minor. DIMIA can confirm that he was interviewed and assessed for refugee status by the UNHCR as part of its caseload. Ms Le's concerns about the interview conducted by the UNHCR have been referred to the UNHCR for consideration.

As a result of continuing monitoring by Australia of the caseload on Nauru, the two persons have been identified by Australia as now being refugees on the basis of the current country situation.

This outcome is subject to security checks, which are currently underway. The process of monitoring of refused cases to identify instances where a different outcome may be needed is a general DIMIA practice both onshore and in Nauru. It reflects the department's work to ensure that people who become refugees receive protection irrespective of past decisions on their cases.

The Bakhtiyaris (named)

Ms Le gave evidence that she presumed people smugglers advised Mrs Bakhtiyari to lie

DIMIA officials, when interviewing asylum seekers, advise the interviewee that they should always answer questions truthfully and accurately. Mrs Baktiyari had ample opportunity during the course of the PV and subsequent review processes, by the RRT and courts, to provide truthful answers to questions regarding her identity and origins.

Ms Le raised concerns about information relating to Mrs Baktiyari provided by an intel source

Ms Le refers to information from DIMIA, including that 'informants' state that Mrs Bakhitaryi is Afghan and that her husband is Pakistani and that she is travelling with her brother-in-law. Ms Le states that "that level of information from intel says from day one that she is Afghan but that her husband is Pakistani and that she, by implication, is travelling with her brother-in-law. From that, someone decided that another person on that boat called Mohib Suwari, must be the brother-in-law because he looked a little bit like Ali Bakhtiyari….."

The unauthorised boat arrivals caseload at the time were arriving with little or no identifying documentation and the department was receiving persistent claims from various sources, including the Afghan community, that the caseload contained Pakistani nationals presenting themselves as Afghans. It is reasonable for DIMIA to retain records of information which might shed light on the identity or origin of the people arriving without authority. This does not mean that such information is considered reliable enough for use for visa decision making purposes. Whether dob-ins are given any weight in any DIMIA visa decision will be a matter for the individual decision maker. Standard visa decision making arrangements involve the disclosure of such information to the applicant for comment if it is adverse to the applicant and the decision maker is considering giving weight to the information in the visa decision.

In this case, Mrs Bakhtiyari was found by the Government of Pakistan to be a citizen of Pakistan and the Government of Pakistan issued her with a Pakistani travel document. The Bakhtiaryi family was removed to Pakistan holding Pakistani travel documents in accordance with the department's obligations under the Migration Act.

Mr Sawari (named)

This person, along with his wife and two children, arrived in Australia in January 2001. The family applied for protection visas on 8 February 2001 and were granted temporary protection visas by the department and released from detention less than one month later on 5 March 2001. The protection visa decision maker accepted that they were Afghan nationals as claimed.

On 4 December 2002 the family's temporary protection visas were cancelled because the department concluded, on the basis of new evidence obtained from Pakistan, that they were nationals of Pakistan. The new evidence included a copy of a Pakistan National Identity Card bearing the photograph of Mr Sawari and related family registration documentation. The relevant information was provided to Mr Sawari, as part of the Notice of Intent to Consider Cancellation under section 109 of the Migration Act, for comment before the decision was made. No response had been received from Mr Sawari at the time of the cancellation decision.

On 20 June 2003, the RRT set aside the cancellation taking into account further information and documentation obtained from Afghanistan by Ms Le. This resulted in the restoration of the temporary protection visas originally granted by DIMIA.

The family applied for further protection visas and the department granted permanent further protection visas to the family on 29 August 2005.

The Bitanis (named)

Ms Le expressed concern over the handling of a dob-in relating to this case.

In March 2000, the Bitanis' protection visa applications were refused by the department. They were found not to be owed refugee protection on the basis of the identities and claimed origin they provided in their application.

On 25 July 2000, a member of the Australian community, providing only a given name and a mobile phone number, and who wished to remain anonymous, informed DIMIA that he wished to advise the department that a number of Albanian individuals had applied for protection visas using false names, and were presenting themselves as Kosavar refugees. This included the Bitanis. He also claimed that Mrs Bitani's mother-in-law resided in Adelaide and that is why the clients moved there.

In August 2000 the Refugee Review Tribunal (RRT) affirmed the department's refusal of the protection visa applications. The RRT's decision accepted the applicant's stated identities and origins. The RRT's decision did not refer to dob-in information. The Tribunal's decision has been upheld by the Federal Court and the Full Federal Court.

Ministerial Intervention schedules were sent to the Minister in December 2002 and May 2003, setting out a range of supporting and countervailing considerations for possible Ministerial intervention in the case. They included a reference to the anonymous dob-in of July 2000. This information was included because the Ministerial Intervention Guidelines issued by the Minister to the department state that 'information regarding any offence or fraud involving migration legislation is relevant and should be specifically brought to my [the Minister's] attention'. There is no information available to the department to suggest that this dob-in was given any weight in the outcome of that intervention decision.

Ms Le also expressed concern over the flimsiness of evidence provided by dob-ins

The department received anonymous information about the identities of Mr and Ms Bitani from a member of the Australian community, and conducted further investigation into their identities. That investigation produced documentary evidence that called into question the claims of Mr and Mrs Bitani. The department continues to investigate the issue of their identities.

Any adverse information that is relevant to a visa decision is required to be disclosed to the applicant for comment. Should an applicant disagree with a visa decision, avenues of both merits and judicial review are generally available.

22 year old in Glenside (not named)

Ms Le raised two matters in her evidence concerning reports to the Commonwealth Ombudsman as per the department's obligations under section 486N of the Migration Act 1958:

Firstly, in relation to Mrs Le's comments regarding the department's willingness to provide information to the Ombudsman, it is noted that over 130 reports and more than 60 responses to requests for further information have been provided to date. It is further noted that in a letter to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator the Hon Amanda Vanstone, from the Commonwealth Ombudsman, the assistance provided by the department in discharging this new function is directly acknowledged.

Secondly, in response to comments concerning the reporting of an individual's possible hepatitis status, the report provided to the Ombudsman under section 486N of the Act did not refer to this individual having hepatitis, contrary to the assertion made to the inquiry. However, given the health issue raised by Mrs Le, the department will further investigate whether the person has in fact ever been diagnosed as having hepatitis while in detention and liaise with the Commonwealth Ombudsman as necessary.

Lombok (persons not named)

Ms Le asserted that the Australian Government is secretly funding the detention in Lombok of family members of people in Australia.

None of the people in the care of the International Organisation for Migration (IOM) remaining in Lombok have been found to be refugees. They are accommodated in tourist-class hotels and continue to receive material assistance from IOM. They are not detained. With the exception of a small number of Afghans and Iraqis who are not expected to return until local security concerns in their home country are resolved, the other asylum seekers are expected to return home as soon as possible, with the assistance of the IOM if needed.

The funding provided by the Australian Government for the care of these people has supported both a humane response and the provision of effective protection for those determined to be in need.

The presence of asylum seekers in Lombok is not a secret: IOM's website mentions it, advocates for asylum seekers have raised it in the media and Senator Vanstone has received and replied to a number of letters on the subject from members of the public explaining their circumstances.

The government is aware that in a small number of cases these unsuccessful asylum seekers have relatives in Australia. They are close relatives, but not members of their immediate family. The *Migration Regulations 1994* restrict family reunion provisions to members of the immediate family of Australian permanent residents and citizens.

More generally, the management and care of asylum seekers attempting to transit Indonesia to Australia takes place with the cooperation of the Indonesian government, with the participation of IOM and the United Nations High Commissioner for Refugees (UNHCR). This enables an orderly and safe way for asylum seekers intending to engage people smugglers to travel to Australia to have their refugee claims assessed and receive advice on and practical assistance with the options available to them.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE:
11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(2) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 13) asked:

Is there a cost to the government for overstays and do you know what that cost is? Do you have a person cost? What would be the significant cost basis?

Answer:

Overall overstayer costs are difficult to quantify. They would include for example, the cost of their location and removal from Australia, as well as their access to Government services and benefits and labour market which are intended for Australian citizens and lawful residents. The direct cost for the location, detention and removal of unlawful non-citizens in 2004-05 was $179 million with $120m* for detention being the most significant cost (DIMIA Portfolio Budget Statements 2005-06, pp50-51). As of 30 June 2004 there were an estimated 51,000 overstayers (most recently published figure) in the community.

There are also wider government costs relating to the extent to which overstayers may be accessing services and benefits to which they are not entitled or working in the black economy.

* These costs include detention costs related to unauthorised arrivals.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(2) Inquiry into the Administration of the Migration Act 1958

Senator Ludwig asked:

Please provide an outline of the changes undertaken, commenced or proposed in relation to the management and operation of immigration detention centres, including the provision of services and facilities to detainees, since January 2005. In doing so, please outline any time lines applicable to these changes (eg, commencement, completion, review, etc).

Answer:

The Department is continuously making improvements to immigration detention facilities. These include changes to infrastructure and access to amenities at centres, health and food services and the monitoring of management of centres by the Detention Services Provider (DSP).

Infrastructure

Since January 2005, the Department has made or planned a number of infrastructure and amenities changes at centre level. These include:

- an operational upgrade of the Darwin Immigration Detention Centre (IDC);
- completion of a recreation room at the Port Augusta Residential Housing Project (RHP);
- significant internal and external refurbishment and new works at the Villawood IDC;
- the commencement of construction of the RHP adjacent to Villawood IDC;
- the opening of a new visitors reception building at Maribyrnong IDC;
- an extensive refurbishment and expansion of the Maribyrnong IDC;
- Refurbishment of the kitchen at Baxter Immigration Detention Facility (IDF);
- Refurbishment of areas of the Perth IDC; and
- Softening the appearance of centres, including the removal of the razorwire at Villawood, Maribyrnong, Perth and Darwin IDC and landscaping, as appropriate.

Mental Health Screening and Assessment

All detainees who are received into immigration detention are assessed for mental health concerns. This involves

- A suicide and self harm assessment (SASH) which is undertaken on arrival by the receiving Detention Services Officer,
- an 'at risk' assessment by the nurse undertaking the general health assessment,
- follow up by the PSS psychologist for anyone exhibiting risk.

Initial screening at Baxter IDF also includes

a clinician rated Health of the Nation Outcomes Scale (HoNOS), and
a Mental State Examination (MSE)

A client rated Kessler 10 (K 10) screen (voluntary) will be introduced in Baxter by the end of the year.

The HoNOS, K 10 and the MSE are widely used in mainstream mental health services. All detainees who screen positive on these instruments will be referred to a multidisciplinary mental health team for diagnosis, the development of a specific mental health management plan and ongoing mental health care. This team comprises of mental health nurses, psychologist, senior counsellor, general practitioner and psychiatrist.

If the management plan requires inpatient mental health treatment this will be arranged through clinical pathways developed with identified public and private sector health providers.

All detainees who screen negative can be reassessed at their own request, at the request of GSL staff, if any concerns are noted by IHMS or PSS staff, at the request of DIMIA or at the request of an agreed third party.

If not re-screened earlier, all detainees will be re-screened at 90 days to ensure no person develops an unrecognized mental disorder.

The department has received a costed proposal from the DSP to enhance mental health services at all other immigration detention facilities I line with the current and planned process at Baxter IDF.

A meeting between the department and the DSP is scheduled for mid-October 2005 to determine how this mental health strategy will be rolled out at other facilities in the future.

Strategic Health Planning

The department has established a Health Service Delivery group which held its first meeting on 20 June 2005. It currently meets every two to three weeks to ensure that health service delivery issues are managed in a timely and appropriate way. Senior representatives from the department, GSL Health Management, and the DSP's health subcontractors are members of this group.

Food Services

On 23 September 2005, the Department accepted a proposal from the DSP to enhance food services at Baxter IDF. As a result, there will be further upgrades in food services to include greater choice and self-catering.

Infrastructure at Baxter IDF will be changed to provide a central dining facility. This will result in a range of benefits, including greater ability to provide a multi-choice menu, enhanced opportunities for social interaction at meal times and closer control by the food services staff over the food preparation, delivery, consumption and clean-up processes.

Procedures for places of more restrictive detention

The operational procedures for use of Management Support Units (MSU) and the Red One Compound at Baxter IDF have been revised by the department, in consultation with the Commonwealth Ombudsman's office. The new procedures provide for greater flexibility in managing detainees whose behaviour is of concern. These procedures also provide for more rigorous health and mental health checks and regular reviews of placements in these places of more restrictive detention to ensure detainees do not remain there any longer than necessary.

Provision and Monitoring of Services

Departmental staff, drawing on the advice of expert panels, monitor service delivery against contract requirements and operational procedures on an ongoing basis. The Department uses this and other information to make formal quarterly assessments of the DSP's compliance with the immigration detention standards and sanctions can be applied where agreed service standards are not met.

On 20 January 2005, the Department adopted a new monitoring plan for the Detention Services Contract (DSC). This was based on a formal risk assessment of the contract, using methodology endorsed by the Department's internal auditor. The monitoring plan provides for regular audits of all areas of service delivery, with resources directed towards those areas assessed as being of higher risk, such as health care, prospective or actual self-harm, security and safety. A range of monitoring strategies is used in the plan, including:

- Audits by departmental staff located at immigration detention facilities;
- Monitoring visits by staff from the Department's National Office;
- Expert Panel oversight of technical areas; and
- Detailed self-reporting by the DSP.

The current monitoring regime will be independently reviewed as part of the DSC review process. As an interim measure, an internal review of the risk assessment and monitoring plan will commence in October 2005, based on a comprehensive analysis of relevant data from the last year.

On 25 May 2005, the Minister announced the establishment of new detention review managers in each State and Territory Office to provide additional quality assurance processes that decisions to detain people are soundly based and reviewed. In addition to the existing detention case management processes of the DSP and the Department, these positions also keep detention arrangements for individuals under constant review at a State Office level.

The Department continues to negotiate with external service providers on the provision of services in immigration detention facilities. For example, the Department recently signed a Memorandum of Understanding with the South Australian Police Service.

Following the Report into the transfer of five detainees from Maribyrnong IDC to Baxter IDF in 2004, the Department and DSP are in the process of reviewing detainee complaint handling procedures to provide for increased rigour, accuracy and to make the process more user-friendly for detainees.

Further proposed changes

On 19 September 2005, the Minister announced plans to improve amenities and infrastructure at Baxter IDF. These changes respond to recommendations made in the Palmer Report.

The plans are scheduled to be delivered by the end of December 2005, and include the development of a new sports facility, the opening up of the accommodation compounds, the modification of amenities, and a review of the Medical Centre and the Management Support Unit.

For more detail on these changes, refer to the Minister's media release at

http://www.minister.immi.gov.au/media_releases/media05/v05114.htm

On 6 October 2005, further significant proposed changes to the management of immigration detention facilities were announced in response to the Palmer Report. For detail on these changes, refer to the Report from the Secretary at http://www.immi.gov.au/current-issues/palmer/palmer-response.pdf

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(3) Inquiry into the Administration of the Migration Act 1958

Senator Fierravanti-Wells (L&C 17) asked:

On the litigation issue, can you provide us with some information on the costs of litigation to the Commonwealth for defending cases and, in particular, the success rate?

Answer:

The Department has checked the information that was provided at the hearing, which appears on page 17 of the transcript, and can confirm that the information is correct.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE:
11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(4) Inquiry into the Administration of the Migration Act 1958

Senator Fierravanti-Wells (L&C 17) asked:

Provide information on costs which have been left unpaid by overstayers when they depart Australia. In other words, I would like to know the total value of the debts that are never recovered by the Commonwealth when people leave the country."

Answer:

For the 2004-05 Financial Year, 3,813 visa overstayers were held in immigration detention. During this time, these overstayers accrued a total debt to the Commonwealth for immigration detention costs of $11,615,874. On average DIMIA recovers approximately 4% of immigration detention debts. Based on these figures, during the 2004-05 financial year it is estimated that $11,151,239 in detention debts incurred by overstayers will not be recovered.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(5) Inquiry into the Administration of the Migration Act 1958

Senator Fierravanti-Wells (L&C 17) asked:

Could you give us some analysis – without referring to names – of cases and the reasons why cases inevitably find their way up through the court system to the appeals processes? They are often totally non-meritorious cases. I would appreciate it if you could, when providing those statistics, give a bit of a snapshot of the history of some of those cases all the way through the system, and particularly through the appeals processes.

Answer:

Appeal through the various layers of judicial review has become common place and considered, by many applicants, to be part of the process. This has resulted in significant numbers of matters being pursued all the way to the High Court. In 2001-02 financial year 5% of all applications for judicial review of migration decisions were applications for special leave to appeal to the High Court. The 2004-05 financial year has seen a fourfold increase in such appeals, with 20% of applications received being High Court special leave applications.

On 1 January 2005 the new High Court rules commenced which gave the court the power to dismiss applications for Special Leave on the papers where an unrepresented applicant has either no reasonable cause of action or has not filed the required documentation. This change to the rules, largely a response to the Court's increasing workload of migration matters, has had a dramatic effect on the number of matters which proceed to hearing in the High Court. Between 1 January 2005 and 21 October 2005 there have been 508 applications for special leave determined in the High Court, of which 8 resulted in favourable outcomes for applicants. Of these 508 resolutions in excess of 80% have been dismissed on the papers.

In addition to applicants pursuing matters through the various stages of judicial review, there is a trend towards re-filing and commencing the process again. For example in the period 1 July 2005 to 30 September 2005, 91 out of 713 applications for judicial review filed in the Federal Magistrates Court or Federal Court at first instance were filed by applicants who had had previous judicial review of the same refusal decision.

Some recent examples where Judges and Magistrates have commented on non-meritorious cases include the following:

Justice Weinberg stated in **VWZG v MIMIA** [2005] FCA 1018 (21.7.05) at [14] that:
"In my view the current proceedings amount to an abuse of process because: the repeated bringing of applications for judicial review of the same tribunal decision is unjustifiable, vexatious and brings the administration of justice into disrepute; there is an underlying public interest in the finality of litigation; the current application for judicial review is devoid of particulars, and fails to disclose any arguable basis; and in all, the applicant has brought seven

proceedings in relation to the same RRT decision, three of which he has chosen to discontinue. Having regard to his history of instituting proceedings, only to subsequently abandon them, I am prepared to infer that he has brought this application for the collateral purpose of extending the period of his stay in this country."

Justice Madgwick stated in **SZBJM v MIMIA** [2005] FCA 404 (5.3.05) at [29] that:
"Nothing has been put to me to indicate that there is any arguable basis at all for any of the new points sought to be raised and, given that the appellant has previously litigated his way, with legal advice, to a Full Court of this Court, and thereafter, it seems, without such advice to the High Court, it is high time that all this litigation was put to an end."

In **SZEAG v MIMIA** [2005] FMCA 202 (14.2.05), Federal Magistrate Smith stated that:
"I propose to grant orders on the Minister's motion pursuant to Federal Magistrates Court Rule 13.10(c). This allows summary dismissal of the proceeding where it is "an abuse of the process of the court". I consider that this applies since the new proceeding is manifestly hopeless and unsustainable in the face"

In **S1000 of 2003 v MIMIA** [2004] FMCA 963 (13.12.04), Federal Magistrate Driver at [11] stated: "In my view, there is no substance to the present judicial review application. The grounds substantially mirror grounds advanced in the Federal Court proceedings four years ago. The applicant had a further opportunity to agitate these grounds when his proceedings were severed from the Muin and Lie class action and remitted to the Federal Court. The interests of the administration of justice certainly do not require that the applicant be given a further opportunity. On the contrary, the interests of the administration of justice require that the applicant be denied that further opportunity."

In **SZCYW v MIMIA** [2004] FMCA 878 (25.11.04) Federal Magistrate Driver stated:
"In my view, the applicant is simply seeking to prolong her stay in Australia and has no genuine belief in the contentions raised in her application before the Court."

In **SZCOT v MIMIA** [2004] FMCA 630 (13.9.04) Federal Magistrate Driver stated at [13]:
"This is the second proceeding before a court to review the decision of the RRT. There is no reason why the issues the applicant now seeks to raise in this Court could not have been raised in the Federal Court. The judicial review application in this Court, like the judicial review application in the Federal Court, is vague and unhelpful in its terms. The applicant has not complied with this Court's order to file an amended application with particulars and to file any evidence by a certain date. The written submissions filed by the applicant are in part inconsistent with the facts. Those circumstances lead me to the view that the applicant is using this Court's process in order to remain in Australia for an extended period rather than to advance a serious legal dispute with the decision of the RRT."

In **M42 of 2003 v MIMIA** [2005] FMCA 204 (15.2.05), Federal Magistrate Reithmuller stated at [30]: "It is difficult not to conclude that this is an application that has been brought solely for the purpose of delay and to some extent has already been in part successful, given the delay that it has caused. In the circumstances I propose to dismiss the application to reinstate the substantive application. I also propose to order that the applicant not bring further proceedings without leave."

In **NADZ v MIMIA** [2005] FMCA 759 (27.05.2005), Federal Magistrate Smith at [37] stated:
"I also consider that the history sketched above shows a clear disposition on the part of the applicant to commence and pursue proceedings for judicial review without regard to their merit, and without regard to previous judicial determinations in relation to the arguments which he

presents. I consider that any further proceeding of the applicant commenced by way of a fresh application filed in this Court in any of its Registries would be vexatious to the respondent. I consider that it is appropriate for me to direct the registry not to receive any further application for judicial review in relation to the present decision of the Tribunal without first obtaining the leave of the Court. The Court's power to make such an order has been upheld by Jacobsen J in SZDCJ v Minister for Immigration and Multicultural and Indigenous Affairs (2004) 212 ALR 581 at [29]."

In **SZANJ v MIMIA [2005]** HCATrans 533 (5.08.2005) Justice McHugh stated: "The applicant's submissions are pro forma. Tamberlin J's decision makes it clear that the applicant's submissions in the Federal Court proceedings were also pro forma. In fact, in that Court they contained the claim that the applicant feared persecution on the basis of "being a woman" if he returned to Bangladesh. The applicant is a male.

In the absence of submissions that have any bearing upon the case at hand, it is very difficult for the Court to ascertain the basis upon which the applicant seeks a grant of special leave. In this case, there is nothing in the Tribunal's reasons, or the reasons of the Courts below, to indicate any error that would justify the intervention of this Court. The applicant seeks to re-argue questions of fact. That is not a basis for a grant of special leave to appeal to this Court. As this application raises no arguable question of law, it must be dismissed."

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(6) Inquiry into the Administration of the Migration Act 1958

Senator Fierravanti-Wells (L&C 21) asked:

Have you got some statistics in relation to the migration agents who have contravened the requirements of the MARA legislation? Have there been any collected in preparation for the work for the task force? Do you have some statistics on that work – particularly if there have been any changes in the patterns, if I can say, of behaviour of migration agents since the legislation that has been introduced.

Answer:

The Migration Agents Registration Authority (MARA) has continued to take strong action against migration agents of concern during 2004-05, although at a lower level than in 2003-04, with:

- 37 sanction decisions made (compared with 42 in 2003-04); and
- 28 agents refused registration (a drop from 44 in 2003-04).

The attached graph provides further information about sanction action taken by the MARA since its inception in March 1998.

The Migration Agents Integrity Measures Act was developed following an analysis of the activity of migration agents who lodge Protection visa applications, which showed that 95 agents appeared to be engaging in "vexatious activity". Between them, these agents had 3,470 Protection visa applications refused over an eight month period from 1/11/01 to 30/6/02. A total of 9,238 Protection visa applications were lodged during 2001-02 financial year.

These statistics were used to help develop a list of agents of concern for the Migration Agents Task Force (MATF), which was set up in June 2003 to investigate particular registered and unregistered agents allegedly involved in breaches of the *Migration Act 1958* and other Commonwealth legislation.

The deterrence effect of the Migration Agents Integrity Measures Act, combined with the effect of increased sanction action taken by the Migration Agents Registration Authority (MARA) and the disruption activities of MATF, has already resulted in a significant number of the 95 agents of particular concern in terms of lodging large numbers of vexatious Protection visa applications (referred to above), being removed or forced out of the industry.

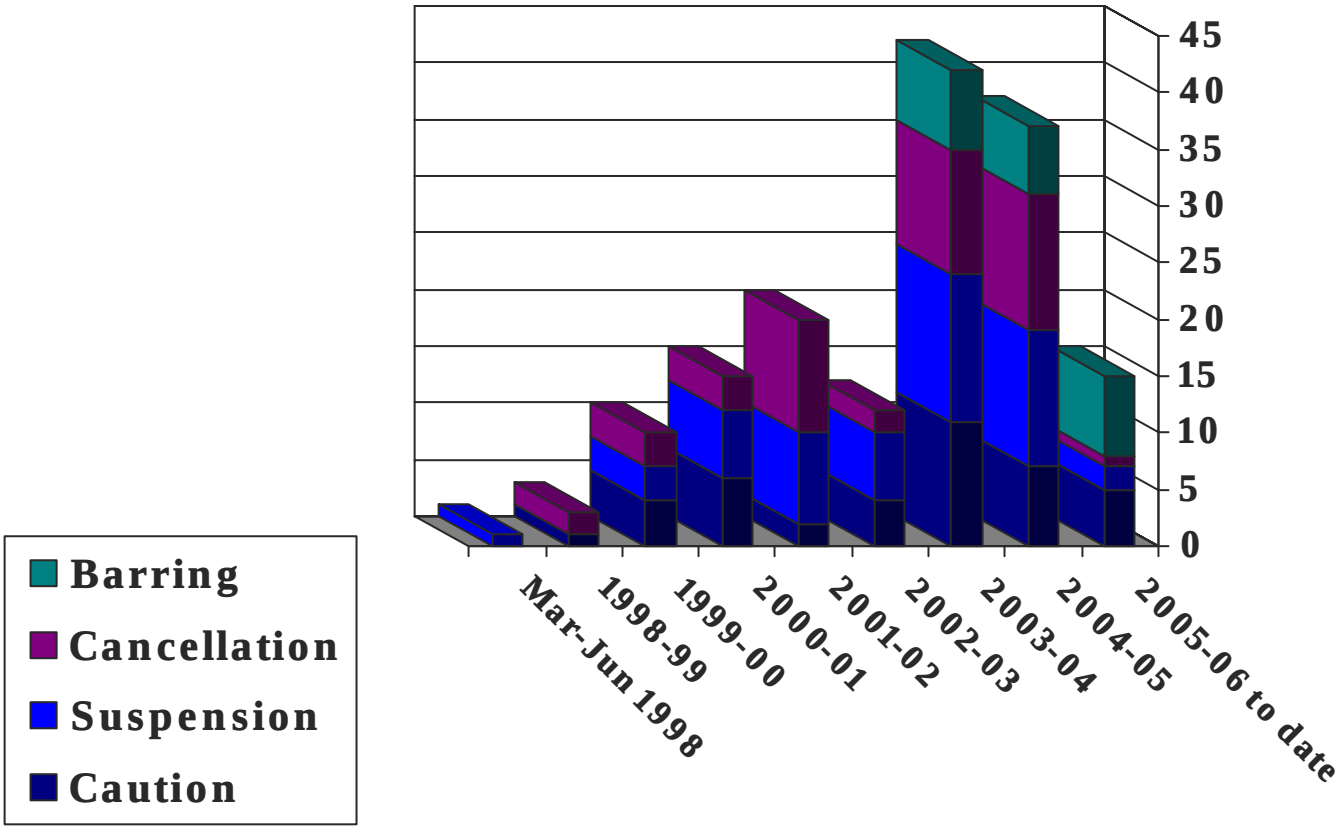
The attached table outlines the Protection visa activities of these 95 agents between 1/11/01 and 30/6/02, compared with the period between 1/7/04 and 1/3/05. As indicated by the final column in the table, the MARA has now taken sanction action against all but one of the "top 10" agents of concern. All agents on the list have, however, reduced their Protection visa activities significantly, and many have dropped out of the profession and are no longer registered.

Since the legislation came into effect on 1 July 2004, only seven agents have been identified as coming within the scope of the vexatious activity sanction scheme, in terms of the lodging of Protection visa applications. This includes only 1 agent previously amongst the 20 most active agents of concern.

Every Protection visa application lodged by these seven agents has been identified. All the relevant case files are being collated to enable comprehensive analysis of each agent's activities. One of these agents has already had their registration cancelled by the MARA under its discretionary sanction powers. Three agents have already been formally asked to explain their actions, as a precursor to being considered for referral to the MARA for possible sanction under the sanction regime introduced in the Migration Agents Integrity Measures Act, pending judicial review of some of their cases. The caseloads of the remaining three agents are still being analysed. Once this analysis is complete, any additional agent found to be potentially in breach of the vexatious activity scheme will be asked to explain their actions and if unable to do so satisfactorily, may be referred to the MARA for sanction action.

Since 1 July 2004, no agents have been identified as within the scope for the vexatious activity sanction scheme in terms of their lodgement of other types of visa applications.

Sanction decisions taken by the Migration Agents Registration Authority (MARA) since 1998 (as of 25 October 2005)



QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(7) Inquiry into the Administration of the Migration Act 1958

Senator Nettle (L&C 28) asked:

If there were a case where the department believed that it was inappropriate for GSL to have guards in a hospital, is there something in the contract that allows the department to pursue that with them? Can you point out for me where that is in the contract?

Answer:

Schedule 3 of the Detention Services Contract details Immigration Detention Standards (IDS) and performance measures. IDS 1.4.2.1 specifically relates to personal privacy and allows the department to sanction the Detention Service Provider if it can be substantiated that a detainee was not afforded as much personal privacy as reasonably practicable.

The department would consider both the personal circumstance of the detainee and under what circumstances an alleged intrusion of privacy occurred when determining whether to pursue a possible breach of IDS 1.4.2.1.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(8) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 29) asked:

In relation to the period of time people have spent in detention, compare the current figures to those for the last five years.

Answer:

The departmental database is only able to provide this information for the last four years.

As at 23 September 2005, there were 748 people in immigration detention. Of these, the length of time spent in detention is below.

Period of Detention	**Detainees**
less than 1 week	118
1 week to less than 1 month	99
1 to less than 3 months	105
3 to less than 6 months	99
6 to less than 12 months	119
12 to less than 18 months	67
18 months to less than 2 years	49
2 years or more	92
Total	**748**

As at 23 September 2004, there were 1047 people in immigration detention. Of these, the length of time spent in detention is below.

Period of Detention	**Detainees**
less than 1 week	118
1 week to less than 1 month	152
1 to less than 3 months	167
3 to less than 6 months	98
6 to less than 12 months	108
12 to less than 18 months	86
18 months to less than 2 years	54
2 years or more	264
Total	**1047**

As at 23 September 2003, there were 1113 people in immigration detention. Of these, the length of time spent in detention is below.

Period of Detention	**Detainees**
less than 1 week	70
1 week to less than 1 month	138
1 to less than 3 months	188
3 to less than 6 months	78
6 to less than 12 months	130
12 to less than 18 months	53
18 months to less than 2 years	34
2 years or more	422
Total	**1113**

As at 23 September 2002, there were 1316 people in immigration detention. Of these, the length of time spent in detention is below.

Period of Detention	**Detainees**
less than 1 week	132
1 week to less than 1 month	159
1 to less than 3 months	137
3 to less than 6 months	70
6 to less than 12 months	132
12 to less than 18 months	264
18 months to less than 2 years	262
2 years or more	160
Total	**1316**

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(9) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 29) asked:

Has the Department ever hired a consultant or conducted an internal study about the long-term effects of detention on people? Have you conducted any research or studies on that?

Answer:

No, to date the Department has not commissioned or conducted any such studies.

In 2004, the Department commissioned a review to evaluate the strengths and weaknesses of research methodology in existing literature in that field. This did not involve research into the long-term effects of detention.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(10) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 30) asked:

When were the internal and external audits done on the visa issuing system?

Answer:

The Australian National Audit Office conducted an audit of the Electronic Travel Authority (ETA) system in 1999. It was tabled on 22 July 1999.

DIMIA's internal auditors, Ernst and Young, finalised an audit of the ETA Interface on October 2002.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(11) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 31) asked:

Has ASIO ever expressed concern about the MAL check?

Answer:

ASIO has expressed confidence in DIMIA's management of MAL. ASIO and the Department continue to cooperate very closely over MAL and related border issues and if concerns arise then they are quickly addressed.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(12) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 33) asked:

Go through the evidence of the four days of hearings and identify all the allegations of inaccuracies in relation to the Country Information Service either held by DIMIA or in the RRT and respond to those claims.

Answer:

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) response:

Preamble – DIMIA's Country Information Service

DIMIA maintains a comprehensive Country Information Service (CIS) to support protection visa decision makers. As at end June 2005 there were 15 full time country researchers in the CIS, with up to 19 at various times throughout the year. All had research related qualifications and/or extensive research related experience.

At the end of June 2005, the CIS held 7,690 hard copy publications and documents dealing with human rights and refugee issues in other countries. The service also held copies of major human rights and country information collections from several other governments, including the United States, Canadian and United Kingdom governments.

The CIS also maintains a systems database of country information standing at some 87,500 individual information items drawn from over 2,600 different sources. Some 26,500 of these information items were added during 2004-2005, with over 25 percent of them added within one day of publication and two-thirds within five days of publication. This information is accessible and searchable from the decision makers' desktop computers. All of DIMIA's CIS holdings are available to the Refugee Review Tribunal (RRT), with the electronic data holdings searchable from Tribunal personal computers. All RRT sourced information used in a Tribunal decision is provided to DIMIA and is added to the Department's CIS holdings.

Around 80 percent of all information sourced for the CIS database comes from media based in countries being monitored or the surrounding region or from international agencies. A further 10 percent is sourced from United Nations agencies. Information sourced from non-government organisations, other government, academic and special interest groups make up the remaining 10 percent. Information provided by the Department of Foreign Affairs and Trade (DFAT) comprises 0.5 percent of holdings. DFAT has in place an Administrative Circular that provides policy guidance to overseas posts tasked to collect country information for use by the CIS, RRT and the Migration Review Tribunal (MRT). In summary, these guidelines specify the purpose for which the information is being gathered,

and indicates that information provided by overseas posts should contain factual information to the extent possible and should not contain any unsolicited comment. It clearly instructs the post not to divulge the name or any other details of the applicant or their family, unless specifically asked to do so in the tasking cable.

Decision makers are able to conduct their own inquiries and to consider information they assess to be relevant and reliable from any source, including from clients and advocates. The decision makers have desktop access to the internet. All of the information used in protection visa decisions is required to be included in CIS holdings for audit and reference purposes. Any adverse information used by a decision maker must be provided to the applicant for comment.

In addition, where information is not immediately available to case managers, for example where there are highly specific issues in question, the officers are able to make requests to the CIS to conduct research. Some research requests are referred to overseas posts and/or overseas organisations such as the United Nations High Commissioner for Refugees, as appropriate, for specific advice. This generally takes place where available information is ambiguous or is not sufficiently precise to address the specific issues under assessment. As a result, country information sought through this process, for example from DFAT, tends to be focused on key issues of direct relevance to protection visa decision making on individual cases or groups of cases in Australia.

Responses to specific points raised in the previous hearings relevant to country information and its use, are as follows:

MONDAY 26 SEPTEMBER 2005
Ms Dymphna ESZENYI, President elect, Law Society of South Australia
States findings by a study conducted by the Edmund Rice Foundation, (referred to in Law Society's written submission) suggests failed asylum seekers have been refouled by Australia.

Response: No evidence to support these views or allow them to be explored further has been identified. The department's answer to a separate question on the Edmund Rice Foundation study provides more detail on this matter.

Ms Sasha Jane LOWES, Member Human Rights Committee, Law society of South Australia
Notes cases of DIMIA officers relying on procedural information in an application to cast doubt on credibility of another applicant's claims. Reliance on that sort of information as opposed to independent country information does not seem to have any valid basis.

Response: Information provided in one application can play a legitimate role in the assessment of claims of another applicant. One example might be if two family members present obviously inconsistent accounts of the family's experiences. Importantly, such cross application comparison can also assist in substantiating the accounts of an individual, for example where the accounts of applicants align. Without information enabling the department to identify and assess the handling of the cases of concern to Ms Lowes, no reliable conclusion can be drawn as to whether these cases were handled improperly.

Ms Claire O'CONNOR, Private capacity
Notes case officers have "consistently ignorant approach to a particular country or regional application". Suggests appropriate training and understanding required.

Response: Protection visa decisions are made by senior departmental officers who have undertaken comprehensive induction training and regular refresher training for this work including:

- Refugee law and international obligations.
- Cultural, gender and age sensitivities.
- Legal requirements of administrative decision making.
- Policy and procedures; and
- Selection and use of country information.

In addition, the CIS organises regular country information seminars for decision makers, often drawing on visiting international experts or local commentators and academics.

In total, between 280 and 300 hours of training courses are provided for protection visa decision makers each year. This training is additional to corporate, systems, staff management and personal development training provided to all DIMIA employees. It is noted that advocates representing protection visa applicants are also required to undertake training for their continuing professional development. For example, lawyers are required to undertake 10 hours of continuing legal education per annum.

Australia's protection visa approval rates compare favourably with those in many European countries. For example, for the unauthorised boat arrivals between 1999 and 2001, DIMIA approved some 85 percent of applications from Afghan nationals and some 89 percent from Iraqi nationals in the first instance. More recently, the department's approval rates in 2004 for Iraqi nationals was some 79 percent, and for Afghan nationals some 70 percent. Approval rates in comparable European countries in 2004 for these nationalities ranged from less than 1 percent to some 66 per cent, with approval rates in many countries being below 20 percent.

Historical and current Refugee Review Tribunal set aside rates compare with merits review tribunal rates in other jurisdictions. It needs to be recognised that the RRT is making a *de novo* decision, providing applicants with the opportunity to present new claims and taking into account any changes in the home country that have occurred since the department's decision.

Even with these factors, in the period from 2001-2004, the RRT set aside rate has been between 6 and 13 percent. Set aside rates for other tribunals, such as the Migration Review Tribunal, the Social Security Appeals Tribunal and the Veterans Review Board over the same period have been between 28 and 50 percent.

Details of the Country Information Service holdings and capabilities are set out in the preamble to the answer to this question.

WEDNESDAY 28 SEPTEMBER 2005
Mr David BITEL, President, Refugee Council of Australia
Country reports out of date by years.

Response: The Country Information Service database is continuously updated with contemporary information. Details of the size and currency of those information holdings are set out in the preamble to the answer to this question.

A DFAT country report from posts in Bangladesh published 12 years ago stated that nearly

100 percent of claims made by applicants are based on false information.

Response: DIMIA is unable to identify a report that matches this description within the CIS holdings. DIMIA has identified a Country Information Report dated April 1993 located in the CIS archive. This report is based on a debrief from a then recently returned DFAT officer. There is no statement contained in this report that nearly 100 percent of claims from nationals of Bangladesh are made on the basis of false information.

Protection visa applications are assessed objectively on a case by case basis. Each decision maker assesses the merits of each case and determines whether the applicant meets the criteria for the grant of a protection visa. The applicant is given the benefit of the doubt in this assessment.

Decision makers are using country information out of context.

Response: Details of the comprehensive induction training and regular refresher training for decision makers, and decision maker competencies, are set out in the response to Ms Claire O'Connor above. In the absence of some identification of individual cases which could be explored by DIMIA, it is not possible to draw conclusions about these views.

Ms Elizabeth Mary BIOK, Legal Officer, Civil Litigation Section, Legal Aid Commission of NSW

Decision makers do not use country information to acquire knowledge on cultural political and social norms in countries prior to decision.
Culture of decision makers to selectively use country information - from one source used to reject claim while ignoring information in source that could support claim (human rights abuses).
Decision makers take country information on face value, do not consider ramifications of it (eg: recent peace accord not tested).

Response: Detailed information concerning country information holdings, decision maker training and competencies and the comparison of the department's approval rates with those in other jurisdictions is set out above. In the absence of some identification of individual cases which could be explored by DIMIA, it is not possible to draw conclusions about these views.

RRT members are more in tune with country information compared to DIMIA case officers.

Response: The Tribunal does not see departmental approval decisions and, as set out above in the preamble to this question, RRT set aside rates for departmental refusal decisions are low in comparison to set aside rates in other jurisdictions.

Old country information used (6 years old, reliance on historical events, and ignorance towards current events.)

Response: In the absence of information which might enable the department to identify and evaluate the cases in question, it is not possible to conclude that the use of information was inappropriate. The age of a report does not necessarily indicate its reliability or relevance. Protection visa applicants will often base their claims for protection on past persecution and past experiences. Contemporaneous information will often be used to evaluate such claims.

Detailed information concerning country information holdings and decision maker training and competencies is set out above.

Ms Kate GAUTHIER, National Co-ordinator, A Just Australia
Ms Naleya EVERSON, Researcher, A Just Australia
Country information not correctly regulated, causing inconsistent decisions.
Use of country information used selectively, in favour of decision preferred.
Discrepancies in issues included in country information as it is acquired through various sources.

Response: The Country Information Service does not censor the information available to case officers. Where there are divergent analyses and reports regarding the situation in a country, such reports are generally included in CIS holdings. It is for decision makers to select and weigh the country information in each case to reflect the particular situation and circumstances of the applicant. Cases which at one level may appear similar may have significant distinguishing features. In the absence of any information which might enable examples to be identified and explored, it is not possible to substantiate the views put to the Committee.

Detailed information concerning country information holdings and decision maker training and competencies is set out above.

Problems in accuracy of country information from DFAT – political bias (eg: "Christians not persecuted in Iran").

Response: Detailed information concerning country information is set out in the preamble to this question. The administrative circular issued by DFAT to guide officers in the preparation of responses to CIS country information requests which provides that, to the extent possible, posts should only provide factual information in response to requests for country information and that any advice should not contain unsolicited comments. By reporting the views of interlocutors, DFAT is in no way endorsing those views.

The CIS database contains a range of information concerning Christians in Iran including information from DFAT. The DFAT material consists predominantly of factual reporting of the situation in Iran and in relation to specific questions. It includes a report of February 2003 of discussions between DFAT and a regular interlocutor from a particular church in Iran. This appears to be the report alluded to in evidence to the Committee, but there are significant inconsistencies between that evidence of the reports contents and other country information available to the Department.

The DFAT document reports the view of the interlocutor that the particular church did not believe there has been any deterioration in the situation for Christians in Iran at that time. DFAT reported that the interlocutor also advised that the situation can be more complex for converts who publicly state their conversion, but this has not resulted in criminal charges for some time. The interlocutor in question did not say that "Christians were not persecuted in Iran" as asserted in the evidence to the Committee by Ms Everson. There is no information to suggest that the DFAT report was other than a balanced and factual recording of information to provide views of relevance to decision makers.

The CIS holdings contain continuously updated information on Christians in Iran. The views of the interlocutor reported by DFAT form a small part only of a wider range of information available to decision makers. The relevance and weight of any particular item of

information will depend on the circumstances of the individual case. At the time of the DFAT report, the comments of the interlocutor were broadly consistent with other available information.

A search of CIS holdings and internet sources has located no evidence to support the assertion given to the Committee that another member of the interlocutor's church had since been executed. Publicly available information form a range of credible sources report that the most recent execution of converts from Islam to Christianity for apostasy in Iran was in 1994.

Use old information and do not seek up-to-date information.

Response: Detailed information concerning country information holdings, decision maker training and competencies and the comparison of the department's approval rates within those in other jurisdictions is set out above.

No automatic review of recent decisions after country information changes – onus on applicant.

Response: The *Migration Act 1958* (the Act) prevents a person refused a protection visa from lodging a valid fresh protection visa application unless the Minister uses a personal non-compellable power to allow this in the public interest under section 48B of the Act. In many cases it is reasonable to expect that a person found not to be owed protection who subsequently develops a well founded fear of persecution will draw these circumstances to the department's attention. Specific units have been established in New South Wales, Victoria, Western Australia and DIMIA National Office to conduct assessments of such cases, and to provide advice to the Minister in considering her power to intervene under section 48B of the Act to allow fresh protection visa applications to be made. The Department actively monitors the cases of persons in detention or facing removal, and where appropriate, refers these cases to the Minister for her consideration of the use of her section 48B power. The Department also initiates and conducts broader assessments of Australia's obligations under other international instruments, prior to involuntary removals, to identify and refer for Ministerial attention any case which raises other non-refoulement obligations.

Reflecting the approach set out above, formal reassessment of Afghan and Iraqi nationals found not to be refugees was conducted in 2004 in response to significant changes in the situation in these countries.

Applicants in community on BV unaware of new country information to enable them to reapply/be reassessed. Applicants in detention more likely to get assistance from legal advocates.
Applicants can only reapply through 48B if a change in country information – lengthy process.

Response: The Minister's power under section 48B of the Act is a personal non-compellable power that enables her to allow a further application for a protection visa where it is in the public interest to do so. The Minister's consideration of whether it is in the public interest to allow a further application includes, but is not restricted to, a consideration of changes in country information. In relation to persons in detention, cases are actively managed by the department in the national office these section 48B issues are, on average, resolved in approximately 75 days.

THURSDAY 29 SEPTEMBER 2005
Dr Graham THOM, Refugee Coordinator, Amnesty International Australia
Query weight applied to Amnesty information compared to DFAT information used in decisions.

Response: Detailed information concerning country information holdings and information provided to DIMIA by the Department of Foreign Affairs and Trade is contained in the preamble to this answer. Information from Amnesty International and other major non-government organisations forms an important part of the CIS holdings. The relevance and weight of the country information will depend on the circumstances of each case.

"Something like 90 per cent of primary decisions for Afghans were overturned by RRT."

Response: This claim is not true. Of all Afghan boat arrivals who sought protection between 1999 and 2001, DIMIA approved over 85 percent of these cases in the first instance. Less than 15 percent of this cohort sought RRT review. When assessing applications for further protection visas from these people, DIMIA has been approving over two thirds of the applications, notwithstanding the significant changes that have taken place in Afghanistan since many of these people were originally assessed. Further relevant information on departmental approval rates and the low rate at which the RRT set aside departmental decisions is set out in the response to Ms Claire O'Connor above.

DFAT makes assessments about persecution of particular groups which DIMIA uses. Need to ensure we do not refoule.

Response: Detailed information concerning information provided by the Department of Foreign Affairs and Trade is contained in the preamble to this answer. The administrative circular issued by DFAT to guide officers in the preparation of responses to CIS country information requests provides that, to the extent possible, posts should only provide factual information in response to requests for country information and that any advice should not contain unsolicited comments.

The inability to acquire independent country information is an issue identified in the Palmer enquiry with regard to the remoteness of the Baxter Detention Centre, and will be magnified in places like Nauru, Manus Island and Christmas Island.

Response: DIMIA cannot identify any reference in the Palmer Report calling in to question the reliability of the CIS holdings used for protection visa processing.

FRIDAY 7 OCTOBER 2005
Ms Marion Rose LE, OAM, Private capacity

Ms Le raised a number of concerns in her evidence regarding the knowledge level of departmental officers and the use of different sources of information. These concerns have been addressed separately in question number 1.

Refugee Review Tribunal Response:

The RRT wishes to respond to the submissions and evidence given to the Committee with

the information set out below. The RRT is not a policy or law making body and does not engage in political debates on refugee or legislative policy issues. The sole business of the Tribunal is to provide administrative merits review of decisions by the Minister's delegates either to cancel protection visas or to refuse applications for Australia's protection under the 1951 Convention and 1967 Protocol relating to the Status of Refugees.

Several submissions and witnesses to the Inquiry dealt with a range of factors such as government policy issues, multi-member panels, tenure, tribunal structure and independence as well as a range of case specific issues including the reliability or correctness of country information used by Members, ignoring country information, poor quality decision making, manner of conduct of certain hearings, undue emphasis on credibility and bias.

The RRT does not intend to provide any submissions on policy matters nor is it possible to respond to specific case issues, primarily for reason of the strict confidentiality provisions of section 439 of the Migration Act 1958 (the Act). However, the RRT wishes to provide the following information regarding its role and operations and its access to and use of country information.

1. The role of the RRT: final tier Merits Review

The Tribunal provides a final tier of merits review of administrative decisions made by officers of the Department who, as the Minister's delegates have the power to refuse applications for protection visas by applicants in Australia or to cancel such visas.

Merits review also has a broader objective of improving the quality and consistency of the decisions of primary decision-makers. Additionally, through the publication of decisions and reasons, (subject to the particular confidentiality requirements which bind the RRT 1), merits review enhances the openness and accountability of the particular area of administration in which it is available. Section 421(1) specifies that the Tribunal is to be constituted by a single member.

<u>The role of the RRT: jurisdiction limited to onshore applicants</u>

The Tribunal has a very particular role in Australia's refugee determination process which is defined by the *Migration Act 1958*. The Tribunal deals only with 'onshore' asylum seekers, ie persons who are present in the Australian migration zone and the Tribunal reviews decisions of the Minister's delegates, who have refused applications for or have cancelled protection visas relating to such persons.

<u>The role of the RRT: considering the principal criterion</u>

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1 The RRT publishes decisions. These are edited into a style and format so as not to contain information which may identify the applicant or relatives, or other dependents of the applicant (s431(2) of the Migration Act, 1958). On average the Tribunal publishes 10% of its decisions. Before 1 June 1999, all Tribunal decisions were published. Since that date, only decisions considered to be of 'particular interest' by the Principal Member are published. Decisions of particular interest are those representing a broad cross section of decisions having regard to factors such as the country of reference, the outcome of the review, whether there is detailed consideration of legal principles, and whether the factual circumstances are complex or unusual, or whether they are common to a large number of cases. Statements which would require extensive editing for the purposes of subsection 431(2) of the Migration Act 1958 are likely to be difficult to follow and therefore not of particular interest.

Whilst there are a number of criteria,2 such as character and health to be considered in connection with the grant of a protection visa, in almost all cases the Tribunal is solely concerned with what is commonly regarded as the principal criterion - namely, it has to be satisfied that the applicant before it is a person, or a family member of a person, to whom Australia has protection obligations under the *1951 Convention* and *1967 Protocol relating to the Status of Refugees*.

The Tribunal is also empowered to undertake an assessment of whether certain persons brought to Australia under s.198B of the Act are covered by the definition of refugee in Article 1A of the Refugees Convention (s.198C). However, in practice it is a power which the Tribunal is rarely required to exercise.

In determining whether an applicant satisfies the principal criterion, the Tribunal conducts a *de novo* review, examining the merits of the protection visa application afresh, that is, as I mentioned earlier, the Tribunal 'stands in the shoes of the original decision maker'.

On occasions, there are differences of interpretation and application of the UN Convention and the legislation between the Minister's delegates and the Tribunal. Often further and more detailed information becomes available between the time of the primary decision and the Tribunal's decision. The Minister and the Department are not represented before the Tribunal and do not usually present any further material subsequent to the primary decision and the production of the Department's file to the Tribunal.

In its review the Tribunal must 'act according to substantial justice and the merits of the case' and 'is not bound by technicalities, legal forms or rules of evidence' (s.420) but it is bound by the decisions of the Federal Magistrates Court, the Federal and Full Federal Courts and the High Court from which applicants may seek judicial review on limited points of law.

The role of the RRT: confidentiality obligations

The Tribunal necessarily operates in a closed environment – and this can, on occasion, attract adverse comment. The Tribunal is required by the Act to conduct its hearings in private (s.429) and to restrict the release of personal information (s.439).

These obligations not only serve to protect any persons or their family Members from possible retribution in their own country of origin, but also to provide an environment in which applicants feel less restricted in the evidence they may give and to develop sufficient trust with the Member to express themselves more freely.

Post decision – fee may be payable

If the protection claims are successful the application is remitted to the Department for further processing including health and character checks after which the applicant may be granted a visa. If the protection claims are rejected or the cancellation is not set aside and the Departmental officer's decision is affirmed by the RRT, a $1,400 RRT fee is payable by the applicant. People granted a protection visa as a result of an RRT decision and people on whose behalf the Minister intervenes in the public interest do not have to pay the fee.

Post decision - The Minister has the power to intervene

2 see s.36(2) of the Act and clauses 785 and 866 of Schedule 2 of the *Migration Regulations 1994*

The Minister for Immigration has the power to intervene only after an applicant has received a Tribunal decision, however, he is not compelled to do so (under s.417). The Minister may intervene to substitute an RRT decision with another decision where it is in the public interest to do so. Importantly, the substituted decision must be more favourable to the applicant. Where the Minister substitutes a decision, the Minister is to table a statement in each House of the Parliament.

RRT Members may draw to the Minister's attention a particular case which raises claims for consideration of Ministerial intervention. Members may also outline their reasons for referring the matter for consideration of Ministerial intervention, in an appropriate section of their decision. However, in referring a matter for Ministerial intervention on the basis of unique or exceptional circumstances, Members do not make recommendations to the Minister.

Quality control mechanisms

The RRT has in place a broad range of quality control mechanisms to ensure that merits review decision making quality in the portfolio remains at a high level.

(a) Highly skilled Membership

The Tribunal's Members are its decision makers. The Tribunal Members are recruited for the high level of skills and experience they possess through a competitive and extensive nation-wide recruitment process. Members come from a broad range of backgrounds and are employed for the specialist skills that they can bring to the decision making process. At present, approximately 50% of Members have a legal background, and many come to the Tribunal with senior and extensive experience in private practice, government departments and related agencies such as Legal Aid.3 Others have extensive experience in the refugee field, refugee advocacy groups or the UNHCR. A number of Members have undertaken temporary assignments with the UNHCR in trouble spots (such as Afghanistan and West Africa) to assist in the establishment of human rights structures and to make refugee determinations in those countries.

In carrying out merits review, Members have to consider both the lawfulness and the merits of the decisions they are reviewing. While legal skills are clearly useful in respect of the first component, it is generally accepted within the tribunal that merits review benefits from the wide range of skills and experience that a diverse Membership makes available. An analysis of Court remittals to the RRT does not suggest that legal error occurs noticeably more or less on the part of Members with legal qualifications than those without such qualifications.

The Tribunal currently comprises 71 Members, 10 of whom are full time whilst 55 are part time. (Of the total number, 44 Members work in the Sydney Registry and 22 in the Melbourne Registry). Members are appointed by the Governor-General on recommendation of Cabinet. Lengths of appointment vary, however, a majority (59) of the current

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3 Current Members backgrounds include other Tribunals such as the SSAT, AAT, ABT, CTTT, VWAB. Refugee organisations UNHCR, RACS, private legal practice, Legal Aid, DPP, AGS, Community Legal organisations (incl Refugee /immigration specific), Government employment (DoCS, HREOC, DFAT, DIMIA CASA, ITSA, Ombudsman, Centrelink, ALRC, AFP, ICAC, AG, Federal Court, Supreme CourtADB, EPA, Ethnic Affairs) Academia and Interpreting /translating. Of current RRT Members, 6 out of 71 (8%) have had prior work experience with DIMIA. Legal qualifications are not a statutory requirement although a significant number of Members have legal qualifications.

Membership were appointed to 3 year terms on 1 July 2004. Section 461(1) provides that appointment is for a period not exceeding 5 years, but can be subject to re-appointment. Re-appointment allows for continued use of specialised skills and knowledge.

(b) Member training and professional development

Ongoing professional development of RRT Members is an important priority. A variety of professional development and training is provided to Members covering legal, professional and practical skills as well as legal and country updates.

Training is conducted in a variety of ways, ranging from individual mentoring, workshops, formal presentations and the use where appropriate of external experts. Areas of focus include refugee, migration and administrative law, country information, professional skills, practical and procedural issues, cross-cultural awareness, and information technology. Members attend external conferences and training where it is identified as beneficial to their professional development.

Newly appointed Members - both full-time and part-time - initially undertake a 4-day induction program. Apart from legal training of refugee and administrative law, the induction features sessions on caseload management, conducting hearings, making and writing decisions and statements of reasons, working with interpreters, victims of torture and trauma, and legal and country information services.

There is also structured follow-up training for new Members, as well as guidance by mentors and by Senior Members. Each Senior Member receives detailed monthly statistical reports in relation to the caseload and output of each Member. Such material is also provided directly to each Member. Under the general oversight of the Deputy Principal Member, Senior Members acquaint themselves with the work of each Member through sampling hearings and decisions, direct discussion and where appropriate feedback from Legal. Senior Members directly provide advice and counselling to Members as appropriate in one-on-one informal discussions, as well as through the ongoing formal performance appraisal process for which they are primarily responsible. Members can choose to have their decisions read in draft by the Legal Section, and this is required for newly-appointed Members for an initial period. Senior Members provide feedback as to areas that should be covered in additional professional development and training.

Annual performance appraisals of Members are carried out, which involve inter alia consideration of a random sample of the Member's recent written decisions and recent hearing tapes; the incidence and outcome of applications for judicial review in relation to the Member's decisions; the Member's compliance with procedural fairness obligations generally and in relation to hearings; the Member's participation in professional development programs; the Member's interaction with applicants, advisers and interpreters; and whether the Member uses interpreters effectively and in accordance with accepted techniques.

Appropriate professional development and training are also conducted at the National Members Conference. Other professional development is carried out through a formal Members' Training Program covering a range of aspects of Member activities, including legal training on refugee and administrative law issues. The Tribunal also takes opportunities for Members to attend relevant external presentations or seminars, including by the AIJA, AIAL and COAT.

External presenters have included UNHCR, STARTTS (Service for the Treatment and

Rehabilitation of Torture and Trauma Survivors); Refugee Council of Australia and other NGOs (NGO perspectives on Iraqi caseload); Dr Sandra Hale, Head of Interpreting and Translation Programs, University of Western Sydney (Working with Interpreters); Mr Laurie Robson, Leo Cussens Institute (Effective communication and testing credibility); Mehmet Ozlap, Affinity Intercultural Foundation (Contemporary Issues and Islam); Dr Stephen Donaghue and Guy Gilbert, barristers (Witnesses and procedural fairness); Zachary Steele, Clinical Psychologist and Naomi Fromer, UNSW School of Psychiatry ("The traumatised applicant"); Professor Guy Goodwin-Gill (Developments in Refugee Law); Professor John H Phillips AC QC (Conduct of Hearings); Chief Federal Magistrate, John Pascoe; Stephen Lloyd, Barrister (Litigation & the Tribunals); Australia diplomatic representatives (including the Ambassador to China, the High Commissioner to India; and the Ambassador to Serbia & Montenegro, FYR of Macedonia and Romania) and a range of academic experts, journalists and commentators providing up-to-date assessments in relation to countries such as Iraq, Afghanistan, Indonesia, Iran and China.

The Tribunal also circulates to Members external material as appropriate, including UNHCR papers on such subjects as *Internal Flight or Relocation Alternative;* Cessation of Refugee Status under Art 1C(5) and (6); Gender Related Persecution and *Membership of a Particular Social Group* .

There are also regular presentations by legal officers at Members' meetings, drawing attention to significant recent decisions. A monthly RRT Decisions Bulletin summarises a range of RRT and Court decisions so that Members can familiarise themselves with the work of other Members in similar cases. All RRT decisions are accessible electronically to all Members. The Bulletin also includes key Court decisions.

(c) Correct law and country information

There is a considerable amount of legislation, country information and case law which relate directly to the RRT's work. The RRT enables Members and officers to find the correct law and relevant country information through a combination of external and internal information products. Available electronically to all Members and officers are:

- Consolidations of migration legislation, Ministerial directions, Gazette notices and DIMIA policy searchable by date back to 1994;
- Commentaries on legislative amendments and court cases;
- A collection of relevant court decisions;
- RRT decisions;
- RRT procedures, guidelines and advices;
- A legal advice service;
- A country information service;
- A vast amount of country information;
- Current awareness bulletins; and
- Internet access.

(d) Legal and country research services

The RRT has specialist Legal and Country research staff to assist Members. The Country Research Section provides Members and staff with relevant authoritative country

information. Both section ensure Members and staff are kept up to date with significant developments by conducting workshops and providing briefings and reports on significant developments.

The Country Research and Library Services Section provide Members and officers with relevant, current and authoritative country information. Research officers respond to queries from Members, and also update, organise and index holdings of information for maximum accessibility by Members in their decision-making. All information used for country research purposes must be able to be cited and made publicly available.

Members and research officers have access to a very wide range of information available either electronically or in hard copy in the Library or from each computer desktop. DIMIA's CISNET database is available in addition to the major Government, intergovernmental and non-government sources of information, and a large number of specialist journals and international newswire services. An important source relied on by Members and officers is the information provided on request by the overseas missions of the Department of Foreign Affairs and Trade (DFAT) through its People Smuggling, Refugees and Immigration Section. The RRT may also from time to time commission expert opinions from academics and leading commentators.

The Legal Services Section provides Members and staff with migration, refugee and administrative law advice on a range of substantive and procedural issues. Legal section checks draft decision of Members upon request. The section also ensures that Members and staff are kept up to date with significant legal developments and maintains the Guide to Refugee Law in Australia for the reference of Tribunal Members and staff. Legal Section monitors and co-ordinates cases under judicial review and provides training to Members and officers on significant judicial developments and key legislation.

The regular legal research bulletins provide an analysis of the legal issues and contain practical suggestions for Members in response to the implications of the legislation or case law addressed. Recent titles include, for example:

> 'Categorising Applicants or their Claims in Assessing Well-Founded Fear - The implications of Applicant NABD of 2002 v MIMIA [2005] HCA 29'
>
> "Protection Obligations" and Effective Protection - Implications of NAGV & NAGW of 2002
>
> 'Article 1C and Further Protection Visas – An Analysis of Recent Case Law'
>
> 'Blood Feuds and s.91S - An Analysis of Recent Case Law'
>
> 'Dealing with confidential and sensitive information'
>
> 'Cancellation: Reviewing decisions to cancel protection visas'

Legal Services Section also provides training to staff on Freedom of Information and Privacy issues and produces a publicly available bulletin that reports on RRT cases, court judgments, legislative developments and statistical outcomes. The RRT Bulletin is available on the RRT's website www.rrt.gov.au

The RRT places a high priority on the collection, analysis and sharing of information across the organisation, primarily through its intranet site, the delivery of case-related training, and through promoting the discussion of issues between Members and officers at national and local levels.

(e) Decision templates

Legal Services Section prepares and maintains decision templates for the use of Members. The decision templates are standard forms of words prepared for insertion in decisions. They

are essentially summaries of various aspects of the applicable law which may commonly arise in the assessment of cases before the Tribunals.

Additionally, Members may request their draft decisions to be checked by the Legal Services Section. There is a three day target turn around time for legal clearance of non-detention cases, and a two day turn around time for detention cases. Members use this facility to a varying degree dependent upon their level of experience, the complexity of the matter and other factors.

(f) Senior Members

Senior Members have a very important role in the Tribunal. In addition to undertaking a full range of cases and leading by example with quality and timely reviews, the Senior Members each provide leadership, guidance and advice to a group of Members. This involves supporting and monitoring the work of Members.

The Senior Members have a particular responsibility for Member performance – Members' productivity, quality of Members' work, consistency in decision-making and contributions towards maintaining a collegiate environment. The Senior Members also play a significant part in the Tribunal's overall management, including participation in senior management meetings, in consultations across the Membership, in the development and implementation of strategies to meet the Tribunal's goals, in national and local resource planning, and in the development and review of national and local policies and procedures.

The Principal Member is appointed to both the Migration Review Tribunal and the Refugee Review Tribunal and is the Chief Executive Officer of the tribunals. The Principal Member is responsible for Member management and performance issues across both tribunals, as well as for the overall management of both tribunals. The Registrar of both tribunals is primarily responsible for staff matters as noted in the Members Code of Conduct. The RRT DEPUTY PRINCIPAL MEMBER is responsible to the Principal Member for management and performance issues across the RRT Membership, and Senior Members are accountable in relation to their work performance, professional conduct, management and organisational issues to the DEPUTY PRINCIPAL MEMBER.

The responsibilities of a Senior Member include:

- undertaking a caseload (equivalent to two-thirds of a full-time member caseload) including more complex and demanding cases
- monitoring the work of a group of Members, providing guidance, advice and support, conducting performance appraisals, and, where necessary, providing counselling
- working with the Deputy Principal Member and other Senior Members to promote consistency and balance in performance appraisals, mentoring and development for all Members
- assisting as required with other aspects of Members' professional development
- investigating complaints and enquiries about Members and preparing reports, recommendations and draft replies for the Principal Member's consideration
- leave planning and approving Members' leave requests
- approving the days for part-time Members' attendance and approving pay claims

- participating as a member of the Tribunal's Senior Management Group
- undertaking other duties and tasks assigned by the Principal Member or the Deputy Principal Member

(g) Senior Management Group

The Senior Management Group of the Tribunal comprises the Principal Member, the Deputy Principal Member, the Registrar, the Senior Members, the Deputy Registrar and the NSW and Victorian District Registrars. The Senior Management Group meets on a monthly basis and considers caseload and Member and staff performance issues. It generally monitors the Tribunal's operations and develops and implements strategies relating to Member and staff productivity.

(h) Judicial review

Adverse judicial decisions are drawn directly to the attention of the Members concerned and summaries are circulated to all Members generally. Members have access to a strong legal support area within the Tribunal and professional development and training is provided to both new and ongoing Members.

Although large numbers of RRT decisions are litigated each year, only a very small proportion are remitted by judgment. Summaries of all significant judgments are circulated to all Members. A brief listing of other routine judgments is also circulated each week. In all instances, the Member concerned receives a copy of the full text of the judgment. In the case of particularly significant decisions or issues, a Legal Bulletin is prepared by the RRT Legal Section and distributed to all Members.

The Tribunal's Guide to Refugee Law, which is available to all Members electronically and in hard copy and is regularly updated. Detailed analysis of judicial decisions, including trends and issues, is provided to all Members at monthly Members' meetings and in a substantive Quarterly Litigation Report Trends in Judicial Review of Tribunal Decisions.

Many remittal decisions by the Courts involve issues of legal interpretation, including the widening scope of jurisdictional error, and not infrequently following a different view taken by a lower Court. In those few cases where a Member's conduct is identified as not affording procedural fairness, the decision will be discussed with the Member by his/her Senior Member.

(i) Complaints mechanism

The RRT has a complaints mechanism under which complaints against Members are referred to the Principal Member for investigation. The Principal Member may investigate the complaint himself or may require an investigation to be carried out by the Deputy Principal Member or a Senior Member. The Principal Member or his delegate advises the complainant of the outcome of the investigation and of any action taken. The complaints procedures are set out in the RRT's Service Charter.
The RRT's Service Charter sets out in plain English the standards of service that clients can expect and provides information on how clients can comment on, or complain about, the service provided by the RRT. The Service Charter is available on the RRT's website www.rrt.gov.au.

The Charter sets out general standards for client service covering day to day contact with the RRT, responding to correspondence, arrangements for attending hearings, the use of interpreters and the use of clear language in decisions. The Charter is sent to all applicants with an acknowledgement letter following the lodgement of an application for review.

A key indicator of client service quality is the number of complaints received about the RRT's operations, whether made directly to the RRT, to the Commonwealth Ombudsman or to Government.

The RRT received only a small number of complaints having regard to the 3,033 cases finalised during the year. A number of complaints related to the manner in which a hearing was conducted. Other complaints were about the conduct of the review process or alleged bias on the part of a Member. The Principal Member investigated and provided a written response to 15 complaints during the year.

The Commonwealth Ombudsman received 6 complaints about the RRT during the year, the same number as the previous year. The Ombudsman's office finalised 6 complaints covering 6 issues, deciding at the outset not to investigate these issues. Four of the issues were referred back to the RRT and the remaining two were found not to be warranted.

Consistency in decision making

Members are required to conduct an independent review and to reach an independent decision on each case allocated to them. A decision made by a Member in one case does not bind Members in other cases. Members are required to apply the correct law and are bound by relevant court decisions.

Consistency of decision making on similar facts is identified by the Members' Code of Conduct as a requirement for Members to observe.

Each case before the Tribunal is decided on its merits, which involves consideration of the individual circumstances presented by each applicant. Due to the variation in individuals' circumstances, it is seldom possible to compare individual cases.

Fairness and justice

The Act provides that applicants are entitled to:

- be informed of, and be given an opportunity to comment upon, certain information that might lead to an adverse outcome;
- appear before the RRT to give oral evidence and present arguments;
- make written submissions or provide documentary evidence at any stage of the review;
- be given an opportunity to ask the RRT to take oral evidence from other persons;
- an interpreter if not sufficiently proficient in English; and
- a written statement of reasons for the decision.

The RRT is committed to ensuring that outcomes do not depend on whether applicants have obtained professional advice or assistance. About 31% of cases finalised involved applicants who were not represented. There has been a particular effort to tailor the RRT's documents, procedures and practices to suit applicants who proceed without expert representation.

Legal representation

A representative can forward written submissions and written evidence to the RRT, contact the RRT on the applicant's behalf, and accompany the applicant to any meeting or hearing

arranged by the RRT. With very limited exceptions, a representative must be a registered migration agent. Applicants may appear before the RRT in person, or through the use of videoconference or teleconference facilities.

Under current law procedural fairness may require that an applicant before the tribunal be represented in hearings.4 The restriction in s.427 has been narrowly interpreted by the courts. Other provisions require that persons giving immigration assistance must be a registered agent, and the status of lawyer alone is not sufficient - but this does not prohibit persons who are lawyers to represent clients before the Tribunal as long as they are also a registered agent.

Conduct of hearings

A corollary of the inquisitorial nature of proceedings before the Tribunal is that the hearing is only part of the process. This contrasts with the adversarial system where, as a general rule, all the evidence relied on by the parties must be led at trial.

The hearing supplements the information already provided to the Tribunal, which will normally include not only any information provided to the Tribunal by the applicant but also the file of the Department of Immigration and Multicultural Affairs containing the applicant's original application for a protection visa (provided to the Tribunal by the Secretary of the Department in accordance with subsection 418(3) of the Act).

Under section 425 of the Act, if the Tribunal considers that it should decide the review in the applicant's favour on the basis of the material before it, if the applicant consents to the Tribunal deciding the review without the applicant appearing before it, or if the applicant has failed to give information or to give comments on information in response to an invitation issued under section 424 or section 424A of the Act, the Tribunal can dispense with the hearing. In all other cases, however, the Tribunal must invite the applicant to appear before it to give evidence and present arguments relating to the issues arising in relation to the decision under review.

Under subsection 426(2) of the Act an applicant is entitled to give the Tribunal notice that he or she wants the Tribunal to obtain oral evidence from other persons and in practice applicants are invited to nominate witnesses in the 'Response to Hearing Invitation' form sent out with the letter inviting the applicant to appear before the Tribunal. However the Tribunal is not required to obtain evidence (orally or otherwise) from a witness nominated by an applicant, although the Tribunal 'must have regard to the applicant's wishes' (subsection 426(3) of the Act).5

The conduct of the hearing is at the discretion of the Tribunal Member but the hearing must be a genuine opportunity to present evidence and arguments. If this requires input from the agent, then it will be permitted. In practice, representatives are invited to provide submissions and comments but when and how they do so is at the discretion of the Member.

Interpreters

Where possible, the RRT uses interpreters who have an 'Interpreter' level accreditation from the National Accreditation Authority for Translators and Interpreters (NAATI). Furthermore,

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4. Applicant VEAL of 2002 v Minister for Immigration & Multicultural & Indigenous Affairs [2003] FCA 657

5 See W82 v Minister for Immigration and Multicultural Affairs [2001] FCA 1373; W360/01A v Minister for Immigration and Multicultural Affairs [2002] FCAFC 211; cf. WADA v Minister for Immigration and Multicultural Affairs [2002] FCAFC 202.

the RRT has in place an Interpreter feedback mechanism, where by Members are encouraged to provide feedback on the performance of interpreters during their hearings. An evaluation form has been designed specifically for this purpose.

Currently, the RRT and the MRT have a contract with On-Call Interpreters & Translators Agency (the Contractor) for the provision of interpreting services. The performance of this contract is for the period 1 July 2004 - 30 June 2007.

The contract stipulates that the interpreters provided by the Contractor must be:

(a) accredited to NAATI Interpreter Level or above, where such accreditation is provided in the language. Where accreditation is not available, or where the Contractor is unable to provide an interpreter at the NAATI level or above, the Contractor must seek approval from the Tribunals; and
(b) otherwise fit in all respects to perform the services in relation to the particular interpreting assignment.

In most circumstances the interpreters used by the Tribunal are NAATI level 3. However, it has been noted that for Hindi, Urdu, Tamil, Punjabi and Bengali, the Contractor has provided more NAATI level 2 interpreters. In circumstances where the Tribunal is unable to secure a NAATI level 3 interpreter, Member approval is sought before accepting the particular interpreter.

The Contractor must also ensure that interpreters comply with the standards and requirements set out in the RRT's Interpreter Handbook and the code of ethics devised by the Australian Institute for Interpreters and Translators (AUSIT). The code is available at the website www.ausit.org.

The Contractor also acknowledges that it is the Tribunals' policy that an interpreter, who is also a registered migration agent, shall not interpret for an applicant with whom he or she has had previous association, either directly or indirectly, as a migration agent. The Contractor will ensure that interpreters advise the Tribunals if they perceive a conflict of interest in this regard or if they have had any other dealings with the applicant, as soon as this becomes apparent. In circumstances where a possible conflict of interest arises after an interpreter has already been assigned, guidance is sought from the Member.

The Contractor cannot substitute an interpreter already accepted by the Tribunals for an assignment, without the Tribunals' written approval.

The contract also stipulates that the Tribunals have the right to nominate a preferred interpreter for an assignment (eg, where an interpreter has been engaged from an alternate provider or a request from a Member for a particular interpreter).

In relation to procuring the interpreting services from an alternate provider, the Tribunals may do this if:

1) the Contractor fails to propose an interpreter within the applicable timeframe; or

2) the Contractor is unable or unwilling to provide interpreters accredited to NAATI Interpreter Level or above, and the Contractor doesn't propose an alternate interpreter or the Tribunals disapprove of the Contractor's proposal for an alternate interpreter.

Languages which pose problems in finding suitably qualified interpreters

The Tribunal has difficulties in obtaining accredited Swahili, Ibo, Lingala, Uyghur, Malayalam, Thelagu and Amharic (Ethiopian) interpreters from either the Contractor or alternate providers. However, to date the Tribunal has received few requests for these languages.

The Tribunal's Victorian Registry on occasion experiences difficulty in obtaining level 3 interpreters in Vietnamese, mainly because it is a very high demand language, particularly for court work. The Contractor's stated policy, however, is to give RRT/MRT requests priority. Level 3 accredited interpreters are also in limited supply in Victoria in Tamil, Bahasa Indonesia, Nepalese, Punjabi, Pashto, Pashtun, Tagalog and Sinhalese, although some of these are not high demand languages for the Tribunal.

When an interpreter is engaged through another agency the same arrangements pertain with regard to levels of accreditation and the requirement for the presiding Member to sign off to state that they are satisfied with a level 2 interpreter if that is all that is available.

Timeliness

The RRT operates within a legislative framework which requires a speedy resolution of matters. The percentage of cases over 9 months old since lodgement has been dramatically reduced from 35% of cases at the end of 2002-03 to 1% of cases at the end of 2004-05. The percentage of cases over 12 months old has been reduced from 16% in 2002-03 to less than 1% in 2004-05.

The average time taken from lodgement to finalisation for community cases in 2004-05 was 22 weeks, compared to 58 weeks in 2002-03. The average time to finalise detention cases was 11 weeks.

In September 2005, proposed amendments to the Migration Act 1958 were introduced into Parliament to require the RRT to conduct reviews within 90 days. A range of measures to achieve this new time limit have been introduced in the Tribunal since the intention to introduce the legislation was announced by the Prime Minister on 17 June 2005.

These measures have included the transfer of Member and staff resources to the RRT caseload as well as the introduction of a new Principal Member Direction (3/2005 – Efficient Conduct of RRT reviews) which provides for a framework for processing cases within 90 days by promoting greater use of electronic communication, early lodgement of submissions setting out applicants' claims together with any available evidence, early consideration of cases by Members, and by seeking collaboration from migration agents.

Productivity

Members are expected to undertake cases from a variety of countries. The caseload and allocation policy seeks to ensure that all Members undertake equivalent caseloads, notwithstanding the inherent variability within the caseload.

There are case targets set for Members each year, and each Member is expected to undertake a mix of cases. These targets may change from time to time with changes to the RRT's caseload, or as a result of changes to work practices or legislation.

The case targets are based on a fully experienced Member working throughout the year.

Members may not meet the case targets for a number of reasons including variations in the complexity of cases, the time it takes to re-establish a caseload after returning from extended absence, illness, and performance issues. All Members have a performance agreement, with appraisals conducted by Senior Members.

Notwithstanding the importance of case targets, there is a continuing commitment to quality decisions, and to training and professional development.

Members averaged 94% of their annual case targets (which in 2004-05 were 120 cases for a Sydney-based full-time Member and 115 cases for a Melbourne-based Member), compared to 98% the previous year.

Fifteen cross-appointed Members were transferred from the RRT caseload to the MRT caseload during the year, following a decline in RRT lodgements. At the end of the year, most of these Members were returned to the RRT caseload, following the announcement by the Prime Minister on 17 June 2005 of the introduction of a 90 day time limit for RRT reviews. Steps were also being taken to train other cross-appointed Members who had not previously worked on RRT cases.

Social justice and equity

The RRT recognises the importance of ensuring applicants have equitable access to the range of its services. The RRT's website is a significant information resource for those applicants who have access to the Internet. Information about the RRT and its operations is contained on this site. Forms can also be downloaded from the site, saving applicants the need to visit an RRT registry. The site is continually being upgraded in response to research and client feedback. Statistics indicate that the RRT website received up to 11,000 page visits per month during 2004-2005. Documents most commonly downloaded from the RRT website included the What is a Hearing? Brochure; the RRT Application Form; the RRT Brochure; and the RRT Decisions Bulletin.

All of the RRT's publications are written in plain English, including the RRT's Service Charter which provides information about service levels and how to contact the RRT. The RRT's forms and publications are regularly reviewed to ensure that information, advice and requirements are readily understood by the RRT's clients.

If an applicant needs an interpreter for a hearing, the RRT will engage a qualified interpreter. Where possible, the RRT will use interpreters who have an 'Interpreter' level accreditation from the National Accreditation Authority for Translators and Interpreters (NAATI). The latest version of the Interpreter's Handbook is available on the RRT's website www.rrt.gov.au.

The RRT uses its disability action plan, workplace diversity program and workplace harassment policy as the main vehicles to ensure that applicants, staff and others receive equitable access and treatment.

Ethical standards

Members are required to act according to a Member Code of Conduct and staff are required to act according to the Australian Public Service (APS) Values and APS Code of Conduct.

All Members of the RRT must sign a performance agreement. The first part of the agreement requires that they will act in their role as a Member of the RRT in accordance with, and in

the spirit of, the principles set out in the Member Code of Conduct.

The APS Values and the APS Code of Conduct are available on the intranet and referred to in Tribunal publications. Recruitment guidelines include references to the APS Values and APS Code of Conduct.

External scrutiny

The RRT is subject to external scrutiny through the publication of its decisions, appeals to the courts, Annual Reports to Parliament, appearances before Parliamentary Committees, complaints to and enquiries by the Commonwealth Ombudsman and reports and enquiries by the ANAO and other bodies. The RRT interacts with agencies like the ANAO on compliance issues, and monitors parliamentary committee reports and other reports across the public sector.

2. Additional information in relation to RRT's Country Information Service

Country Research and Library Services Section (the Section) within the Migration Review Tribunal and Refugee Review Tribunal has an international reputation for the provision of high quality, comprehensive, timely, authoritative and relevant country of origin information to assist Members with decision making on the review of visa decisions. The *Migration Act 1958* (the Act) empowers the Tribunals to get any information the Tribunals consider relevant to the process of review decision making. The Section has been assisting in this process since 1993 by undertaking political, economic, social, and or historical research on our applicants' source countries.

RESEARCH METHODOLOGY

The Section employs professional researchers (4 in Melbourne and 9 in Sydney, in addition to Library staff in both locations) with expertise in the collection, dissemination and management of country of origin information. Researchers hold a variety of degrees and post-graduate qualifications in fields as diverse as the social and political sciences, communications, law, English literature, Asian studies, international relations, education, computer systems, librarianship, philosophy, linguistics, economics and languages.

The Section's work is based on the collection of evidence rather than on personal opinion or speculation on the part of Researchers. Researchers monitor political developments, patterns of internal conflict, institutions and organisations in source countries, and read widely and critically about these countries. They strive to be objective in evaluating source material. Statements of fact in the Section's information products must be substantiated by a reputable authority. No statement is made unless it can be referenced and unless the source documentation is or can be made publicly available.

Country researchers do not give opinion or draw conclusions for Tribunal Members. Relevant information is collected and presented by researchers, but judgements regarding the applicant's claims are left to the Member to make. Members select what weight to give the evidence supplied by researchers.

Researchers will provide, where necessary, data on the credentials and position of the author or source as these details give the angle of the information which that source provides. This is not only good research practice, it helps the Member to determine how to weigh up the available information.

Researchers consult many sources, including competing discourses, in order to provide information that is as balanced as possible. Researchers aim to locate information emanating from differing perspectives to present the most balanced picture. For example, a quote from a Sri Lankan Tamil community newspaper might be balanced with information on the same matter from a reputable non-government organisation (NGO) such as Human Rights Watch or Amnesty International, the Sri Lankan Human Rights organisation or an in-country academic. Researchers may also seek information from Australia's Department of Foreign Affairs and Trade (DFAT) as one among a wide range of sources.

INFORMATION SOURCES

Tribunal researchers draw upon a wide range of publicly available information from a comprehensive range of authoritative and current sources. The Tribunal has extensive country information holdings including our own research database, which contains a range of ethnographic, historical, cultural, legal, human rights and political material collected by Researchers.

The Tribunals also subscribe to a number of journals, newspapers and several electronic sources either on-line or CD-ROM, such as CISNET (DIMIA's database), UNHCR Refworld, Encarta, Encyclopaedia Britannica, FACTIVA and the Internet.

Researchers liaise with DFAT to gather up-to-date and specific information. Researchers also have access to foreign government research material such as the US State Department, Canadian IRB, UK Home Office etc.

Researchers have built up a network of Australian and overseas academics and other experts, and refer to them as information sources in addition to UNHCR, foreign missions in Australia, NGOs and other international organisations.

The Tribunals have two Librarians and library support staff in both Sydney and Melbourne. The Libraries support the work of the researchers and Members through maintaining a comprehensive collection of information related to the refugee determination process. The librarians are in regular contact with other libraries, universities and service providers, and have the capacity to identify and obtain a wide range of material from outside the Tribunal.

RESEARCH PRODUCTS

The Section distils the results of its research into a number of products which are made available to Members on the Tribunals' intranet site. The Section is continually looking to improve its services to Members and is developing a more pro-active capacity to provide information early to Members. The products currently provided include the following:

- Internal databases containing material collected from the internet and other sources, and all previous research material. These are searchable through ISYS (a powerful information retrieval and management system).

- A Question and Answer service whereby individual Members can request specific information which is necessary for the making of a decision. This is a main function of the country research teams within the Tribunals. Members request 'country of origin' information at various times throughout the decision-making process in order to investigate applicants' claims. Requests usually fall into one of two categories:

(i) current or historical factual information about trends and events within a source country; or
(ii) case specific information about the applicant.

Responses to these requests are prepared in a 'question and answer' format, known as a Research Response. In 2004-2005, country researchers answered 2068 individual questions of this kind. Once edited to remove any applicant specific detail, these research responses are provided to DIMIA for inclusion in CISNET so that primary decision makers can also access the Section's Research. Around 2,000 Research Responses are available on CISNET.

- Basic Information Pack. A basic information pack is a short collection of background information consisting of the relevant chapters from the most recent US Department of State Country Research Reports on Human Rights, the Europa Publications series, the annual Amnesty International Report, the Political Handbook of the World and a map.

- Researchers regularly participate in external seminars, forums and conferences and also arrange seminars with guest speakers who can discuss issues of current interest. Experts recently engaged by the Tribunal to address Members and Country Researchers include: Prof William Maley, Dr Jonathan Goodhand and Mr Ahmed Rashid (Afghanistan); Prof. David Goodman (People's Republic of China); Dr Charles Tripp, Mr Dilip Hiro and Mr Michael Ware (Iraq); Mr Emir Bengisoy (Iran); Phong Nguyen (Vietnam). When necessary video-conferencing facilities were arranged for use simultaneously in Melbourne and Sydney.

- The Section provides Members with direct access to new country research products and key country research internet web sites through its own intranet site.

- Researchers also produce issue or thematic packages designed to deal with issues or topics that are fairly stable, require relatively little updating and will continue to be relevant in terms of caseload. Topics which are considered worthy of an issues or thematic package must meet the following criteria; (i) that the issue has been a major source of requests from a spectrum of Members (ii) that information about it was relatively stable, albeit that it might require occasional updating (iii) that it is a continuing source of requests and is likely to remain so.

- Monitoring of fluid international situations is undertaken for countries relevant to the Tribunal's caseload. For example, monitoring is being done on Afghanistan and Iraq.
- Researchers also participate with Members in country workshops - discussion groups for Members who are dealing with applications from the same country. The purpose of these meetings is to discuss the common claims in the caseload, the information available for dealing with those claims, and to identify gaps in our information holdings. Researchers will often prepare background papers or reading lists before the focus group, and will follow up with research to fill identified gaps. Recent workshops held were on Iraq, Bangladesh and Nepal.

- Research staff locate and develop professional relationships with academics and other people with expertise in fields of interest to the Tribunal. This is done through universities, organisations and journals, and via referral from Members and other contacts. Researchers also use their attendance at conferences and seminars to build up networks with specialists, academics and organisations which are qualified and willing to

provide the Tribunal with information that can be used in the refugee determination process.

A selection of Country Research products is made available from time to time to DIMIA, the New Zealand Refugee Status Appeals Authority, the Irish Office of the Refugee Applications Commissioner (ORAC), and information is shared at this stage on an ad hoc and less formal basis with the UK Home Office, Canadian Immigration & Refugee Board, and the Belgian Office of the Commissioner for Refugees and Stateless Persons.

Every effort is made to ensure that Members are well informed about conditions in applicant source countries through availability of internal databases of country information which are updated regularly and which include all major sources of COI reporting (USDOS, UK Home Office, Amnesty, HRW, UNHCR etc), the Department's CISNET database, resource guides and issues papers prepared by the Section, all of the Research Responses prepared by the Section and indices of these responses by topic and geographic location, subscriptions to a wide range of specialist journals and media reporting, transcripts of seminars with academics and other experts and a library of hard copy information.

To take Afghanistan as an example, the Tribunal makes available to Members:

- A Resource Guide consisting of 58 pages of hyperlinks to all major reports on Afghanistan, to useful books and journals on Afghanistan, to maps and information on geographical locations, to information on returnees, women, Hazaras, the new Cabinet, provincial governors, election results, Taliban & insurgent attacks in Ghazni province, etc.
- An index to more than 500 research responses on Afghanistan prepared by the Country Research Teams, organised by topic and location.
- Transcripts of seminars delivered to Tribunal Members concerning Afghanistan by Prof William Maley, Dr Jonathan Goodhand, Mr Ahmed Rashid and Dr Mousavi.
- Issues papers on matters such as Shia / Sunni beliefs, the transitional administration of Afghanistan, government before and after the June 2002 Loya Jirga, Hamid Karzai's new Cabinet of December 2004, the situation for Hazaras, the situation for gays.
- A weekly Afghanistan news headline service covering news downloaded from Afghan Online Press, Afghan Recovery Report from the Institute for War & Peace Reporting, Afghanistan Report from Radio Free Europe/Radio Liberty and providing links to Associated Press reporting, BBC Online and the UN's Reliefweb and Human Rights Watch reports from their election monitors."

INTERNATIONAL LIAISON

The Tribunal has been visited over the last 18 months by, amongst others, Members of the UK Immigration Appeal Tribunal, New Zealand's Refugee Status Appeals Authority, the Canadian IRB, the Timor L'Este Immigration Service and UNHCR, and received favourable comments on the range and diversity of the Tribunal's country information holdings and its research capacity.

In 2001, the Section hosted a conference which focused on international best practice in the collection and use of country of origin information in the refugee determination process. This conference was attended by delegates from refugee determination bodies in the UK,

US, Canada, NZ, Ireland, Denmark, Belgium, Finland, Norway, Switzerland and the Netherlands. The Tribunal's pursuit of best practice in research was acknowledged on several levels, including the invitation to and subsequent temporary placement of a Tribunal researcher with the Republic of Ireland's Office of the Refugee Applications Commissioner (ORAC) to help with the establishment of a Country of Origin information research unit.

In 2002, the Assistant Director of Country Research attended UNHCR organised workshops entitled “Towards Refugee Law in the South Pacific” in Nadi and Port Moresby to provide advice on the collection, distillation and dissemination of country of origin information for use in the refugee determination process.

In 2002 assistance was also provided to the Republic of South Africa in relation to the establishment of their refugee determination process including advice on establishing a Country of Origin Information unit, and lists of references for the establishment of a library of relevant source materials.

In early 2003, the Tribunal assisted the Canadian IRB by providing a range of documents which were the results of research conducted by the Section on the situation of Fiji Indians at that time. This was gratefully received by the Canadian authorities as a significant enhancement to the information that had been available to them until that point.

Similarly in April 2003, the Tribunal provided the Canadian IRB with its Chinese Christian Resource Guide which received an enthusiastic response.

In June 2004, the Section assisted in briefing visitors from Timor L’Este concerning establishing a country of origin information unit to support their new refugee determination process. The visitors were provided with materials including copies of the Tribunal’s compilation of internet links to relevant authorities and sources of country information.

In July 2004, the Tribunal provided briefing material at the request of a US Immigration Judge in New York concerning the research capabilities of the Tribunal following a visit to New York by the Principal Member.

In 2004 the Tribunal provided briefings for visitors from Japan and in January 2005 provided a lengthy written response to a series of questions posed by Japanese authorities concerning refugee applicants from Turkey and the situation of Kurds in Turkey.

In September 2005, the Section has been liaising with our Belgian, Czech and Polish colleagues sharing information on the situation of Russian speakers in Kyrgyzstan.

Tribunal country researchers also present papers at conferences from time to time. Papers include one on Palestine, presented at a conference held by DIMIA, and a paper on the Kurds of northern Iraq presented at the Asian Studies Association of Australia biennial conference. Representatives of the Section have lectured on country research methodology and on-line research to students of Webster University, Geneva and the University of Technology, Sydney.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(13) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 36) asked:

Can you provide me with information in relation to Baxter and the modifications at Villawood about when you took that advice and who you took that from?

Answer:

The Management Support Unit (MSU) at Baxter Immigration Detention Facility is a portable building comprising 10 bedrooms with ensuite bathrooms, an officer's control room, and two day rooms. It was previously located at the John Oxley Juvenile Detention Centre at Wacol, Queensland. The building was purchased from Ifco Hire and Sales Pty Ltd and was inspected by the department's quantity surveyor and an engineer for Australasian Correctional Management (ACM), the detention service provider at the time. No modifications have been made to the building since it was purchased in 2001. It was considered fit for purpose at the time.

The MSU at Villawood Immigration Detention Centre was a refurbishment of an existing building in Stage 3 of the centre, as part of the Villawood Interim Expansion Project (May 2000 to February 2002). A design architect was involved with refurbishing the building for use as an MSU. ACM also had input into the design of the building. The refurbishment was completed in September 2001.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(14) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 36-37) asked:

In relation to the management units, there are small windows on the door into each cell in the unit at Baxter as well as a CCTV camera, but that was not the case at Villawood, was it? We saw a door at Villawood that did not have any window on it, though. That is why I am asking the question. I am trying to find out why there is such a difference or to get a comparison on the difference.

Answer:

The Management Support Unit (MSU) at Villawood Immigration Detention Centre (IDC) was constructed as a refurbishment of the accommodation blocks in Stage 3 of the IDC. The building, called 'Darling Building', was refurbished during 2001 for use as a MSU. There are 11 detainee rooms in the building, all with viewing windows in the doors and five with corner mounted cameras. There are no detainee rooms without a viewing window. The door to the officer's room on the ground floor does not have a viewing window.

When Baxter Immigration Detention Facility was constructed during 2003, a purpose built, demountable facility, previously owned by the Queensland Department of Corrections, was purchased for use as a MSU. It came fitted with viewing windows in the doors and cameras fitted in each room.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(15) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 37) asked:

I did not see any grassed area within the management unit at Villawood where detainees can exercise. Is that the case?

Answer:

The Department has tried on a number of occasions to grow grass in the outdoor area attached to the Management Support Unit at Villawood Immigration Detention Centre and on each occasion it has been unsuccessful.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(16) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 38) asked:

In relation to Vivian Solon, when did you know that the check list has not been complied with?

Answer:

The Department became aware on 29 July 2005 that there was no evidence from Ms Solon's file that the compulsory checklist had been completed.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(17) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 39) asked:

I would like you to take on notice for me the exact date that somebody in the department discovered that that form was not completed properly and the exact date that you got official information from Mr Comrie not to interview people

Answer:

The Department became aware on 29 July 2005 that the form did not appear on Ms Solon's file.

At a meeting with senior officers of the Department held on 4 May 2005, Mr Comrie requested that the Department not interview any person in relation to his or her involvement with Ms Solon's case.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

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QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(19) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 39) asked:

Provide a copy of the policy on how the management units operate.

Answer:

The Operational Procedures for transfer to and accommodation in the management support units is attached.

CONTROLLED DOCUMENT

Document Title: **Generic Operational Procedure No. 2.6**
Management Support Unit – Transfer and Accommodation

Document Ref No: **CO-02-01_2**

Rev	Date	Comments	Who developed?	Checked?	Approved
0	23/10/03	Development & Revision	MR	PM	MR
1	18/06/04	Incorporation of DIMIA comments	ST	DIMIA	MR
2	12/05/05	Revision by GSL Head Office	NB/MR		
3	19/06/05	Revision by GSL Head Office	TH		

Document Revision Table:

Distribution Table:

Rev	Distributed to?	How?	When	Why	Change Note?
0	DIMIA, BDC, PS, MS, Baxter, Villawood, CI, MR, PM	e-mail	24/10/03	Development & Active	√
1	DIMIA, RH, PO, TH, site GMs; 4x subcontractors	e-mail	21/07/04	Incorporation of DIMIA comments	√
2	DIMIA, PO, JMcG, DB	e-mail	19/06/05		

NO. 2.6 – MANAGEMENT SUPPORT UNIT – TRANSFER AND ACCOMMODATION

INDEX

NO. 2.6 – MANAGEMENT SUPPORT UNIT – TRANSFER AND ACCOMMODATION

1 PURPOSE

1.1 To facilitate the transfer of a detainee to a place of more restrictive detention and a regime of closer supervision, when such a placement is necessary for the good order and security of the facility and the safety of those within it, including the detainee being transferred.

1.2 To set out the principles that determine the transfer of a detainee to a Management Support Unit (MSU) and the administration of an MSU.

2 PRINCIPLES

2.1 The transfer of a detainee to the MSU will occur only when there is no viable alternative for ensuring the safety of an individual or individuals (not necessarily the detainee himself/herself) in their current location.

2.2 The principal determinants of placement will be the safety, security and well-being of the individual, taking into account the good order of the facility and the duty of care owed to all detainees.

2.3 Every detainee transferred to an MSU will be treated on an individual basis and with appropriate dignity.

2.4 Every detainee transferred to an MSU will receive a wide range of services. This will always be dependent on the safety, security and good order of the facility being maintained. (See section 4.10 below).

2.5 A case management approach will always be adopted when advance consideration is being given to the transfer of a detainee to an MSU. In all cases the emphasis will be on ensuring that mental health issues are dealt with as a matter of priority and appropriate urgency.

2.6 Structured programs will be implemented on an individual basis to ensure that a support network is developed for detainees whilst in the MSU and upon their return to mainstream detention.

2.7 This Operational Procedure is to be read in conjunction with:

- OP 2.2 Dynamic Security / Detainee Interaction
- OP 2.4 Detainee Code of Conduct
- OP 2.5 Restrictive Movement Program
- OP 3.2 Anti Bullying Policy
- OP 12.4 Assaults
- OP 12.11 Use of Force and Restraints
- OP 12.20 Incident Response
- OP 12.21 Emergency Management
- OP 13.1 Staff Code of Conduct
- OP 14.3 Complaints Procedure
- OP 15.7 Reporting of Incidents

3 IMMIGRATION DETENTION STANDARDS

3.1 The Immigration Detention Standards (IDS) will be complied with in all cases of transfer to, and accommodation in, a Management Support Unit.

3.2 See Part 6 of this instruction for the key IDS relating to MSUs.

4 PROCESS

4.1 Transferring Detainees and Authorisation

4.1.1 Except when the General Manager is not available transfer to an MSU will occur only after the initial approval of the General Manager or a higher level. In all cases, this decision must then be endorsed by the:

- Assistant Director, Operations;
- Director, Detention Services; and
- Director, Operations (GSL)

as soon as possible, and in any case within 48 hours of the transfer.

ISIS TIP: The approval of the General Manager is to be recorded in the "Actions" Screen of the ISIS Incident Report relating to the transfer, in the "Detainees Relocated" field. The endorsement of this decision is to be recorded in the "Case Notes" field of the ISIS Care Plan. These records must include the name of the approving/endorsing Managers/Directors and the time and date of their decision.

4.1.2 In cases where a unanimous endorsement is not reached, the Managing Director will make the final determination within 72 hours of the transfer. In all cases, a comprehensive report of a transfer to the MSU will be provided to the Managing Director and DIMIA Manager.

ISIS TIP: The Managing Director's determination is to be included in the "Case Notes" field of the ISIS Care Plan and must include the name of the Managing Director and the time and date of the determination. The comprehensive report is to be attached to or referenced in the "Details" Screen of the ISIS Incident Report in the "Other ISIS Reports" field.

4.1.3 The DIMIA Manager will be consulted by the General Manger prior to the transfer if possible. If it was not possible to consult prior to transfer, the DIMIA Manager must be consulted as soon as possible, and according to incident reporting protocols.

ISIS TIP: Where this consultation occurs prior to the transfer, it is to be recorded in the "Case Notes" field of the ISIS Care Plan.

ISIS TIP: Where consultation occurs after the transfer, the consultation with the DIMIA Manager is to be recorded in the "Actions" Screen of the ISIS Incident Report in the "Immediate Actions taken in response to Incident" field.

4.1.4 A transfer to an MSU will only take place after all other placement and management options (see 4.4.1) have been explored and rejected and documented. The following will be considered when determining a transfer to an MSU:

- immediate threat to the security and good order of the facility and/or the safety of those within it;
- ongoing case management strategy, when other behaviour management strategies have been unsuccessful. For example:

  - a detainee exhibits violent and/or unlawful behaviour and repeatedly refuses an order or direction to cease such behaviour;
  - a detainee is a continuing risk to himself or herself, or to others in the facility;
  - there is credible intelligence of an impending and serious incident to be instigated by the detainee; or
  - there is credible intelligence that the detainee may abscond.

4.1.5 A health and mental health assessment will, unless there is an emergency situation, always be conducted by a nurse and psychiatric nurse respectively, prior to the

transfer of a detainee to the MSU. In an emergency situation the assessment is to be no later than 24 hours after transfer.

ISIS TIP: This assessment is to be recorded in the "Case Notes" field of the ISIS Care Plan. Where appropriate it should be recorded in full.

4.1.6 A detainee may be transferred to an MSU:

- to prevent self-harm;
- to prevent harm to other detainees, staff or the facility;
- to protect them from other detainees;
- for health/medical quarantine purposes (eg tuberculosis cases):
    1. as a last resort (where no other, more appropriate facility, is immediately available);
    2. for no more than 24 hours;
    3. on the condition that more appropriate arrangements are sought immediately upon transfer;
- for voluntary time away from general accommodation where a more appropriate facility is not available.

4.1.7 Where a detainee's circumstances give rise to serious concern in general accommodation, the General Manager will initiate a review of the individual care plan with the aim of case managing the behaviour prior to any decision being taken to transfer the detainee to the MSU.

ISIS TIP: The name of the reviewing officer and the date and outcome this review is to be recorded in the "Case Notes" field of the ISIS Care Plan.

4.1.8 Alternative accommodation and restrictions on movement may be trialled before making a recommendation to transfer a detainee to an MSU. Refer to OP 2.5 Restricted Movement Program. A health assessment of the detainee, including mental health, will be conducted prior to making any such recommendation.

ISIS TIP: This assessment is to be recorded in the "Case Notes" field of the ISIS Care Plan. Where appropriate it should be recorded in full.

4.1.9 Under no circumstances will there be any element of punishment or discipline in a decision to transfer a detainee to an MSU.

4.1.10 Specific attention will be given to determining whether the circumstances which led to a detainee being considered for transfer to the MSU have underlying medical or mental health features and to establish that the detainee can safely be transferred to the MSU.

ISIS TIP: This assessment is to be recorded in the "Case Notes" field of the ISIS Care Plan. Where appropriate it should be recorded in full.

4.1.11 All special care needs of the detainee will be identified and appropriate services and facilities will be available to the detainee when accommodated in an MSU. All efforts must be made to ensure that the detainee in a MSU is afforded as much personal privacy as reasonably practicable.

ISIS TIP: If these have not been updated then these needs must be updated in the ISIS Special Needs functionality.

4.1.12 The following additional principles are paramount in the rare circumstances where a woman or minor is placed in a MSU:

- approval is to be endorsed as required for any other placement but must occur within 24 hours (see 4.1.1);

- there must be immediate notification to the Managing Director and the Contract Administrator together with a full statement as to the reasons why the transfer has taken place;
- there must be gender appropriate supervision at all times;
- all efforts must be made to have appropriate arrangements for the special privacy needs of women and minors, including respecting specific cultural, gender and/or religious considerations.

4.2 Where General Manager is Not Available to Make a Transfer Decision

4.2.1 When the General Manager is unavailable the Duty Manager will direct the transfer process. As soon as possible after the placement the Duty Manager will initiate a report detailing the reasons for the placement and submit this immediately upon completion for the attention of the General Manager and others required to endorse the decision. General Manager or higher level approval must be obtained as soon as practicable and no later than 24 hours after transfer.

ISIS TIP: The approval of the Duty Manager is to be recorded in the "Actions" Screen" of the ISIS Incident Report relating to the transfer, in the "Detainees Relocated" field. The approval of the General Manager or higher level staff is to be recorded in the "Case Notes" field of the ISIS Care Plan. These records must include the name of the Managers/Directors and the time and date of their decision.

4.3 Placement Review Team

4.3.1 The General Manager will establish a specialist Placement Review Team (PRT) to manage individual cases. This team will comprise:

- Deputy General Manager/ Operations Manager;
- Education/Programs Manager;
- DIMIA representative;
- medical representative;
- mental health professional (eg psychologist or psychiatric nurse); and
- Detention Services Officer who:
  - has knowledge of the detainee's recent history; and
  - has knowledge of the detainee's behaviour and circumstances during placement in the MSU.

Note: This may be the same DSO, or two separate DSOs.

4.3.2 The PRT will appoint a Team Leader and the team will meet as set out in section 4.9.6 below. The aim of the PRT will be:

- the progressive management of the detainee to address their circumstances after other options have been exhausted;
- to gain input from a range of staff into the development and implementation of effective care plans;
- to ensure that the detainee is managed in a consistent, equitable and transparent manner;
- to ensure that the detainee is not unduly disadvantaged by his/her placement, as against the conditions that applied prior to the placement;
- to assess and review all physical and mental health issues with the object of ensuring that a thorough and comprehensive care plan is implemented;
- to ensure that the detainee maximises the periods of time spent outside his or her room. Zero room confinement will be the optimal goal when developing the plan; and
- to ensure that the decisions relating to the placement and ongoing case management of the detainee are recorded in ISIS and relevant files in accordance with this Operational Procedure.

4.4 Case Management Strategies

4.4.1 Except in emergencies, before consideration is given to transferring a detainee to an MSU, a range of strategies must already have been considered and/or trialled, including:

- positive praise and feedback;
- involvement in merit point activity program;
- involvement in recreation and education programs;
- counselling;
- mediation by delegates' committee;
- medical and mental health re/assessments;
- referral to external agencies for assistance or investigation;
- formulation of care plan/s; and
- restricted periods of access to specific areas.

ISIS TIP: These strategies are to be documented in the ISIS Care Plan- both in the "Plan Point" fields as agreed actions and in the "Case Note" fields as they are implemented.

4.5 Notifying Detainees Prior to Transfer

4.5.1 Except in emergencies member/s of the PRT will notify the detainee that they are being considered for transfer at the earliest opportunity.

4.5.2 The reasons why they are being considered for transfer will be clearly explained to the detainee, in a language and in terms that he or she understands, utilising interpreter services when required.

4.5.3 Whenever possible, the context of the discussion should be to explain to the detainee what steps or behaviour changes the detainee may adopt to avoid the transfer.

4.5.4 A written record of the discussion must be provided to the detainee, including any agreed behaviour changes.

4.5.5 Prior to recommending a transfer, the detainee's health and mental health will be assessed by qualified health services professionals, and thereafter at least every 24 hours.

ISIS TIP: The notification process and any written assessment or records of discussions are to be recorded in the "Case Notes" fields of the ISIS Care Plan where appropriate.

4.6 Care Plans

4.6.1 When Case Management strategies have not been effective and the PRT is satisfied that it is appropriate to transfer a detainee to the MSU, or to maintain a placement in the unit, the detainee's Care Plan will again be reviewed to ensure that all other options have been exhausted.

ISIS TIP: Where appropriate this review is to be recorded in the "Case Notes" field of the ISIS Care Plan.

4.6.2 Detailed records will be maintained in the ISIS Care Plan, where appropriate, or otherwise on file, and will include:

- background history of the detainee in immigration detention;
- immigration processing status;
- health assessment, including mental health, and specialist reports;
- details of contact with, or advice received from, community or welfare organisations;
- details of behaviour/management difficulties;
- details of behaviour/case management strategies already trialled or currently in place, with records of the discussion emphasising issues and measures that have and have not brought about positive change in the detainee;
- an outline of the actions that resulted in the recommendation to transfer the detainee to the MSU;
- details of relevant discussions and agreements with the detainee; and
- daily case note reviews.

4.6.3 The Care Plan will then be extended to include:

- specific recommendations:
  - that the transfer occurs or does not occur or continues;
  - the timing of the transfer (to ensure discretion and minimal disruption within the facility);
  - details of the detainee's access to amenities while in the Management Support Unit; and
  - details of the detainee's access to visitors while in the Management Support Unit.
- identification of potential transfer-related risks and contingency strategies. (Refer to the GSL Quality Manual – Chapter 20: Risk Opportunity Management);
- personal property considerations;
- monitoring the time frame; and
- reviewing the timeframe (scheduled meetings of the PRT).

4.6.4 The PRT will provide the General Manager with the Care Plan and it will be discussed by the General Manager and DIMIA Manager and signed by both prior to implementation.

4.7 Transfer

4.7.1 If the transfer is to proceed, consideration will be given to the timing of the transfer. Wherever possible, the transfer will be initiated under circumstances where no other detainees are present, or are able to view the transfer.

4.7.2 The General Manager will arrange for the transfer to be video-recorded. The footage will be secured by the General Manager/Duty Manager immediately after the transfer and will be released only to designated investigating agencies, or as directed by DIMIA (refer to 4.13 below).

ISIS TIP: The existence of video-footage is to be noted in the relevant ISIS Incident Report or Care Plan.

4.8 Care Plan Agreement

4.8.1 A Care Plan Agreement may be formulated between the detainee and the PRT, with the aim of addressing the behaviour or circumstances that led to the transfer.

4.8.2 In formulating the Care Plan Agreement, the PRT should, in consultation with the detainee, discuss strategies and goals that will enhance the possibility of reducing the period of time spent in the MSU. During these discussions, the detainee will always be encouraged to state his or her views.

ISIS TIP: These discussions are to be recorded in the "Case Notes" field of the ISIS Care Plan.

4.8.3 If a transfer for behaviour management purposes is to proceed, a Care Plan Agreement will be put in place. The purpose of the agreement is to provide incentives for detainees to amend their behaviour. It will include:

- an undertaking from GSL to treat the detainee in a dignified, respectful and impartial manner;
- an undertaking by the detainee to behave in a specific manner;
- agreement about the detainee's access to amenities and visitors;
- arrangements about personal property;
- an outline of specific goals and responsibilities;
- proposed timeframes to achieve goals by both the detainee and GSL; and
- GSL responsibilities to the detainee in assisting in obtaining specified goals.

ISIS TIP: The Care Plan Agreement should be recorded in the Plan Point fields of the ISIS Care Plan

4.8.4 The Care Plan Agreement will then be presented to the General Manager for approval, to the DIMIA Manager for consultation and to the detainee for agreement. If the detainee refuses to sign their Care Plan Agreement, they will be given the opportunity to record the reasons why they refuse to sign, but its implementation will not be delayed or varied by a refusal to sign.

4.9 Timeframes and Reporting

4.9.1 It is not appropriate for a detainee to remain in an MSU for an extended period of time and alternative measures must be considered after placement of a detainee.

4.9.2 Consideration and implementation of alternative measures is encouraged as soon as possible but no later than 48 hours after placement in an MSU.

4.9.3 If the General Manager, after reviewing all the facts, is satisfied that it is necessary for a detainee to remain in the MSU for longer than 48 hours, he or she will initiate a full review of the placement in conference with:

- Assistant Director, Operations;
- Director, Detention Services; and
- Director, Operations (GSL).

4.9.4 The ongoing management of the case will be the responsibility of the PRT. However, there will be an ongoing requirement for hierarchical consideration of cases when detainees remain in the MSU.

4.9.5 PRT reviews will occur every day. The PRT must report to senior GSL officers or the Contract Administrator on detainee placements in MSUs every 3 days, as follows:

- Initial Transfer: General Manager approval required.
- 3 day PRT report: Director, Detention Services approval required.
- 6 day PRT report: Director, Operations approval required.
- 9 day PRT report: Managing Director approval required.
- 12 day PRT report: Contract Administrator approval required.

4.9.6 A detainee transferred to the MSU does not need to wait for the PRT to meet on the next day in order to be returned to mainstream detention, if the General Manager evaluates that the risk has subsided. In appropriate situations, the time a detainee is held in the MSU may be a short period.

ISIS TIP: When a detainee is transferred out of the MSU, this is to be documented in the relevant Incident Report and on the ISIS Care Plan.

4.9.7 Note: The circumstances of the transfer to and from the MSU must be fully documented, irrespective of how long the detainee spends in the MSU.

4.9.8 A detainee may request in writing a review of the reason for their placement and this will be considered as a matter of urgency by the General Manager. This right of review will be explained to the detainee upon transfer to the MSU and, if required, an interpreter will be made available for this purpose.

4.10 Access to Services

4.10.1 To the extent that it can reasonably be facilitated, a detainee in the MSU will have access to the same services that are available to detainees in mainstream detention, with an open door policy adopted.

4.10.2 A comprehensive risk assessment will be carried out by the PRT and reviewed by the General Manager.

ISIS TIP: This assessment is to be recorded in the ISIS Security Screen, with General Manager comments recorded in the "Case Notes" field of the ISIS Care Plan.

4.10.3 With the exception of restrictions specifically imposed by the General Manager, there should be no restrictions on:

- time spent outside their room;
- incoming or outgoing telephone calls;
- association with other detainees in the MSU through regular visits;
- organised external visits in the visits centre;
- access to religious services through organised visits, either in the visits centre or facility interview rooms;
- the opportunity to purchase the usual range of canteen items;
- access to education material upon request and, where appropriate, visits from the education officer or visits to the education compound on a regular basis; and
- daily exercise in the open air and, where appropriate, other recreational activities.

4.10.4 Detainees will be given access to an appropriate range of clothing and personal effects taking into account individual personal needs and circumstances.

4.10.5 Detainees will be given access to activities materials and be considered for external activity.

4.11 Health Services

4.11.1 The detainee will be assessed daily by a health professional and at a minimum, seen by the General Practitioner once a week. A copy of the detainee's daily health assessment and weekly GP health assessment will be recorded on CHIRON and be provided to the PRT.

4.11.2 The detainee will also be assessed daily by a mental health nurse. A copy of the detainee's daily mental health assessment will be recorded on CHIRON and be provided to the PRT.

4.11.3 If the detainee requires further specialist mental health services including psychiatric care, psychological support or counselling, the psychiatric nurse will make a referral to the appropriate health professional and advise the Multidisciplinary Mental Health Team (MDMHT) of this referral. The referral should be recorded in CHIRON and a copy should be placed on the detainees medical file.

4.11.4 Each attendance by a health professional, including psychiatrists, psychologists, psychiatric nurses and counsellors will be recorded in the detainee's medical record and ISIS case notes.

4.11.5 If the detainee refuses to see a health professional, the reasons given by the detainee for his/her refusal should be documented in CHIRON and the ISIS case notes and referred to the MDMHT. The MDMHT will decide and document what further efforts will be made to communicate with the detainee.

Issue with Management of Health Care

4.11.6 Where the detainee in an MSU makes a complaint about their physical or mental health care, the matter will be referred to both the GSL Manager and the IHMS Health Services Manager for information and action.

4.11.7 In accordance with the OP 14.1 Issues/Complaints Resolution the detainee will be advised of the outcome of the complaint.

Issue with Diagnosis

4.11.8 Where a detainee has an issue with a diagnosis provided by a treating health professional, the detainee may nominate a preferred medical services provider and request a medical opinion from an external health care provider at their own expense.

4.11.9 If the detainee requests a specialist opinion, a referral should be provided by the detainee's treating doctor. Where a detainee nominates an allied health professional such as a chiropractor or podiatrist, this should be accommodated wherever practicable.

4.11.10 If, after a detainee sees the external medical provider and the two medical opinions agree on the diagnosis, treatment should proceed if the detainee consents. Treatment may also proceed if the detainee is subject to involuntary admission to a mental health facility or treatment has been authorised under Regulation 5.35 of the Migration Regulations.

4.11.11 If the medical opinions concur but the detainee disagrees with the diagnosis then the IHSM Health Services Manager will advise the GSL Manager who will in turn notify the DIMIA Manager for their information. It is possible that in this instance a third medical opinion may be sought.

4.11.12 Where the two medical opinions differ or where IHSM consider it the most appropriate resolution, a third medical opinion will be sought by an external health provider. The Health Care Protocol relating to Medical Assessments by Non-Treating External Health Care Providers must be followed.

4.12 Monitoring by the Placement Review Team

4.12.1 The PRT is responsible for monitoring and reviewing each individual case.

4.12.2 The PRT will meet daily to review placement in the MSU. A quorum of at least three members is required, one of which must be a health professional. A health/medical/psychological report will be presented at every PRT meeting (which may include a nil response where there is no health concern).

4.12.3 The PRT will establish goals, objectives and timeframes, with input from the detainee, the aim of which is the detainee's return to mainstream detention.

4.12.4 The case management approach outlined above (see 4.4) should be maintained throughout the detainee's placement in the MSU and, where appropriate, after transfer back to a place of less restrictive detention.

4.12.5 The PRT will provide a daily report to the General Manager which details all relevant issues, including goals, objectives and timeframes relating to the detainee's return to mainstream detention.

ISIS TIP: Where appropriate the report of this meeting is to be recorded or referenced in the "Case Notes" and "Plan Points" fields of the ISIS Care Plan.

4.13 Record Keeping

4.13.1 Detailed case notes are, where appropriate, to be recorded in the "Care Plan" field of the ISIS care plan. If this information is not appropriate for recording in full on ISIS, a reference note is to be made to the presence of these notes on the detainee's individual file (and see section 4.6.2 above). They will include:

- pre-transfer paperwork and reports;
- times spent restricted in a room and the reasons for any such restriction;
- case management strategies;
- pre-emptive and immediate actions;
- care plan/s;
- care plan agreements;
- property agreements;
- detainee comments;
- transfer details;
- files notes (including related discussions, phone conversations and detainee comments);
- detailed case notes;
- medical reports;
- psychological reports;
- details of the outcome of monitoring and review processes;
- paperwork and reports detailing the reasons for the detainee's transfer out of the MSU and back into the general community of the compound; and
- any other information relevant to the detainee's welfare or good management.

4.13.2 A minimum of one case note entry will be made in every 12-hour shift.

4.13.3 The video footage from the MSU should be recorded at all times, occupied or not.

4.13.4 The video footage should be labelled appropriately, identifying when the footage was taken.

4.13.5 A copy of the footage should be given to the General Manager/Duty Manager as soon as practicable.

4.13.6 All footage of the MSU should be stored and preserved in accordance with the *National Archives Act 1983.*

5 APPLICABILITY TO SEPARATION DETENTION

5.1 This Operational Procedure applies to all detainees. If the detainee has been transferred from the Separation Detention area to the MSU, care will be applied to ensure that the visa application process is not comprised.

5.2 For more information see *OP 5.1 – Separation Detention: Principles/Detainee Behaviour.*

6 KEY IMMIGRATION DETENTION STANDARDS

1.2 Administrative Detention

1.2.1
Detainees have as much freedom of movement, association, and individual expression as possible within an administrative detention environment, subject to:

- The security and good order of the detention facility and the safety of all those within it; and
- The integrity of the visa assessment processes.

1.4 Fundamental Principles

1.4.1 Dignity

1.4.1.1
Each detainee is treated with dignity and in a humane manner, and is accorded respect; and the individuality of each detainee is recognised and acknowledged.

1.4.1.2
Detainees are not subjected to discrimination on any ground, including race, colour, gender, sexual preference, language, religion, political or other opinion, national or social origin, property, birth or other status, or disability.

1.4.2 Privacy - personal and information privacy

1.4.2.1
Each detainee is afforded as much personal privacy as is reasonably practicable; in particular, each detainee can undertake personal activities, such as bathing toileting and dressing in private.

2.1.2 Detainee Property

2.1.2.2
Property retained by the Services Provider is properly recorded, safely stored, maintained and returned, on a detainee's transfer, release or removal, or in any instance in which property is lost or stolen appropriate restitution is made, according to the Property Protocol approved by the Department.

2.1.2.5
With respect to property retained with them, detainees:

- have access to secure storage for their personal use;
- are informed of the need to respect other detainees' personal property;
- can expect that their personal effects will not be used by others in the detention facility without their consent; and
- are assisted, on transfer, release or removal, to identify and take with them such personal property.

2.2 CARE NEEDS

2.2.1 Health

2.2.1.1 <u>General</u>

2.2.1.1.1

Detainees are able to access timely and effective primary health care, including psychological/psychiatric services (including counselling):

- in a culturally responsive framework; and
- where a condition cannot be managed within the facility, by referral to external advice and/or treatment.

2.2.1.2 Public health and quarantine

2.2.1.2.1
Any risks to public health in the detention environment are managed in accordance with Commonwealth and State/Territory public health and quarantine laws and regulations and, as a result, minimised.

2.2.1.2.2
The provisions of any agreed Protocol between the Department and health authorities relating to health processing of unauthorised boat arrivals are adhered to.

2.2.1.2.3
Detainees quarantined for health reasons can expect to be afforded the same rights and privileges as other detainees so long as the health of others in the facility is not jeopardised.

2.2.1.2.4
The Department's Manager is notified immediately, with supporting medical certification, of any instances of quarantine for health reasons.

2.2.1.3 Individual health

2.2.1.3.1
The individual health care needs of detainees are recognised and managed effectively, appropriately and in a timely manner.

2.2.1.3.2
A detainee can expect:

- to be consulted and informed about his or her medical condition and treatment, including transfer for medical reasons, in a language or in terms he or she understands; and
- that the communication of such information and advice will be consistent with the requirements to maintain accuracy and his or her privacy.

2.2.1.5 Hygiene – clothing, footwear and bedding

2.2.1.5.1
Where detainees do not have their own clothing or footwear, they have access to adequate supplies which appropriately address their needs.

2.2.3 Special care needs, including detainees with special illnesses and conditions

2.2.3.1 General

2.2.3.1.1
The special care needs of detainees are identified, assessed and responded to.
Detainees with special care needs may include but are not limited to the following:

- elderly detainees, whether accompanied or unaccompanied;
- minors, in particular unaccompanied minors;
- expectant mothers
- women, whether accompanied or unaccompanied;
- detainees in need of psychiatric or psychological treatment;
- detainees at risk of self-harm

- long-term detainees
- victims of torture and trauma; or
- detainees with a physical/mental disability.

2.2.3.4 Self-harm

2.2.3.4.2
Detainees who self-harm or attempt self-harm are provided with medical assistance as soon as possible and, post-incident, with ongoing appropriate treatment including but not limited to psychological/psychiatric assessment and counselling.

2.2.3.4.3
Detainees whose movements are restricted because they are a danger to themselves:
- have an effective Detainee Care Plan in place;
- have access to open air, subject to the security and good order of the detention facility and the safety of those within it;
- are provided with adequate supervised exercise periods on a daily basis.

3 EDUCATION AND OTHER ACTIVITIES

3.2 Sporting, Recreation and Leisure Activities

3.2.4
Detainees whose movements are restricted for management reasons have:
- access to open air, subject to the security and good order of the detention facility and the safety of those within it; and
- adequate supervised exercise periods are scheduled on a daily basis.

4 COMMUNICATION and VISITS

4.2 Detainees not in Separation Detention: communication and visits

4.2.1 Contacts (other than visits)

4.2.1.1
Detainees are able to maintain a reasonable level of contact with their relatives, friends and community contacts, subject to the good order and security of the detention facility or except where a detainee's movement in the facility is restricted for management reasons.

4.2.1.2
Detainees have reasonable access to facilities to communicate with the diplomatic and consular representatives of the country to which they belong or with their legal representatives.

4.2.2 Personal Visits

4.2.2.1
Detainees are able to receive visits from relatives, friends, community (including religious) contacts or their diplomatic, consular or legal representatives, subject to:
- the good order and security of the detention facility;
- the safety of all those within it;
- the protection of the dignity and privacy of all detainees;
- the restrictions of a detainee's movements for management reasons; and
- the agreement of detainees.

4.2.2.2

At the request of a detainee, access by that detainee is facilitated to visits by:

- the Human Rights and Equal Opportunity Commission (HREOC);
- the Commonwealth Ombudsman; and
- the Australian Red Cross, and other organisations or groups as determined by the Department.

4.2.3 Other visits

4.2.3.1

Visitors other than personal visitors are admitted, subject to:

- the good order and security of the detention facility;
- the safety of all those within it;
- the protection of the dignity and privacy of detainees; and
- appropriate prior Departmental approval.

4.2.3.2

Visits by and at the request of the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission (HREOC) for the purposes of investigations are facilitated by the Department and the Services Provider.

4.2.4 Telephone and correspondence

4.2.4.1

Once through initial processing stages and subject to the good order and security of the facility, detainees are able to communicate at their own cost with family, friends, diplomatic, consular and other representatives through access to telephones, faxes, and mail.

4.2.4.2

Where detainees do not have sufficient funds, they are provided with reasonable access to means of communicating with family and diplomatic, consular or legal representatives.

4.2.4.3

Detainees can expect that written communications from them or addressed to them are not opened, read or prevented from reaching them, subject to the good order and security of the facility and the safety of those within it.

6.4 Obeying laws, orders and directions, including conflict resolution

6.4.1

In the interests of the security and good order of the facility and the safety and management of detainees, detainees comply with all reasonable orders and directions.

6.4.2

Non-compliance, uncooperative behaviour or conflict are addressed as far as practicable through communication, negotiation and conflict resolution.

6.4.3

Collective, corporal, cruel, inhumane or degrading treatments and punishments are not used.

6.4.4

Detainees are informed that, if they commit a criminal act, they can expect to be charged according to State/Territory/Commonwealth law and, if convicted, may be transferred to a correctional facility.

6.4.5

Where a potential criminal act is suspected, the Services Provider takes appropriate action.

6.4.6

As a result of non-compliance with orders and directions, detainees may:

- be transferred to another part of the facility;
- have their movements within the facility restricted; or
- be transferred to another place of detention.

6.4.7

Force is used as a measure of last resort and only where all other control methods have failed or have been assessed as inadequate. Only such force as is reasonably necessary and proportionate in the particular circumstances to resolve the situation is used.

6.4.9

Only such instruments of restraint are used as are reasonably necessary and proportionate in the particular circumstances to resolve the situation.

6.4.10

Instruments of restraint are never used as punishment.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(20) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 41) asked:

Is there a clear policy on the use of the terms 'refuse to sign' and 'unable to sign' or is that discretion left up to the officer in question?

Answer:

The term 'refused to sign' is generally used when the department makes an application for a travel document on behalf of a person who is not cooperating with arrangements for removal. The department informs the authorities of the country where it is intended to return the person that the person concerned has refused to sign an application for a travel document.

The term 'unable to sign' is used when the department makes an application for an Australian Certificate of Identity on behalf of a person who is not cooperating with arrangements for removal. The Application for a Certificate of Identity requires the signature of applicants aged 10 or over. When the person will not or cannot sign, the department endorses the form with 'unable to sign'. This is the form of words requested by the issuing authority and the department is required to explain the circumstances as to why a signature cannot be obtained.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(21) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 41) asked:

Has the issue – the difference between 'refuse to sign' and 'unable to sign' – been contested in a court?

Answer:

According to Departmental searches of the relevant legal database there has been no litigation in which the difference between "refuse to sign" and "unable to sign" has been an issue requiring consideration.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(22) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 41) asked:

Who were the officers who signed off on Ms Vivian Alvarez' deportation?

Answer:

As indicated in response to question 16, there is no evidence that the compulsory checklist attached to MSI 267 had been completed.

In the report "Inquiry into the Circumstances of the Vivian Alvarez Matter" at page 33 Mr Comrie found that: "There is no record of an actual decision to remove Vivian – if one was made. …[T]here is no documentation to support the decision to remove her."

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(23) Inquiry into the Administration of the Migration Act 1958

Senator Parry (L&C 13) asked:

Provide a comprehensive list of ETA countries.

Answer:

ETA countries and regions.

Travelers holding one of the following ETA-eligible passports can apply for an ETA while they are outside of Australia.

Andorra
Austria
Belgium
Brunei
Canada
Denmark
Finland
France
Germany
Greece
Hong Kong (SAR)
Iceland
Ireland
Italy
Japan
Liechtenstein
Luxembourg
Malaysia
Malta
Monaco
The Netherlands
Norway
Portugal
San Marino, Republic of
Singapore
South Korea
Spain
Sweden
Switzerland
Taiwan*

UK - British Citizen or
UK - British National (Overseas)**
USA
Vatican City

* Holders of Taiwan passports can only be processed for an ETA if resident in and applying in Taiwan.
** Holders of UK passports which indicate their nationality to be British National (Overseas) can only be processed for an ETA if resident in and applying in Hong Kong.