

Justice for Vivian
A coalition of groups and individuals who are rallying support for
addressing the justice issues for
Ms Vivian Solon

SUBMISSION to the Senate Legal and Constitutional Committee
Department of the Senate

Inquiry into the administration and operation of the Migration Act 1958

We thank the Inquiry for extending the deadline to 12 August to enable us to express our views on the administration and operation of the Migration Act 1958. In this submission, we draw on what we know of Vivian's experiences and their consequences for her and those of around 200 other people detained in similar circumstances, including Ms Cornelia Rau.

We also take this opportunity to comment in general terms on the current detention system in relation to asylum seekers.

Our submission will address in turn the specific elements of the Inquiry's Terms of Reference.

- a. *the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia.*

The treatment of Vivian by DIMIA officers reflect serious inadequacies in the department's systems and operations, for example, in

- the failure of officers involved in sorting out Vivian's identity, due to inefficient information systems and inadequate use of community networks (e.g., agencies whose staff can assist in conditions of confidentiality such as the Immigrant Women's Support Services in Brisbane).
- the seemingly callous and inhumane attitude towards her, which to us indicates the lack of appropriate training of department officers in providing responsible, sensitive and specifically, culturally appropriate services to their clients. This is quite unfortunate, given that DIMIA deals with people of various language and cultural, other than the traditional Anglo-Celtic, backgrounds. In this regard, we cannot help but be concerned that department officers may be operating from an assumption of guilt until proven innocent, especially when dealing with people of colour and from third world countries.
- the failure of the department to conduct an exhaustive investigation despite repeated claims from Vivian herself and a friend who brought

her to the hospital that she had a child, a brother in Brisbane and an Australian former husband, a bank manager. In various interviews with DIMIA representatives after surgery at a Liverpool hospital (Hansard, Senate, Foreign Affairs, Defence and Trade References Committee, July 25 2005), Vivian informed them that she was married to an Australian citizen, she had a child and had a passport. She could not however recall how she had arrived in Australia, and this could be because she was not in a proper physical or mental condition to give accurate answers to the questions.

The confusion regarding her status in Australia should have prompted a fuller investigation before deportation.

- the failure of department officers involved to use community networks in ascertaining Vivian's identity and personal circumstances.
- ignoring the pleas of concerned people, including members of the Filipino community, among whom were a nurse and a physician, similar pleas from a social worker at Lismore Hospital and from no less than officers of the Embassy of the Philippines in Canberra, that Vivian was not in any condition to travel.
- the lack of concern for a person, especially in this case, a woman being deported to a place where she had no known family to provide the necessary support on and after arrival.
- the haste with which DIMIA dealt with this very complicated case, in which a decision had the potential to result in irreparable damage to the life of a human being and her family, as it did.

There are other issues relevant to Vivian's case, which we do not highlight here, but we think the above are sufficient to point out the urgent need to change the culture (and therefore the modus operandi) of the entire DIMIA, as has been admitted by the Minister herself.

We urge, however, that the change process be initiated without delay, that appropriate changes in the Migration Act and the Migration Regulations be made, and that this change process should be driven by the need to:

- end the culture of paranoia, secrecy, arrogance, insensitivity and inflexibility due to a closed mindset in the department.
- ensure transparency and flexibility in DIMIA's operations.
- make the relevant officers and the Minister more responsible and accountable to their clients and the public in whose name they are supposed to serve, in regard to the entire system of managing and implementing the Migration Act 1958 and its guidelines.

- develop a close, trusting and collaborative relationship between the department and those agencies that get involved in the performance of their duties, e.g., police, health services.
- develop partnerships with relevant community networks and services, based on trust and respect.
- ensure that the department's service provision is underpinned by principles of social justice, human rights, equal opportunity as all Australian government services are; and that staff will be made accountable in this regard, with appropriate disciplinary actions meted out for failure to adhere to such principles.

Based on our collective experience in change processes within government and other agencies focusing on service provision for culturally and linguistically diverse (CALD) communities, we strongly recommend the development of a cross-cultural training regime, in addition to relevant changes in the legislation and guidelines, for DIMIA staff to address the inadequacies in its modus operandi as identified above, to help progress the cultural change process.

We also recommend with the same urgency, that police and other agencies working with DIMIA be held accountable in a similar way, and change their organisational culture to be more consistent with the principles of natural and social justice, human rights and equal opportunity.

b. the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia.

We are not certain as to the role and responsibilities of the Philippine Consulate General's office in Brisbane in cases like Vivian's, and whether they did enough to protect her rights as a Filipino national, especially considering that it was assumed she was not an Australian resident, and therefore entitled to full protection by the Philippine Government. In fairness to the Philippine Embassy, a senior officer tried to convince DIMIA that Vivian was not fit to travel. Despite these concerns, Vivian was deported.

In these circumstances, how and why was she given travel documents for the Philippines?

As members of the Filipino community, and indeed, as part of the Australian community, we would appreciate clarification of their role and responsibilities, and call for appropriate community education in this regard. Indeed, such clarification and transparency should be one of the standards to which DIMIA, the diplomatic and consular representatives, the police and as below, health services- and other services which get involved in the operations of the Migration Act, should be held accountable for in the performance of their duties.

c. *the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention*

It is evident in Vivian's case that health services, especially mental health services, failed her miserably. We believe she was not properly diagnosed when taken to Princess Alexandra Hospital for examination. Was the assistance of the Qld Transcultural Mental Health Centre sought to ascertain her condition in the appropriate manner? We are aware that they have a consultation service for such cases, and appropriate professionals, including Filipino professionals to do a culturally appropriate assessment of her condition.

In fact, how knowledgeable are DIMIA officers regarding the availability of services in the community that would help them? If the department were truly imbued with the values of human rights and social justice, as an agency of the Australian government and committed to Multiculturalism as a policy permeating its culture, it should have the knowledge of and ability to consult with community resources in confidence and must consider this as integral to the performance of their duties and responsibilities. If these were in place, there would be less tragic consequences as there have been for Vivian, Cornelia, and around 200 other human beings and their families.

d. *the outsourcing of management and service provision at immigration detention centre.*

The experience of Cornelia Rau in the detention centre, as well as the treatment of detainees in the detention centres in general have added to our serious concerns regarding the system of detention and the management of these centers.

A research report of the Edmund Rice Centre has raised serious concerns, among others, about these matters. Specifically, *Deported to Danger: A Study of Australia's Treatment of 40 Rejected Asylum Seeker* reported evidence of harsh and inhumane treatment of detainees, devoid of considerations of human rights and basic human dignity, as well as professional incompetence of DIMIA officials and Immigration Detention Centres staff. This report documents in detail the failure of present arrangements to treat asylum seekers as human beings with inalienable rights.

We endorse the findings of this report and fully support the recommendation that the current detention system, particularly the use of detention centres for asylum seekers, be replaced with a more humane system which acknowledges, respects and safeguards the human dignity and rights of those seeking the protection of Australia as a member of the international community.

e. *any related matters.*

We raise the matter of compensation for individuals who were victimized by the current operations and management of the Migration Act 1958 and Guidelines.

We appreciate the apologies extended by the Prime Minister, but insist that a fair and just offer of compensation for the inhumane treatment of Vivian at the hands of DIMIA, the disruption of her and her children's lives, the aggravation of her mental

and physical health, unnecessary suffering, desolation, disrupted social and cultural life, and loss of economic opportunities that unjustly put her in a very despondent situation.

We view as unfortunate and an aggravation of the inhumane treatment of Vivian, the current wedge politics being legitimised by the Minister in regard to the negotiations with Vivian's lawyer, Mr George Newhouse. The Minister and the Government must urgently offer a just and humane financial compensation and support.

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