

Community Relations Commission

For a multicultural NSW

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ew 19/12/05
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
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Canberra ACT 2600
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Dear Committee Secretary

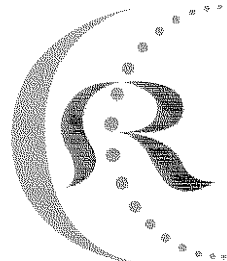
The Commission gave evidence at the public hearing held on the 29th September 2005 to the Senate Legal and Constitutional Reference Committee's Inquiry into the administration and operation of the Migration Act 1958. I am writing in response to the Senate Committee's request for clarification on matters that arose during the hearing.

The Senate Committee requested clarification on the current protocol that governs the removal of children (for detainment or deportation) enrolled in NSW schools and the specific concerns that the NSW Department of Education and Training has with the Department of Immigration and Multicultural and Indigenous Affairs in relation to this matter.

The Committee also sought information on the new arrangements for children attending NSW schools following the Commonwealth Government's announcement that all children be released from immigration detention centres, and clarification on the current arrangements involving children on Temporary Protection Visas and Bridging Visas attending NSW schools.

The Committee also requested clarification on provisions concerning the transfer of detainee medical records between the Commonwealth and NSW upon a detainee's release into the community.

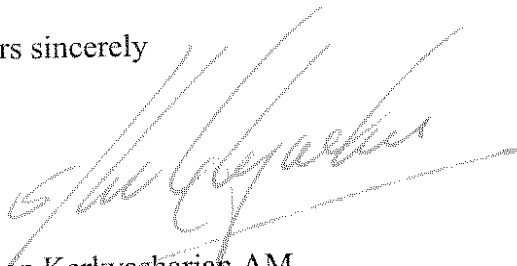
In addition, the Committee referred to a Memorandum of Understanding between the South Australian Department of Health and the Commonwealth Government in relation to mental healthcare provisions for people in immigration detention. The Committee requested information on the current arrangements between NSW Health and the Commonwealth Government and whether a similar arrangement was being negotiated between the Commonwealth and the NSW Government.



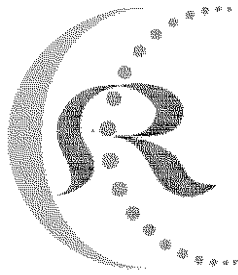
The Commission has sought advice on each of the matters from the appropriate NSW Government departments.

Please find attached the Commission's response to the Senate Committee's request for clarification on these matters.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Stepan Kerkyasharian', written in dark ink over a light background.

Stepan Kerkyasharian AM
Chairperson



Community Relations Commission
For a multicultural NSW

**Response to matters raised in the
Senate Legal and Constitutional Reference Committee's Inquiry into
the Administration and Operation of the Migration Act 1958**

Public hearing held on the 29th September 2005

***1. Protocols governing the conduct of immigration compliance operations in NSW
government schools***

Agreed protocols between the NSW Department of Education and Training (DET) and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) concerning the conduct of any future compliance operations are:

- prior notification of the proposed removal will be given by DIMIA officers to a nominated DET officer. Negotiations will take place on a case by case basis between DET and DIMIA over the timing and manner of the operation;
- the nominated DET officer will advise the Regional Director, School Education Director and principal of the school concerned of the proposed operation;
- a program of briefing sessions for principals will be conducted by DIMIA officers about the rationale and nature of compliance operations.

The Manager of Multicultural Programs, DET, is the nominated Departmental officer for migration compliance issues.

These protocols were developed following immigration compliance operations conducted in March 2005 when a number of children were removed from their schools and taken into detention. The Department of Education and Training was not informed that the compliance operations were to take place.

The absence of notice by DIMIA officers regarding compliance operations represented a significant departure from previous practice. In the only other two examples of compliance operations being conducted in schools over the past five years, prior notification had been given to the Department.

The actions of DIMIA officers in removing children from schools without prior notification placed the principals of those schools in a difficult situation. Some principals have expressed concern that such situations create a perceived conflict between the principals' responsibility for the welfare of the child and their obligation to comply with migration regulations.

2. Residence Determination Community Care Plan

Following the Commonwealth Government's announcement that all children would be released from immigration detention centres, in July 2005 a number of families were released from Villawood Immigration Detention Centre into the *Residence Determination Community Care Plan*. The Plan allows immigration detainee families to reside in the community subject to certain conditions, and school-aged children to enrol in local schools.

The Australian Red Cross was nominated by the Minister for Immigration and Multicultural and Indigenous Affairs as having principal responsibility for administering the Plan in NSW. Under the Plan families receive a living allowance and case management support through the Australian Red Cross.

The Department of Education and Training is assisting the Australian Red Cross in placing the school-aged children of families under the Plan in schools. While the families do not have visas, they have been given a letter from DIMIA identifying family members residing in the community.

By late August 2005, 17 children under the Plan had enrolled in local NSW government schools with 14 students enrolled in four primary schools and three students enrolled in three high schools.

At enrolment, each family presents the letter of identification from DIMIA. The children are enrolled as temporary visa holders but are exempt from payment of the Temporary Visa Holders Education Fee.

Arrangements have also been reached with the Australian Red Cross concerning the provision of financial assistance to schools enrolling immigration detainee children. The Red Cross has agreed to meet school-related costs including uniforms, school book packs, excursions, subject fees and annual school contributions. Schools are required to keep receipts and directly invoice the Red Cross.

To support the child's settlement, schools have been requested to refer the child to a school counsellor. The Red Cross has indicated its willingness to discuss any counsellor recommendations and meet the costs if further referrals are required.

Schools have also been requested to raise any concerns regarding the welfare or health (physical or mental) of a child directly with a nominated contact person from the Australian Red Cross so that appropriate and immediate action can be taken. This action is in addition to communication with the child's parents as part of normal school operational practice.

All principals of schools where these children are enrolling have been informed of requirements under the Plan, including enrolment procedures, support available and contact details for key personnel from the Australian Red Cross and DET. Regional Directors and School Education Directors have also been advised.

3. School aged children holding temporary protection visas and bridging visas enrolled in NSW government schools

Temporary visa holders, including holders of temporary protection visas and bridging visas, may enrol in NSW government schools, subject to certain conditions.

Temporary protection visa holders (visa subclasses 447, 448, 449, 451, 695, 785 and 786) enrol in NSW government schools on the same conditions as permanent residents. They are exempt from paying the Temporary Visa Holders Education Fee. These students have access to the same educational services as permanent residents.

Students granted a bridging visa are eligible to enrol in school while waiting for a decision from DIMIA about their application for a change in their substantive (original) visa.

Most students on bridging visas are liable to pay the Temporary Visa Holders Education Fee. Whether a fee is payable is determined according to the conditions of the immediate previous substantive visa. Provision exists for considering fee exemption on a case by case basis. Each application is considered in relation to the applicant's capacity to pay the fee.

Students on bridging visas are able to access the same educational services, including on arrival intensive English support, as permanent residents. The only exceptions are those who were originally on a visitor visa, or whose visa indicates a condition of three months study only. This last group of students may enrol in schools and access all educational services except for on arrival intensive English support.

4. Current provisions concerning the transfer of detainee medical records between the Commonwealth and NSW upon a detainee's release into the community.

Medical follow up of people released from detention centres has in the past been poorly arranged, and in the experience of medical staff who provide direct services to refugees, are not provided with written summaries of the health screening or any medical care given to them while in detention centres. Duty of care principles however demand that comprehensive transfer of information occurs on release.

Public health staff have reported that detainees have been released without proper follow-up of a notifiable disease such as syphilis. Unfortunately obtaining information on a person's whereabouts after their release is blocked by privacy requirements.

Furthermore, there have been examples of persons with significant health issues released from detention on a Bridging Visa or via habeas corpus, yet they are not entitled to access Medicare.

On release there is a need for appropriate medical documentation, an adequate supply of medications if required, and appropriate referral & follow up arrangements. Health staff need to be informed as soon as a detainee is due for release, to allow medical follow-up to be arranged.

All persons being released should also be provided with a list of support agencies and other relevant services that may assist them in the community.

5. Current arrangements between NSW Health and the Commonwealth Government in relation to the provision of mental health care for people in immigration detention.

The Primary Health and Community Partnerships Branch of NSW Health is not aware of any formal service agreement between NSW Health, or any of the Area Health Services & the Department of Immigration Multicultural and Indigenous Affairs DIMIA and Group 4 Falck Global Solutions Pty Ltd (the agency contracted to manage existing detention centres) to provide mental or other healthcare. Where necessary, inpatient or outpatient care is provided in a hospital or other facility, for which Group 4 Falck Global Solutions Pty. Ltd is billed.