



# Department of Immigration and Multicultural Affairs

REPORT INTO REFERRED IMMIGRATION CASES:  
MENTAL HEALTH AND INCAPACITY

December 2006

Report by the Commonwealth and Immigration Ombudsman,  
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **07|2006**

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## 1—SCOPE OF THIS REPORT

1.1. In 2005 and 2006 the Australian Government referred to the Commonwealth Ombudsman the cases of 247 persons who had been detained by the Department of Immigration and Multicultural Affairs (DIMA), and later released on the basis that they could not be detained any longer as an unlawful non-citizen. This office agreed to investigate and report to DIMA about each individual's case under the Ombudsman's power to conduct an own motion investigation, as provided for in s 5 of the *Ombudsman Act 1976*.

1.2. For the purpose of analysis, the referred matters were divided into seven categories on the basis of the preliminary information provided by DIMA.<sup>1</sup> One of those categories was concerned with cases that raised a mental health issue. Two individual reports from this category have already been provided to the Government: one concerning Mr T<sup>2</sup> and the other concerning Mr G.<sup>3</sup> In an investigation that arose independently of the referred cases, the Ombudsman's office also addressed mental health issues in the report concerning the detention and removal of Ms Vivian Alvarez.<sup>4</sup>

1.3. This report deals with nine cases that raise mental health or incapacity issues, but have not yet been reported on publicly. Attachment B to this report contains eight case studies that provide a brief outline of each case. An individual analysis of each case has been provided by the Ombudsman's office to DIMA, but these will not be published. The common issues about immigration administration identified in each individual investigation have instead been incorporated into this consolidated report.

1.4. The investigation of each case was limited in scope to identify the specific issues in each case and any systemic problems with DIMA's administration of the *Migration Act 1958*. Emphasis was placed upon establishing the facts leading to the detention of each person, the steps taken by officials to resolve the detention, and whether, in all the circumstances, any remedial action is now required. The investigations were largely conducted on the basis of paper records relating to individual cases and other relevant materials, including recent procedural or policy amendments adopted by DIMA. The methodology included consideration of:

- DIMA client files and compliance notebooks for individual cases
- the Integrated Client Services Environment (ICSE) for individual cases
- detention dossiers, where available, for individual cases
- the National Compliance Operational Guidelines (NCOGs)
- the Detention Service Provider Operating Guidelines and Immigration Detention Standards

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<sup>1</sup> The cases were divided into the categories of mental health, children in detention, data problems, cases affected by the Federal Court decision in *Srey*, validity of notification, detention process and other legal issues; further, see Commonwealth Ombudsman Annual Report 2005–06 at pages 83–84.

<sup>2</sup> Commonwealth Ombudsman, *Report on Referred Immigration Cases: Mr T*, Report No 04|2006, available at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

<sup>3</sup> Commonwealth Ombudsman, *Report on Referred Immigration Cases: Mr G*, Report No 06|2006, available at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

<sup>4</sup> Commonwealth Ombudsman, *Report of the Inquiry into the Circumstances of the Vivian Alvarez Matter*, Report No 03|2005, available at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

- relevant paragraphs of the Policy Advice Manual 3 (PAM3) and Migration Series Instructions (MSI)
- relevant sections of the *Migration Act 1958* and the *Citizenship Act 1948*, and associated regulations.

1.5. In three cases, information was obtained from a State police service. Where appropriate, interviews were conducted on a consensual basis with DIMA officials.

1.6. Many of the issues raised in this report were also raised earlier in separate reports on Ms Alvarez, Mr T, Mr G and the report by Mr Mick Palmer on Ms Cornelia Rau.<sup>5</sup> There were many specific recommendations in those reports that were accepted by DIMA and are currently being implemented. Bearing that in mind, this current report does not contain specific recommendations about each of the areas of administrative deficiency that were identified by the investigations. Instead, a single recommendation is made at the end of this report that DIMA take note of and act to correct the administrative deficiencies discussed in the report.

## 2—OVERVIEW OF THE MENTAL HEALTH CASES

2.1. In each of the nine cases, a person was taken into immigration detention under s 189 of the Migration Act, despite being either an Australian citizen or the holder of a visa that entitled the person to reside lawfully within the Australian community. Under the terms of s 189, which is discussed in detail below, detention is authorised where an immigration officer forms a reasonable suspicion that a person is an unlawful non-citizen.

2.2. A theme taken up in this and other reports is that extra care needs to be taken when s 189 is being exercised in relation to a person who is suffering poor mental health.<sup>6</sup> The danger to be avoided is that an immigration officer will form a suspicion that a person is an unlawful non-citizen, when in fact the person is an Australian citizen or lawful resident who is unable to effectively communicate their status. A related theme is that there is a continuing obligation on DIMA, implicit in s 189, to ensure that the ongoing detention of a person is justified. A person's mental health and ability to communicate is again relevant to this ongoing assessment.

2.3. Each of the nine mental health cases addressed in this report illustrates the need for caution and special training in forming a suspicion about a person's immigration status when the person lacks mental capacity, or is in poor mental health. Five of the cases discussed in this report concern persons with diagnosed mental health conditions, one person appears to have had an acquired brain injury, two people were severely intoxicated and one matter involved a person who may have had a learning difficulty or limited literacy. In each instance, the person was detained by a DIMA official under s 189, but later released when the person's identity or immigration status was correctly identified. Five of the people were citizens, three were permanent residents and one was a temporary visa holder. It is also of note that eight of the nine persons were born overseas and their different ethnicity was

<sup>5</sup> *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, July 2005, report by Mick Palmer AO APM.

<sup>6</sup> See the reports concerning Ms Alvarez, Mr T, Mr G (refer earlier footnotes 2, 3 and 4 on page 1 of this report); and Reports on Detainees Nos 014/05 and 016/05, prepared pursuant to s 486O of the Migration Act in relation to persons who had been in detention for two years or more, tabled by the Minister in Parliament on 1 March 2006, available at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

apparent. The periods for which they were held in immigration detention varied from two to eighteen calendar days, noting that one Australian citizen was detained twice. The period in which these detentions occurred spanned the years 2000 to 2005.

2.4. This investigation has concluded that some of the people would not have been taken into detention had there been a better capability within DIMA to identify mental health issues and recognise the implications of incapacity for the administration of the Migration Act. Equally, had DIMA staff been trained to recognise and respond to mental incapacity, some of the people would have been released earlier. In one aspect or another, there was a lapse in good administration in each case, amounting to a wrongful detention.

2.5. The Ombudsman's office has not examined the further issue of whether there was a period of unlawful detention in any of the cases. Only a court of competent jurisdiction could make a conclusive finding to that effect, and a more extensive inquiry (including consultation with relevant parties) would be needed before a firm view could be reached on the legality of a detention. Nevertheless, in each individual case the Ombudsman's office recommended to DIMA that it give further consideration to this issue, for the purpose of considering whether a remedy should be provided to the person to acknowledge or redress any suspected unlawful action.

2.6. This report points to some specific problems and reforms that need to be implemented if DIMA is to cope more effectively with mental health issues. They include:

- The importance of seeking urgent medical assessment and treatment where there is an apparent mental health concern, preferably before any action is taken to detain a person under s 189 of the Migration Act.
- In some cases an unwarranted emphasis was given by DIMA officials to obtaining documentary evidence of a person's identity and immigration status, rather than reviewing whether on the available facts there was a lawful basis for continuing a person's detention.
- There is a need to address the issues raised in previous Ombudsman reports about the administration of s 189 and record keeping practices in DIMA.
- Problems similar to those arising in the mental health cases also arise in dealing with heavily intoxicated persons.

2.7. Against that picture, more recent cases examined by the Ombudsman's office demonstrate some improvements in record keeping and provide examples of appropriate and responsive arrangements being adopted for releasing persons in poor mental health back into the community.

2.8. The issues dealt with in this report concerning mental health and incapacity also pose a challenge for other public and private organisations in all states and territories. Mentally ill and incapacitated persons are amongst those members of the community least able to represent their own interests. Worryingly, this report illustrates how a person's mental illness can contribute to a perception about the lawfulness of their immigration status. It is hoped that this report will inform the wider debate about how mental health issues should be approached.

### 3—LEGAL AND POLICY FRAMEWORK

3.1. The core statutory provision in each of the cases covered in this report is s 189 of the Migration Act, which imposes an obligation to detain a person in certain circumstances—often referred to as mandatory detention. Relevantly, s 189(1) provides:

If an officer knows or reasonably suspects that a person in the migration zone (other than an excised offshore place) is an unlawful non-citizen, the officer must detain the person.

3.2. A person taken into detention must remain in detention (s 196), and can only be released from detention in specified circumstances that include removal from Australia, being granted a visa, or the person being recognised as a citizen or lawful non-citizen.

3.3. The requirements of s 189 have been discussed in previous Ombudsman reports.<sup>7</sup> Among the points made in those reports are:

- a properly based reasonable suspicion constitutes the only protection against arbitrary detention under s 189
- there must be an adequate evidentiary basis underpinning any reasonable suspicion
- the reasonable suspicion must be held for the duration of a person's detention (if there is no longer a reasonable suspicion, a person must be released)
- an unresolved doubt about a person's immigration status falls short of a reasonable suspicion that the person is unlawfully in Australia.

3.4. Those points are especially relevant to mental health and incapacity cases. A doubt about a person's immigration status may in truth stem from a person's poor mental health and inability to communicate their identity and status, or their confusion about their own immigration status. The mental health cases in this report include instances in which compliance officers acted too readily upon information provided by apparently delusional persons, where it was doubtful that the information could sustain a reasonable suspicion. In other instances officers failed to take indicators of mental disorder into account when assessing why a person was unable to provide coherent information.

3.5. The immigration legislation is supplemented by administrative manuals, MSIs and the PAM3, which provide guidance to DIMA officers. These documents are especially important in the administration of s 189 and related provisions, because those statutory provisions are broad in scope and provide only minimal guidance to the officers in dealing with the sensitive and complex factual problems they are likely to encounter. For that reason, the Ombudsman's office has paid great attention to the adequacy of these administrative policies and manuals in the course of these investigations. MSIs are often updated or superseded in order to reflect legislative amendments or a change in policy or process. The following MSIs, as amended from time to time, were most frequently considered during these investigations:

- *MSI 234: General detention procedures*  
Concerned with the practical processes associated with detention under any of the migration detention powers.

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<sup>7</sup> See the reports referred to in footnote 6 on page 2 of this report.



- *MSI 318: Compliance and enforcement overview*  
Provides guidance on compliance activities and associated cancellation, search, seizure, detention, prosecution, removal and deportation processes.
- *MSI 321: Detention of unlawful non-citizens*  
Concerns detention powers and processes regarding unlawful non-citizens.
- *MSI 329: Unlawful non-citizens*  
Establishes procedures for determining the status and identity of a non-citizen, the circumstances in which a non-citizen becomes unlawful, and the effect of becoming an unlawful non-citizen.
- *MSI 409: Establishing identity—in the field and in detention*  
Discusses the relevant powers and processes for establishing identity both before a decision is made about detention and after a person has been detained.
- *MSI 411: Establishing immigration status—in the field and in detention*  
Instructs officers in the powers and processes aimed at establishing immigration status prior to a decision to detain and after a person has been detained.

3.6. MSIs 409 and 411 deal with establishing identity and immigration status, and were first published in December 2005. When compared with the other MSIs that were in operation during the majority of the nine detentions, MSIs 409 and 411 demonstrate a significant improvement in the nature of the guidance given to DIMA officers. Most importantly, these new MSIs now instruct officers that they must resolve identity issues as a matter of urgency, including following up leads and, where necessary, working after hours. Officers are also instructed to ensure that there are no periods of inactivity, they must uncover all possible explanations for the available information and fully document all conclusions as well as the process of identifying persons. Officers are also directed to escalate cases of unresolved identity to senior officers, the National Identity Verification and Advice Section (NIVA) or the Detention Review Manager. It is possible that some of the problems identified in the individual investigations may not have occurred had this quality of instruction been available at the time to immigration officers.

3.7. Of the various MSIs, MSI 409 most clearly refers to the potential impact of poor mental health upon compliance processes. That MSI instructs officers in the need to exercise additional caution when considering information provided by a person in poor mental health, and to keep in mind that there may be many reasons why a person is unable to give a plausible account, particularly where a mental health condition may be contributing to the person's inability to provide a coherent story.

3.8. Importantly, MSI 411 now explains to officers that s 189 not only involves taking persons into immigration detention but also keeping persons in immigration detention. The MSI explains that there is an ongoing obligation on DIMA officials to continue to reassess the lawfulness of a detention under s 189. The MSI clearly states that a person must be released from detention if an officer moves from reasonably suspecting that a person is an unlawful non-citizen, to knowing that they are not an unlawful non-citizen, or no longer reasonably suspecting that they are an unlawful non-citizen. This instruction accords with the Ombudsman's view of s 189 and markedly improves the quality of the policy guidance provided to DIMA officers who exercise the s 189 power.

3.9. Despite these improvements, there is a continuing need, highlighted by this report, to consider the need for revision of other MSIs, to keep all MSIs under continuing review, and to provide appropriate training to DIMA officials.

## **4—RELIABILITY OF INFORMATION ON WHICH A DETENTION DECISION IS BASED**

4.1. The information provided by a person of interest will often be critical in forming an opinion about that person's immigration status. It is therefore important that the information is reliable and capable of supporting any opinion that is based on it. The investigation into the mental health cases revealed that there were several instances in which officers acted upon identity or status information provided by persons whom they noted as being delusional or having psychological problems that required immediate assessment.

4.2. The lawful exercise of s 189 is dependent upon an objectively reasonable and justifiable suspicion that the person is an unlawful non-citizen. It will not be objectively reasonable to uncritically accept information, or the absence of information, from an unmistakably irrational or delusional person. In those circumstances, it is crucial that the DIMA officer concerned takes an analytical view of the information. There should be proper procedures in place, and DIMA officers must be properly trained to take account of the apparent mental illness or incapacity of a person of interest.

4.3. The difficulties inherent in recognising and dealing with mental health issues are well illustrated by the case of Mr A, detailed at *Case study 1* in Attachment B. Mr A came to DIMA's attention in the early hours one day because he was left at a police station with a letter stating that he was Mr X and was an unlawful non-citizen. He was taken to a hospital for treatment for a suspected overdose and was later interviewed by DIMA officers. While recovering in hospital, following a diagnosis of Post Traumatic Stress Disorder (PTSD) and major depression, Mr A confirmed the contents of the note. Later that day, DIMA decided to detain him under s 189.

4.4. In all the circumstances, it was probably open to DIMA initially to form a reasonable suspicion that Mr A was an unlawful non-citizen after he had been assessed at the psychiatric facility. The medical opinion did not originally indicate that Mr A's information was unreliable and even medical professionals trained in diagnosing and treating psychiatric illness did not appreciate that Mr A was using an assumed identity and only providing partially correct information. That said, DIMA should have been slower to make the decision to detain Mr A until the reliability of his self-declared status could be verified. It is admittedly easier to make that observation in the light of the later fingerprint information that showed that he was not an unlawful non-citizen. Although it was not open to DIMA to obtain fingerprints from Mr A prior to his detention, the case is a reminder of the need for informed scepticism when faced with declarations of status and identity from persons of interest.

4.5. Mr A's case illustrates the need for DIMA to institute a process whereby persons of interest who are suspected of being delusional or mentally incapacitated are medically assessed before any action is taken in respect of their immigration status. Depending on the situation, this medical assessment may need to be arranged by DIMA, the police, or the authority in whose care the person is at the time, if any. Mr A's case provides an example of a situation in which it was possible

to conduct a medical assessment prior to a decision being made about his immigration status.

4.6. DIMA admittedly faces a difficulty in arranging an appropriate medical assessment before taking action to detain a person under s 189. One aspect of this difficulty is in accessing appropriate mental health services (partially addressed by a recent government announcement to provide funding of \$1.9 billion over five years for the mental health sector). Another point of difficulty is that DIMA does not have the legal authority to transport a person to a hospital unless the department has lawfully detained that person. Similarly, the power to use identification techniques such as fingerprinting will not arise unless a person has been detained either by State police or DIMA officers. Sometimes a person of interest will voluntarily agree to undergo a medical assessment, either at other premises or by a medical practitioner who is brought to the person. In other instances a person may not cooperate and all that DIMA officers will have to go on is information that arouses doubt about a person's immigration status, yet the information is not necessarily reliable.

4.7. Notwithstanding the difficulties that can confront DIMA officers in this setting, it is important that officers maintain a clear view of the nature of their task. Section 189 imposes a duty to detain a person about whom a reasonable suspicion has been formed, but it is the formation of a reasonable suspicion that is the necessary condition for detention to occur. Even though a person has attracted the attention and interest of DIMA, the occasion to detain them under s 189 will not arise unless a reasonable suspicion about their immigration status can lawfully be formed. A person who is evidently delusional or mentally incapacitated may require special assistance from government officers, but detention under s 189 is only one of many options that may need to be considered.

## **5—RELIABILITY OF DIMA'S DATABASE—THE DETENTION OF CITIZENS**

5.1. The detention of Australian citizens under s 189 must surely rank as one of the worrying episodes in the recent administration of the Migration Act. A citizen is a person with full legal status and freedom to move within the country. Section 189 is designed to apply to those who are suspected of not having a lawful right to remain within the country.

5.2. To a point, it is probably inevitable that at one time or another a citizen will be detained under a provision such as s 189. The section creates a duty to detain a person about whom a reasonable suspicion is held that the person is an unlawful non-citizen. For example, there have been instances in which people who have a lawful right to remain in Australia have deliberately provided misleading information about their immigration status, even requesting that they be removed from Australia. Nor is it without precedent, under other statutes that authorise police detention of people suspected of having committed a crime, that instances occur in which people are detained only to be released later when more reliable information about their situation is obtained.

5.3. The possibility that a statutory power to control unlawful immigration can result in the detention of citizens is a circumstance that nevertheless calls for special caution in immigration administration. Moreover, it is critical that an administrative framework of a very high standard is in place to ensure that the detention of citizens only occurs in the most exceptional circumstances and for good reason. One element

of that administrative framework must be a high quality database that is both reliable and accurate.

5.4. Of the nine mental health cases addressed in this report, five involved the detention of an Australian citizen. Four of the people had acquired citizenship after they came to Australia and one was an Australian citizen by birth who had never left Australia. That brief description itself draws attention to the inherent danger of relying principally on DIMA's database to glean information about citizenship or immigration status.

5.5. The case of Mr W is detailed at *Case study 2* in Attachment B. He was born in Australia and had never travelled outside Australia. Owing to schizophrenia, he spoke with an Irish accent. In 2002 he was arrested by the police and positively identified via fingerprints. Although the police initially referred Mr W to DIMA, a member of the DIMA Entry Operations Centre declined to detain him under s 189 on the basis of Mr W's assertion that he had been born in Australia. Subsequently, an officer from a DIMA regional office attended at the police watch house and interviewed Mr W. Notwithstanding that the officer noted that Mr W was 'somewhat delusional' and the officer could not locate any DIMA records concerning Mr W, the officer decided to detain Mr W under s 189. Two days later, DIMA acquired information that indicated that Mr W was an Australian citizen by birth and he was released.

5.6. DIMA does not, as a general rule, hold information about Australian citizens who were born in Australia. While DIMA does have some access to the Department of Foreign Affairs and Trade's (DFAT) records concerning Australian passports that have been issued, and DIMA has responsibility for administering applications for Australian citizenship, it is only when an Australian born citizen leaves or returns to Australian shores that DIMA records that movement across the border. If a person acquired Australian citizenship at birth but has never been issued with an Australian passport, it is unlikely that the records kept by either DIMA or DFAT will be able to assist DIMA's compliance staff with clarifying that person's immigration status.

5.7. MSIs 409 and 411 now advise officers that where a person claims to be an Australian citizen or permanent resident, the officer should consult with a senior compliance officer before taking action to detain the person. The MSIs also detail a process for escalation where claims of Australian citizenship or permanent residence remain unresolved. MSI 411 also explains that the person should be interviewed within 24 hours.<sup>8</sup> Additionally, MSI 409 now requires the compliance manager to immediately release a person if the manager accepts the person's claim of citizenship or permanent residency. The compliance manager must also implement a review of how and why the person was detained. Generally, DIMA is now emphasising the need to resolve claims of citizenship or permanent residence in an expeditious manner.

5.8. Those initiatives are welcome, but should not cloud a more important lesson that emerges from the cases investigated in this report. If a person is an Australian citizen or lawful resident they bear no onus of satisfying a DIMA officer of that fact. The power conferred by s 189 is exercisable only when a DIMA officer forms a reasonable and objectively justifiable suspicion that a person is an unlawful non-

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<sup>8</sup> The MSI will undergo further revision in light of a recommendation made in the Mr T report, to the effect that in all but exceptional circumstances a person detained under the Migration Act should be formally interviewed as soon as possible and no later than four hours after detention.

citizen. In forming that opinion, a DIMA officer bears the responsibility of considering all relevant material and assessing its adequacy to support action under s 189.

5.9. Another issue that arises from these cases is the need to review existing practice and MSIs in light of problems that have emerged. The earlier report concerning Mr T, an Australian citizen who was detained on three occasions, criticised DIMA's failure to review the circumstances of Mr T's detention on any of the three occasions. Had that been done on the first such occasion he was detained it is possible that he would not have been detained again. In some of the other mental health cases covered in this report, there was no review of the circumstances that led to a citizen being detained. The new MSI 409 requires that a review be conducted of any instance in which a citizen was detained. It is to be expected that this should result in improved administrative practice to safeguard against inappropriate detention of Australian citizens and permanent residents.

5.10. In two of the other cases in this report the detention of a citizen arose from the unreliability of DIMA's database. As to the case of Mr D, discussed at *Case study 3*, DIMA's system was inconsistent concerning his date of birth, the spelling of his name and his country of birth. He was detained on two occasions. On the first occasion, the errors in the database made it difficult for the officers involved to locate Mr D's computer records, and the failure to find a reference to him was a factor in the decision to detain Mr D under s 189. The first detention was ultimately resolved after an address search on DIMA's ICSE system. On the second occasion, the primary officer involved in the detention did not know how to conduct an address search. Further, the officer who had resolved the first detention had not entered the details of that detention into the ICSE system until some three months after that detention. By the time that these details were entered into ICSE, Mr D had been detained once again.

5.11. Ms N's case, detailed at *Case study 4*, also shows the impact of an unreliable database. The DIMA database did not record her name correctly and variously recorded her as unlawful, an Australian citizen, and offshore under different names. Had Ms N's computer records consistently shown that she was an Australian citizen, it is unlikely that she would have been detained at all.

5.12. A warning concerning the reliability of DIMA's database records is now specifically given in MSI 411. It notes that departmental systems may be inaccurate and where a person maintains that they are lawfully in Australia, officers should conduct all reasonable systems checks. Officers are also instructed that where practicable they should arrange for a person's client file to be checked.

5.13. Another issue arising from the case of Mr D (*Case study 3*), is that some DIMA officers may be under the wrongful impression that they should not maintain any records concerning citizens, even where a citizen has been detained by DIMA for a period of time. Instead, some officers create a combined file in which they place any matters for which 'no further action' is required. DIMA must take immediate action to ensure that all staff create and maintain records in respect of any person who has been detained, whether the person was an unlawful non-citizen, a lawful non-citizen or an Australian citizen. The files should be centrally recorded and accessible.

## 6—IDENTITY AND PROOF

6.1. The inability to establish identity was at the heart of the detention of Ms Rau, Ms Alvarez and Mr T. Each person was detained and held in detention longer than they should have been, due to the inability of DIMA to establish their correct identity. A related problem was exposed by some of the case studies in this report, and by the separate report on Mr G. The problem is that a person whose identity as a lawful Australian resident had been established was nevertheless kept in detention until firm documentary proof of their identity was provided.

6.2. This practice is inconsistent with s 189, which implicitly requires that the DIMA officers responsible for a person's detention continue to hold a reasonable suspicion that a person is an unlawful non-citizen. If a point is reached that a reasonable suspicion can no longer be held, a person must be released from detention forthwith. Documentary proof of a person's identity or immigration status is not required before a person can be taken into detention. It should not be an added requirement in all cases before a person can be released from detention. At most, documentary proof may be important where there are serious and justifiable doubts about a person's identity. In other cases, if there is reliable evidence – from whatever source – that points to a person's lawful status, they should be released.

6.3. The problem is best illustrated in the case of Mr ZG, discussed at *Case study 5*. Mr ZG provided information that enabled DIMA to locate his immigration records on the fifth day of his detention. From that time, it was open to DIMA to release Mr ZG on the basis that it could no longer maintain a reasonable suspicion that he was an unlawful non-citizen. Over the next three days, DIMA discussed Mr ZG's case in detail with his support services. Those services advocated for his release into the care of an appropriate facility and advised that it was their view, largely based on having seen his immigration documents, that Mr ZG was a lawful resident. Despite this information, DIMA declined to release Mr ZG. Curiously, DIMA made an unsuccessful attempt to transfer Mr ZG from NSW to Victoria to facilitate a reconnection with his Victorian support services, which tends to indicate that DIMA had accepted the information provided to it about Mr ZG's identity. Nevertheless, and notwithstanding a large amount of information that indicated his identity and lawful status, numerous DIMA officers insisted that Mr ZG could not be released until documents evidencing his identity and status were produced. This occurred after he had been held in detention for eight days.

6.4. It is evident from this description that the officers involved in Mr ZG's detention considered documentary evidence was a prerequisite to establishing his identity and release. This approach gains some reinforcement in MSI 409, paragraph 4.1, dealing with establishing identity in the field. Paragraph 4.1 provides in part:

[I]t is departmental policy that, where officers are considering whether or not to detain a person, they should always check a person's claimed identity by asking them to provide documentary evidence in support of that identity. Officers cannot be satisfied as to a person's identity unless they see documents confirming that identity.

6.5. The need for documentary evidence is also reiterated throughout MSI 411.

6.6. The instruction provided by MSI 409 is appropriate in circumstances where a person is not detained and there are no apparent mental health issues. On the other hand, there is a danger that a blanket statement about requiring documentary proof to be satisfied of a person's identity could be wrongly interpreted by immigration officers as applying to situations when a person has already been detained.

## 7—INTOXICATION

7.1. An intoxicated person may be as unable to provide information about his or her identity and immigration status as a person in poor mental health. The same level of caution is therefore needed by DIMA in its dealings with intoxicated persons. Moreover, heavy intoxication may deprive a person of legal capacity. The detention of two brothers, Mr AY and Mr AR (*Case study 6*), illustrates the dangers inherent in acting upon information from persons who are intoxicated to the point of incapacity, particularly when that information is coupled with an apparent absence of records within DIMA's systems, to form a reasonable suspicion under s 189.

7.2. Mr AY (a permanent resident) and Mr AR (a citizen), who were both heavily drug affected, incorrectly advised a DIMA officer that they were unlawfully present in Australia. After a cursory search of the DIMA databases, which failed to locate any record for either, they were detained under s 189. Mr AR's records should have been readily located as he provided, amongst other things, his correct surname and his year of birth, and the police provided his date of birth and address information that matched his citizenship records. The records showing Mr AY was a permanent resident were placed on his file within a day of his detention, but do not appear to have been taken into account and addressed.

7.3. On induction, it was apparent that both brothers were heavily drug affected, yet there is no indication that any consideration was given to the reasonableness of acting on information provided by persons intoxicated to the point of debilitation. Additionally, Mr AY was only sixteen years old and effectively unaccompanied during his detention, but this did not prompt DIMA to carry out further inquiries with the police in an attempt to locate information about his family. It would seem that DIMA was merely waiting until the brothers were sufficiently recovered from their intoxication before conducting further inquiries.

7.4. Of further concern, the DIMA files record the view of some DIMA officers that the brothers were not likely to be fit for interview for a further 48 hours after they were detained. Despite this observation, the next day, without addressing whether the brothers had recovered from their incapacity, DIMA obtained their signatures on a request to be removed from Australia under s 198(1) of the Act. No attention was paid to whether Mr AY, who had not obtained legal majority (that is 18 years of age), had the capacity, as a minor, to request removal under s 198(1).<sup>9</sup>

7.5. The separate report on Mr G made a detailed recommendation relating to training of compliance officers in recognising the symptoms of mental illness and the considerations for dealing with persons suspected of suffering from a mental illness or reduced mental capacity. In response to that recommendation, DIMA has advised that it is developing training packages that will heighten the capacity of officers to recognise and respond appropriately to mental illness and incapacity. Additionally, Practice Management Groups have been established within DIMA that will focus on the implementation of nationally consistent procedures where a person's ability to understand or provide informed consent may be impeded.

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<sup>9</sup> See the comments of Gummow J in *Re Woolley; Ex parte Applicants M276/2003 by their next friend GS* [2004] HCA 49 at [152]–[154], applying the principle from *Marion's Case* (1992) 175 CLR 218, that a child who has not reached legal majority may still have legal capacity to give informed consent to be removed under s 198(1).

## 8—RELEASE ARRANGEMENTS FOR PEOPLE DETAINED

8.1. The report on Mr T drew attention to the need for proper release arrangements for a mentally ill person who is being released from detention. In that case, no steps had been taken to ensure that Mr T was reconnected with personal support services after eight months in detention. The duty resting upon DIMA to implement proper release arrangements stems from the general duty of care it owes towards persons in detention who are vulnerable and are not able to take control of their own health and welfare (for example *S v Secretary, Department of Immigration & Multicultural Affairs* [2005] FCA 549). There is a further practical consideration, that a period in detention may result in the cessation of a person's financial, medical and social support. For example, Centrelink may cancel payments while a person is in detention; a person's mental health could deteriorate without their usual medication; and during detention they may lose contact with established support services.

8.2. As a general observation, the most recent detentions of mentally ill people covered in this report demonstrate a marked improvement in the release processes adopted by DIMA. An example is the case of Mr ZG in *Case study 5*, who was detained in 2005. DIMA initially attempted to transfer him from New South Wales to Victoria, where he had been receiving medical and social support services from two specialist community organisations. The attempted transfer was unsuccessful and he was ultimately released into the care of a psychiatric facility in NSW. A NSW health service then liaised with the Victorian support services. Another example is the case of Mr A (*Case study 1*), who was detained in 2004; he was released into the care of the NSW police who then transported him to a psychiatric facility.

8.3. The release arrangements in both cases were sensitive to the detainees' needs, they incorporated advice from treating professionals, and there was a referral to appropriate services. A further step that should be considered by DIMA is to place a client alert note on ICSE in respect of any person who is apparently suffering a mental health condition that could diminish their ability to communicate with DIMA. A summary of information held by DIMA, obtained from relevant persons such as medical professionals, could also be included on ICSE. There may be privacy implications associated with this step that deserve further consideration by DIMA, and it may be necessary to develop procedures for advising a person of the information recorded about them.

## 9—INTERACTION WITH POLICE

9.1. DIMA's interaction with State police was an issue arising in each of the earlier detention reports on Ms Rau, Ms Alvarez, Mr T and Mr G. Six of the nine mental health cases discussed in this report also involved people being referred to DIMA by State police. The adequacy of policing in these cases has not been separately investigated in the preparation of this report, which is concerned with DIMA administration. However, the cases under investigation raise a matter of real concern—that when State police have apprehended someone whose identity is unclear and who does not fit the perceived ethnic profile of an Australian, there is a tendency for police officers to think there may be an immigration issue or that the person should be transferred to DIMA rather than dealt with as a State policing matter.

9.2. It is unsafe on the information available in preparing this report to speculate how general or widespread this problem might be. What can be said, however, is that



the problem is real so far as it concerns people in poor mental health who face difficulty in communicating accurately with government officials. The problem is starkly illustrated by the case of Mr W (*Case study 2*). He was an Australian citizen by birth, he had never left Australia, but as a consequence of mental illness he spoke with a heavy Irish accent. On sketchy information, both State police and DIMA were prepared to assume that he was an unlawful non-citizen.

9.3. The issue was the subject of a recommendation in the report on Mr G. It was there recommended that DIMA adopt new policy guidelines to provide instruction on the exercise by police of the power conferred by s 189 of the Migration Act and delegated to police.<sup>10</sup> DIMA's response to that recommendation stated a commitment to improve the interaction between police services and the department, including by engaging with police services across the country and implementing a 24-hour Immigration Status Service (ISS) for police telephone inquiries.<sup>11</sup>

9.4. A further issue concerning the interaction between DIMA and State police is the practice, noted in some cases, that the criminal history of a person who was detained after police referral, was placed on the person's file held by the Detention Service Provider (DSP). By way of example, the criminal history and bail reports for Mr AY, and one bail report for Mr AR, are presently held on their detention dossiers (*Case study 6*). The offences recorded about Mr AY were committed while he was a juvenile (he was a juvenile when taken into detention).

9.5. In limited circumstances it will be appropriate for DIMA to hold information about a person's criminal history. Those details may be relevant to a DIMA investigation into a suspected migration related offence, or be relevant to whether a person meets the character test prescribed in s 501 of the Migration Act.<sup>12</sup> Existing procedures facilitate the formal acquisition of information of that kind from state and federal authorities. A summary of a person's demeanour and history of cooperation with police may also be relevant in assisting the DSP to assess safety and management issues at the outset of a person's detention. The information kept on the DSP files, recording convictions and bail information about Mr AY and Mr AR, does not come within any of those categories.

9.6. We have not explored the issue of whether the State police had authority to release this information. However, it is a separate issue for DIMA to receive it. So far as DIMA is concerned, it has to be considered whether the collection of that criminal record information about a person is consistent with Information Privacy Principle 1 (IPP 1), made under the *Privacy Act 1988*. IPP 1 provides that personal information shall not be collected for inclusion in a record unless the information is collected for a lawful purpose that is directly related to a function or activity of an agency, and the information is necessary for or directly related to that purpose.

9.7. DIMA has statutory power under s 18 of the Migration Act to obtain information from any source about the identity or whereabouts of a person who is believed to be an unlawful non-citizen. Section 18 will authorise the acquisition of some of the criminal record information held on DSP files, consistently with IPP 1. However, it is doubtful that some of the other information on DSP files comes within those legal provisions. It is recommended that DIMA work with law enforcement bodies and the Office of the Privacy Commissioner to examine and identify the

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<sup>10</sup> Recommendation 1 of report on Mr G, see earlier footnote 3 on page 1 of this report.

<sup>11</sup> See DIMA's response to recommendation 1 in the report on Mr G.

<sup>12</sup> See Commonwealth Ombudsman, *Department of Immigration and Multicultural Affairs – Administration of s 501 of the Migration Act 1958 as it applies to long-term residents*, Report No 01|2006.

circumstances in which the collection and retention of criminal records and related information would be lawful and appropriate. In considering this issue, DIMA should also examine whether any police records in DIMA's possession, particularly those relating to juveniles, should be destroyed, or returned to the source of the information or even to the person to whom the record relates.

## 10—THE USE OF CORRECTIONAL FACILITIES

10.1. Another issue identified in previous reports was the use of State correctional facilities to detain persons where dedicated immigration detention facilities are not available. The report on the detention of Ms Rau dealt with this issue and the relevant MSI in some detail.<sup>13</sup>

10.2. In three of the nine mental health cases covered in this report, a person was detained in a correctional facility. Ms N (*Case study 4*), is an Australian citizen whose release was delayed by a day because she was detained in a women's correctional facility at a location without a dedicated immigration detention facility. Had she been detained in a dedicated immigration detention facility (assuming her detention to be lawful), it is likely that she would have been released from immigration detention at least one day earlier.

10.3. An alternative not considered by the detaining officer in Ms N's case was detention at an alternative place, in accordance with *MSI 371: Alternative Places of Detention*. Generally, if a dedicated immigration detention facility is not available, DIMA should ensure that there are viable and readily accessible alternatives, such as hotels or rental houses, for the short-term detention of persons. A person should not be disadvantaged by the geographical location at which they have been detained. For example, Ms N could have been temporarily detained in a hotel until DIMA received the information it had requested from DFAT. Ms N would then have been accessible to the detention officer and, as an Australian citizen, would not have suffered the ignominy of unnecessary detention.

## 11—RECORD KEEPING

11.1. There were numerous examples in the nine cases covered in this report in which DIMA's record keeping practices were inadequate. The hopeful sign is that in the one mental health case arising in mid 2005, there was a significant improvement in record keeping practices, with particular improvement noted in the detail and frequency of file notes and the consistent recording of telephone and email communications. In that case, by contrast with the majority of the other cases in this report, there was a comprehensive use of a compliance notebook.

11.2. As a general principle, proper record keeping is essential, in dealing with any person apparently suffering poor mental health or who is intoxicated, to ensure they receive appropriate medical attention, and that there is active assessment, management and review of their case. It is therefore a matter of concern that in four of the cases in this report no detention dossier was available. These are files created by the DSP to record detention related issues, such as day-to-day care and medical treatment. In one mental health case, DIMA was not able to locate the stored detention dossier. In another three cases, no detention dossier was created because

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<sup>13</sup> See recommendation 3.2 of Rau report referred to in footnote 5 on page 2 of this report.

the detention occurred within a correctional facility. At the time of writing, another eight detention dossiers remain outstanding in the investigation of the 247 referred immigration cases.

11.3. The investigation into the detention of Mr ZG (*Case study 5*) was significantly hampered by the absence of the detention dossier; it was not possible, without that file, to determine whether Mr ZG's mental health condition was evident at the time of his detention. This was an important issue, as information from two persons who were treating Mr ZG indicated that his poor mental health would ordinarily have been readily apparent from his demeanour and behaviour.

11.4. Immigration Detention Standard 7.3 provides that a permanent register for each person in immigration detention must be maintained and must record:

- the photographic and biometric identity of the detainee
- the reasons and authority for detention
- the date and time of admission
- medical and welfare records
- dietary requirements and religious beliefs
- security assessment
- fingerprinting.

11.5. The detention standard also provides that DIMA has access to and ultimate ownership of all detainee records.

11.6. As an Australian Government agency, DIMA has a responsibility in record keeping to comply with legislation, such as the *Archives Act 1983*, *Freedom of Information Act 1982* and *Privacy Act 1988*. DIMA cannot be said to have met its record keeping obligations if detention dossiers cannot be located. On 7 July 2006, DIMA advised the Ombudsman's office that the difficulty in locating detention dossiers stemmed from several historical poor record management practices. Acknowledging the need for improved practices, DIMA also advised that it is implementing some initiatives with respect to detention dossiers, including an audit of present procedures, registration of all unregistered detention dossiers and the development of new procedures within detention centres. In addition to those steps, DIMA should examine its record keeping procedures as it concerns the detention of people in facilities other than dedicated immigration centres, such as correctional facilities and police watch houses. In particular, DIMA should ensure that the health and wellbeing of persons detained in such facilities are addressed and documented and that all actions arising from DIMA's duty of care towards such persons are recorded and accessible.

11.7. DIMA has included training about record keeping obligations and practices in the curriculum for the College of Immigration Border Security and Compliance. New MSIs are presently being drafted in which the record keeping obligations of officers are emphasised. The Ombudsman's office will maintain a focus upon the accuracy of DIMA's record keeping and will monitor matters with a view to seeing improved practices and procedures in hardcopy and electronic recordkeeping.

## 12—RECOMMENDATION

12.1. This report has drawn attention to many administrative deficiencies that occurred during the period 2002 to 2005 in the handling of the nine cases covered by this investigation. Steps are currently being taken within DIMA to address these and other deficiencies that have been identified by DIMA, in response to reports of the Ombudsman and other internal and external inquiries. It is recommended that DIMA, as part of that process of reform, note the contents of this report and ensure that adequate measures are implemented to address the following problems identified in this report:

- Officers should be properly instructed in the administration of s 189 of the Migration Act, both as to taking people into detention, and releasing people from detention when there is no longer a reasonable suspicion to sustain continued detention.
- Officers should be mindful that information provided by persons who are suffering poor mental health or are intoxicated, may not be reliable or suitable for forming a reasonable suspicion to detain the person under s 189.
- Compliance officers should seek professional advice and guidance on what is appropriate in the circumstances for dealing with a person of interest who is suspected of being delusional or mentally incapacitated before any action is taken to detain them under s 189.
- Medical officers who are asked to undertake assessments of persons for immigration purposes should be given information that points to any mental illness suffered by the person that could impair their ability to provide accurate and reliable information about their identity or immigration status.
- Record keeping in DIMA should be improved, taking note of the need to maintain a record base that contains accurate, reliable and accessible information about persons.
- The arrangements for referral of people to DIMA by state and territory police should be reviewed, including a review of the information held on detainee dossiers about the criminal history of those taken into detention.
- The arrangements for people being held in correctional facilities should be reviewed, to ensure that people held in those facilities are readily accessible to DIMA officers, that adequate records are maintained by DIMA about the health and well-being of those persons, and that they are not placed at any disadvantage by reason of being held in a correctional facility and not a facility managed by DIMA.

## ATTACHMENT A—DIMA'S RESPONSE

On 9 November 2006, Mr Andrew Metcalfe, Secretary, Department of Immigration and Multicultural Affairs, wrote to this office in response to this report. The covering letter from the Secretary and the attached response to the recommendations are reproduced below.

### Covering letter from Secretary

Dear Prof. McMillan

Thank you for the opportunity to comment on your draft report into the *Referred Immigration Cases: Mental Health and Incapacity*. I have taken careful notice of the matters you raise, and I agree with your recommendations. My response to the recommendations is attached.

Your report reinforces the importance of my department continuing in its extensive process of reform and addresses the challenges my department faces when dealing with clients who are experiencing a mental illness. Your report is a reminder of the importance of sensitively accommodating clients with mental health needs.

My department's commitment to improving its management of the health needs of clients who come to the attention of the department, and those clients held in immigration detention, is reflected in initiatives such as:

- enhanced College of Immigration training for staff in the identification and management of clients with mental health problems
- the establishment of the Detention Health Branch and an independent expert *Detention Health Advisory Group* to monitor and ensure proper standards of health care for DIMA clients, upon which your office has representation
- the establishment of an enhanced mental health service, an integrated mental health screening model and the adoption of standardised mental health screening tools in Immigration Detention Facilities
- the development of a new integrated client information system – *Systems for People* – to ensure that officers can readily access comprehensive guidance and reliable information about clients' identity and immigration status to make accurate decisions;
- the development of processes for referral of clients by DIMA to other health providers
- the development of Memoranda of Understanding between DIMA and State/Territory based health departments for the provision of specified health services.

I am also aware of the circumstances in which clients with mental health needs are sometimes referred to my department. Consequently DIMA has been actively engaging State, Territory and Federal Police to develop closer working relationships, especially in relation to compliance activities. Information support is also being made available to police to assist them in the appropriate referral of persons they encounter who may possibly be unlawful non-citizens.

As I have expressed to you before, my department has laid solid foundations for change to ensure that our clients continue to be dealt with fairly, reasonably and respectfully, whatever their needs may be. Your report provides further impetus and direction for me and my colleagues to continue building on those foundations to achieve positive outcomes for our clients.

Yours sincerely

Andrew Metcalfe  
Secretary

## DIMA's response to recommendations

The department agrees in general with the recommendations of this report. Significant reforms to mental health care have been made within the department including:

- the establishment of a Detention Health Branch, and an expert *Detention Health Advisory Group*
- formal professional mental health screening conducted as part of the detention induction process, with ongoing clinical care provided
- providing external clinicians with comprehensive referral information about detainees referred to them.

The department has also reformed its detention arrangements, with the introduction of hostel-style transit accommodation, more residential accommodation, and refurbishments in Detention Centres. Detention Review Managers and the Detention Review Committees have also been established to regularly assess whether there continue to be grounds for a client's ongoing detention.

The department recognises that care should be exercised when dealing with information provided by persons who may be delusional or mentally incapacitated. Accordingly, staff are provided training through the College of Immigration (in conjunction with the NSW Institute of Psychiatry) on:

- recognising behaviour that may indicate poor mental health
- recognising where mental health issues may impact upon a person's detention.

Staff are also instructed on seeking professional medical advice at the earliest opportunity where a person suspected of being an unlawful non-citizen presents possible mental health issues. Where there is reasonable suspicion to detain a client but officers are concerned about the client's health, a medical assessment will be arranged as soon as possible. Where an officer does not form a reasonable suspicion to detain, but has concerns about a client's mental health, the officer may contact the appropriate state mental health authority or the police to advise of the department's concerns.

Officers are also trained to access all sources of information and make all reasonable efforts to establish a person's identity and immigration status before deciding whether to detain them.

Procedural guidance, policy support and protocols in a range of areas also strengthen the department's capacity to deal appropriately with clients experiencing a mental illness. Specialist advice and services are available to officers through the department's National Identity Verification and Advice section to assist in establishing clients' identities. Revised policies also seek to ensure that corrections facilities are used to detain individuals for immigration purposes as a last resort, and only with the agreement of the relevant state corrections authorities.

The department has developed a new training package which assists State and Territory police involved in immigration compliance activities, to properly manage issues around clients' health, mental health and substance abuse. This is supplemented by protocols and closer working relationships with police to assist them in referring people to DIMA appropriately.

In support of all these initiatives, the department's information systems and record keeping processes are being extensively reformed to ensure:

- appropriate standards regarding the timeliness and quality of officers' data recording on departmental systems
- the appropriate issuing, use and maintenance of compliance notebooks
- the maintenance of health and medical records according to the requirements of the *Privacy Act 1988* in relation to personal health information.

The department has commenced a 'Management of Information in Detention Centres Review', which will ensure that only appropriate information is recorded in detainee dossiers.

## ATTACHMENT B—CASE SUMMARIES

### Case study 1

Mr A was granted a Temporary Protection visa (TPV) in mid 2004. While his TPV was being processed he was held in immigration detention and treated for a mental health disorder.

In April 2005, Mr A was left at a Western Australian police station with a handwritten note pinned to his chest. The note explained, amongst other things, that his name was X (not his real name), that he was a refugee who had arrived by cargo ship only a few weeks earlier and that he had recently attempted suicide by valium overdose. The police inquired with DIMA who could not find any record for a person known as X; arrangements were made for DIMA officers to interview Mr A.

The police transported Mr A to a hospital with a suspected valium overdose. Mr A confirmed the contents of the note later that day. Later the same day, following discussions with Mr A and the treating staff, DIMA detained Mr A under s 189, but he remained in hospital for further treatment. The initial psychiatric assessment conducted at the hospital did not indicate that Mr A was delusional or an unreliable historian; the original medical advice only put DIMA on notice that Mr A suffered from Post Traumatic Stress Disorder (PTSD) and major depression. Mr A persisted with his assertion that he was identity X. After two days he was released from hospital with a diagnosis of PTSD and major depression, possibly with some psychotic features. He was transferred to the Perth Immigration Detention Centre where his condition was monitored. He requested assistance in applying for a protection visa and stated in interviews that he had never received migration advice nor held a visa. DIMA made numerous inquiries with third parties such as the missing persons bureau, the Australian Taxation Office, Centrelink, and the Australian Customs Service.

DIMA eventually took Mr A's fingerprints thirteen days into his detention and established his true name and status two days later. When Mr A was asked about his true identity, his responses demonstrated that his mental health condition was more pervasive and severe than initially appreciated by either DIMA or the hospital. Mr A was released into the care of the Western Australian police who then transported him to a psychiatric facility. Mr A was detained for a period of 18 calendar days.

### Case study 2

Mr W is an Australian citizen by birth who spoke with a heavy Irish accent due to schizophrenia. Mr W was arrested and charged by the NSW police on a Saturday in 2002. Although he initially provided a false name, he was subsequently fingerprinted and identified by the police. He told the police that he was born in NSW. Mr W was charged and held in custody.

Owing to Mr W's heavy accent, the police contacted the DIMA Entry Operations Centre (EOC). A DIMA officer at the EOC declined to detain Mr W because Mr W said that he had been born in Australia. However, the police then contacted a DIMA regional office. A DIMA officer from that office attended at the police watch house and interviewed Mr W. While noting that Mr W was 'somewhat delusional', the officer formed the view that Mr W was liable to be detained under s 189. A search of the DIMA computer system did not reveal any records for a person with Mr W's name.

Although Mr W was in police custody and unlikely to be released on bail, at DIMA's request the police continued to hold Mr W in immigration detention under s 189.

Subsequent inquiries on the following Monday with Centrelink, a hospital and Mr W's family elicited further information that indicated that he was an Australian citizen. He was released from immigration detention that day, but remained in police custody in relation to the criminal matter. Mr W was in immigration detention for three calendar days.

### **Case study 3**

Mr D arrived in Australia in 1984, aged nine. In 1987 he became an Australian citizen. In late 2003, the Queensland police took Mr D into custody. The police contacted DIMA and were instructed to detain Mr D pursuant to s 189 of the Migration Act. At an interview three days later (after the weekend), Mr D provided address details that led an officer to search for and locate his ICSE citizenship records. He was released from detention that day. A record for this detention was not created for nearly three months.

In early 2004, police in another area of Queensland arrested Mr D for a minor criminal offence. He was released from police custody and, at the request of DIMA, was immediately taken into immigration detention under s 189. This occurred one day before his earlier detention in 2003 was added to the ICSE records. During an interview he again provided address information that was capable of being matched with his DIMA records. Mr D was released from immigration detention the following day when DIMA officers located the record of Mr D's first detention on DIMA's system and realised that he was an Australian citizen. In all, Mr D spent six calendar days in immigration detention.

### **Case study 4**

Ms N arrived in Australia from Vietnam in 1990 under the name she was known by at the time, Ms AB. She was granted Australian citizenship in 1993, but her name was transposed during that process and she was recorded as Ms BA in DIMA's records. She was, however, issued with an Australia passport under the name Ms AB. She subsequently commenced using her birth name, Ms C, and lawfully obtained a new Australian passport under that name. She later officially changed her name from Ms C to Ms N and was issued a passport under her new name, Ms N.

DIMA compliance officers located Ms N at a Northern Territory market garden in late 2004. Ms N's DIMA records variously showed her as unlawful, an Australian citizen and offshore under various names. Ms N provided identity documents, including a driver's licence, information about her passports, and asserted that she held Australian citizenship. Some of the information she gave about her travel history was conflicting and incomplete and she could not accurately recall details about her seven children. Ms N explained that she had a poor memory following two car accidents. The DIMA officer spoke to Ms N's daughter by telephone, who verified that Ms N had been affected by car accidents, but the officer was not satisfied that Ms N was who she claimed to be.

Ms N was then detained under s 189. Because there is no dedicated immigration detention facility in the Northern Territory, she was placed in the Berrimah Women's Prison. The DIMA officer urgently requested copies of passport applications from DFAT. A response was received the same day and included photographs of Ms N. The DIMA officer scheduled an interview with Ms N, but a prison lock down



prevented him from conducting the interview and it was postponed until the following day. The next day an interview was held with Ms N in which she provided further information and the officer determined that she was who she claimed to be. Ms N was detained for three calendar days.

### **Case study 5**

Mr ZG arrived in Australia as a permanent resident in mid 2004. In early 2005, Mr ZG presented himself to a DIMA counter and provided a false name and immigration history. He claimed to have arrived in Australia unlawfully and requested that he be removed from Australia. DIMA officers could not find any record under Mr ZG's assumed name and detained him under s 189 of the Act.

Mr ZG maintained his false persona for five days. Eventually, he provided information that matched the information that DIMA held concerning Mr ZG, showing that he was a permanent resident of Australia. The DIMA officers did not consider releasing Mr ZG at that point in time. Over the next three days, a DIMA officer discussed Mr ZG's situation and condition with his Victorian caseworker and psychologist. DIMA officers accepted that the man in detention was Mr ZG and that he was receiving treatment from various Victorian support services.

Four days after Mr ZG provided his true identity and details, the Victorian support service faxed a copy of Mr ZG's visa to DIMA officers in Sydney. Upon receipt of those copies, Mr ZG was released from the Villawood Immigration Detention Centre (VIDC) into the care of NSW health professionals. A copy of Mr ZG's photograph was then added to his electronic records. Mr ZG was detained for nine calendar days.

### **Case study 6**

Mr AR obtained Australian citizenship in 1999. His brother, Mr AY, was a permanent resident. In late 2000, the police stopped Mr AR and Mr AY in relation to suspected theft offences. They were both heavily intoxicated at the time as a result of intravenous drug use. The brothers were sixteen and nineteen years old when detained. Police records held information about their family including address and contact details, as well as fingerprints and photographs.

The police inquired with DIMA about the brothers' immigration status. A DIMA officer spoke with both brothers over the telephone. The brothers asserted that they were not lawfully in Australia and the officer formed the view that their information was not credible. The DIMA officer performed a search of relevant DIMA computer systems and concluded that there were no records for either on the DIMA computer system. The brothers were detained under s 189. Within a day of the detention, computer records showing that Mr AY was a permanent resident were located and placed on his file.

Three calendar days after their detention, one of the brothers made contact with their mother who then contacted DIMA. The next day, a certificate of Australian citizenship and a certificate of residence were provided to DIMA. The brothers were detained for four calendar days.

### **Case study 7**

Ms ES obtained Australian citizenship in April 1990. In September 2004, police found Ms ES at a private residence. Ms ES said that she was lost, she had limited English language capability and she did not have any identity documents on her person. With

the assistance of an Indonesian interpreter, the police recorded her name as LS. The police contacted DIMA and were informed that there was no record for a person by the name of LS. DIMA instructed the police to hold Ms ES, then known as LS, under s 189. She was later transported to the VIDC. The DIMA fax to GSL included a note warning that Ms ES suffered from 'psychological problems—found destitute ... Request immediate psychological evaluation on admittance'.

During induction into the VIDC, documentation was signed by Ms ES, using that name. It is not known whether this name was conveyed to DIMA but something prompted contact with DIMA's EOC. It appears that this contact led to Ms ES's identification as an Australian citizen. The following morning the EOC also telephoned Ms ES's brother and arranged for him to pick her up from the VIDC. Ms ES was detained for two calendar days.

### **Case study 8**

Ms R was born in the Cook Islands and is a New Zealand citizen. The Trans Tasman Agreement of 1973 permits New Zealand citizens to live and work in Australia without the need to apply for authority to enter Australia. Ms R continues to hold a valid special category TY (sub-class 444) visa.

Ms R was located in December 2004 picking fruit at Ti Tree in the Northern Territory, by DIMA compliance officers during a scheduled compliance activity. She was questioned regarding her identity and detained. The reason given for her detention was the uncertainty of her identity. The explanation recorded on the file is that she could not remember details of her last two flights out of Australia and could not spell her first name correctly. She was conveyed to Alice Springs and held in the police watch house.

Ms R was released the following day after her parents faxed a copy of her passport to DIMA and she was positively identified. She was detained for two calendar days.

## ACRONYMS

DFAT	Department of Foreign Affairs and Trade
DIMA	Department of Immigration and Multicultural Affairs
DSP	Detention Service Provider
EOC	Entry Operations Centre
ICSE	Integrated Client Services Environment
IPP	Information Privacy Principle
ISS	Immigration Status Service
MSI	Migration Series Instruction
Migration Act	<i>Migration Act 1958</i> (Cth)
NCOGs	National Compliance Operational Guidelines
NIVA	National Identity Verification and Advice Section
Ombudsman Act	<i>Ombudsman Act 1976</i> (Cth)
PAM3	Policy Advice Manual 3
PTSD	Post Traumatic Stress Disorder
TPV	Temporary Protection Visa
VIDC	Villawood Immigration Detention Centre