

July 2018

Review Panel  
Independent Review of the Australian Public Service  
Department of the Prime Minister and Cabinet  
PO Box 6500  
Canberra ACT 2600

Dear Panel

### **Independent Review of the Australian Public Service**

Global Mobility Immigration Lawyers welcomes this opportunity to provide the Review Panel with submissions regarding the Department of Home Affairs (“the Department”).<sup>1</sup>

#### **Global Mobility Immigration Lawyers**

By way of background, Global Mobility Immigration Lawyers is a firm of immigration lawyers and registered migration agents / immigration agents in Melbourne. We are committed to giving our clients a voice in their dealings with institutions and have, accordingly, set out below a non-exhaustive list of concerns about the Department’s conduct, exercise of powers and administration of the law.

We wish to emphasise that, in the interests of brevity, this submission does not focus on the many fine things the Department and its staff have achieved.

#### **Unlawful searches by Border Force Officers**

We are disturbed by reports of unlawful searches conducted by Border Force officers.<sup>2</sup> A 2017 report by the Australian National Audit Office (ANAO) makes reference to houses being searched without warrants, people being detained without proper authorisation,<sup>3</sup> and suggested that 29% of airport searches were unlawful.<sup>4</sup>

We commend the Department for their timely response to the issues highlighted in the report, particularly that it would conduct a review and ‘take necessary remedial actions.’<sup>5</sup> We urge the Department to continue to work on improving their training and processes to ensure that officers of the Department apply their powers lawfully.

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<sup>1</sup> For ease of reference GloMo will refer to the Department of Home Affairs, the Department of Immigration and Border Protection and the Department of Immigration and Citizenship, the Department of Immigration and Multicultural Affairs as “the Department”

<sup>2</sup> Ben Doherty, ‘Australian Border Force conducting unlawful searches due to poor training, says auditor’, *The Guardian*, 28 February 2017 available at <https://www.theguardian.com/australia-news/2017/feb/28/australian-border-force-conducting-illegal-searches-due-to-poor-training-says-auditor>

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Australian Border Force, ‘Response to ANAO report on the Australian Border Forces use of statutory powers’, *Newsroom*, 27 February 2017, available at <http://newsroom.border.gov.au/releases/response-to-anao-report-on-the-australian-border-force-s-use-of-statutory-powers>

## Administration of s501 Migration Act

In 2017 the Ombudsman raised concerns with the administration of the s501 visa cancellation power, including ‘a backlog in identifying persons subject to visa cancellation... and a delay in deciding the outcome of revocation requests.’<sup>6</sup> The Ombudsman found that these issues had led to prolonged detention of former prisoners while they awaited an outcome from the Department.<sup>7</sup>

Global Mobility Immigration Lawyers notes that the Department committed to improve its administration of the s501 visa cancellation power. We urge the Department to continue to refine its policies and procedures to ensure that people do not spend unnecessarily prolonged periods of time in detention.

## Removal and Detention of Australian Citizens

Global Mobility Immigration Lawyers finds the detention and deportation of Australians by the Department particularly alarming. We draw the Panel’s attention to two cases that were the impetus for the Palmer and Comrie reports: the deportation of Australian citizen Vivian Alvarez Solon<sup>8</sup> and the detention of permanent resident Cornelia Rau.

We note the comments of former AFP Commissioner Mick Palmer regarding the “serious culture problem” within the Department and his references to untrained and incompetent staff given “exceptional, even extraordinary powers” as well as a disturbing focus on detention and deportation without concern for due process and proper checks.<sup>9</sup>

We believe the Department’s inquiry into the circumstances of the detention of Cornelia Rau and Vivian Alvarez, and its subsequent progress reports,<sup>10</sup> to be steps in the right direction. However, Global Mobility Immigration Lawyers believes this is an area that continues to be of concern.<sup>11</sup> In particular, we note the findings of an independent review of the detention of Australian citizens in 2017,<sup>12</sup> pointing to deficiencies in decision making,<sup>13</sup> record keeping, data management,<sup>14</sup> and ‘the base level of knowledge’ of staff.<sup>15</sup> We highlight the observation that there were ‘a number of common themes and overlaps between the findings and recommendations’ of previous reviews.<sup>16</sup>

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<sup>6</sup> Commonwealth Ombudsman, ‘An update from the Commonwealth Ombudsman Immigration Team’ *Immigration Matters* 23 November 2017 accessed at [http://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0035/77957/Immigration-Matters-Newsletter-November.pdf](http://www.ombudsman.gov.au/_data/assets/pdf_file/0035/77957/Immigration-Matters-Newsletter-November.pdf)

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Department of Home Affairs, Inquiry into the circumstances of the immigration detention of Cornelia Rau and Vivian Alvarez, accessed at <https://www.homeaffairs.gov.au/about/reports-publications/reviews-inquiries/inquiry-detention-cornelia-rau-vivian-alvarez>

<sup>11</sup> Ben Doherty, ‘Australian citizens wrongfully detained because of immigration failures, report finds’, *The Guardian*, 2 February 2018, <https://www.theguardian.com/australia-news/2018/feb/02/australian-citizens-wrongfully-detained-because-of-immigration-failures-report-finds>

<sup>12</sup> Dr Vivienne Thom AM, Executive Reviewer, ‘Independent review for the Department of Immigration and Border Protection into the circumstances of the detention of two Australian citizens’, *Final Report CPM Reviews*, 9 June 2017, page 18, accessed at <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/fa171000267-document-released.pdf>

<sup>13</sup> Ibid, page 23.

<sup>14</sup> Ibid, page 22.

<sup>15</sup> Ibid, page 19.

<sup>16</sup> Ibid, page 18.

We urge the Department to continue to review its processes and procedures in order to avoid instances of unlawful detention or deportation.

### **Data Breach 2014**

In 2014 the Office of the Australian Information Commissioner (OAIC) found that the Department failed to protect, and unlawfully disclosed, the personal information of a number of asylum seekers who had been held in immigration detention.<sup>17</sup>

In their investigation, the OAIC found that the breach may have been avoided if correct processes had been followed to de-identify data.<sup>18</sup> The conclusion of the OAIC was that the Department had breached the *Privacy Act* in failing to put 'reasonable security safeguards' in place and, further, that the Department had 'unlawfully disclosed personal information.'<sup>19</sup>

Global Mobility Immigration Lawyers commends the measures taken by the Department to remedy the privacy breach. We believe the Department has reformed its data management, and we hope this is an ongoing project.

### **Failure to release documents covered by Freedom of Information (FOI) laws**

Delays in the fulfilment of FOI requests are a common complaint about the Department. However, we note with particular concern reports by the Guardian newspaper of deliberate breaches of FOI laws – namely that the Department had obstructed the release of documents about asylum seekers detained in Nauru.<sup>20</sup>

### **Citizenship application delays**

Global Mobility Immigration Lawyers notes with concern reports by the Ombudsman in 2017 of delays in the processing of citizenship applications.<sup>21</sup> We further note the results of a survey conducted by the Refugee Council of Australia, suggesting that 92% of citizenship applicants with a refugee background had experienced a delay of more than six months, with the average waiting time being 16 months.<sup>22</sup>

We acknowledge that the Department's capacity to deal with a high volume of applications is limited, however we also note the Federal Court's finding that "inactivity in the processing of a citizenship application of more than a few months duration is unlikely to be reasonably explained by reference to a lack of resources."<sup>23</sup> We further note the same decision found

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<sup>17</sup> Office of the Australian Information Commissioner, *Department of Immigration and Border Protection unlawfully disclosed personal information of asylum seekers*, 12 November 2014, available at <https://www.oaic.gov.au/media-and-speeches/media-releases/dibp-unlawfully-disclosed-personal-information-of-asylum-seekers>

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Paul Farrell and Ben Doherty, 'Immigration official says department is 'freezing' the release of documents about Nauru', *The Guardian*, 2 November 2016, available at <https://www.theguardian.com/australia-news/2016/nov/02/immigration-official-says-department-is-freezing-release-of-documents-about-nauru>

<sup>21</sup> Commonwealth Ombudsman, 'Delays in processing of applications for Australian Citizenship by conferral', December 2017, available at [https://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0032/78980/Citizenship-own-motion-investigation-report.pdf](https://www.ombudsman.gov.au/_data/assets/pdf_file/0032/78980/Citizenship-own-motion-investigation-report.pdf)

<sup>22</sup> Refugee Council of Australia, *Delays continue for refugees awaiting citizenship*, available at <https://www.refugeecouncil.org.au/wp-content/uploads/2017/04/Citizenship-Brief-2017.pdf>

<sup>23</sup> *BMF16 v Minister for Immigration and Border Protection* [2016] FCA 1530 (16 December 2016), available at <http://www.austlii.edu.au/cgibin/sinodisp/au/cases/cth/FCA/2016/1530.html> also reported by SBS on 16 December 2016, available at <https://www.sbs.com.au/news/rethink-citizenship-refusals-dutton-told>

that the Department “took no steps to progress [the plaintiffs’] cases for some 14.5 months.”<sup>24</sup>

## Conclusion

In our view, the key role of the Department is to provide a public service, in particular facilitating the orderly movement of people into and out of Australia. We note however a trend in recent years towards an increasingly militaristic operational model, with a disproportionate focus on enforcement, detention and other punitive measures.

We commend the Department for its work towards addressing operational failures. However, the above (non-exhaustive) list of issues – if not demonstrative of a pattern of organizational behavior – is likely indicative of a continued need for improvement.

Global Mobility Immigration Lawyers regrettably acknowledges that, in the interests of brevity, this submission has not dwelt on the many fine things the Department and its staff have achieved. However, we urge the Department to approach this review as an opportunity to improve its practices and procedures, to forge a better Department and a better Australia.

We thank the Panel for its consideration, and remain at its service in relation to this review.

Your faithfully

*[sent electronically without signature]*

Ariel Brott  
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& Registered Migration Agent  
[Global Mobility Immigration Lawyers](#)



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<sup>24</sup> Ibid.