

Parliament of the Commonwealth of Australia

WHO CALLS AUSTRALIA HOME?

Review of the Auditor-General's Efficiency Audit  
on Control of Prohibited Immigration  
by the Department of Immigration and Ethnic Affairs

Report of the House of Representatives  
Standing Committee on Expenditure

November 1985

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Secretary: Mrs S.M. Harlow

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MEMBERS OF THE SUB-COMMITTEE

Chairman: Mr L.B. McLeay, MP

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Mr M.R. Cobb, MP  
Mr D.B. Cowan, MP  
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Mr S.P. Martin, MP  
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Mr D.W. Simmons, MP  
Mr P.N. Slipper, MP  
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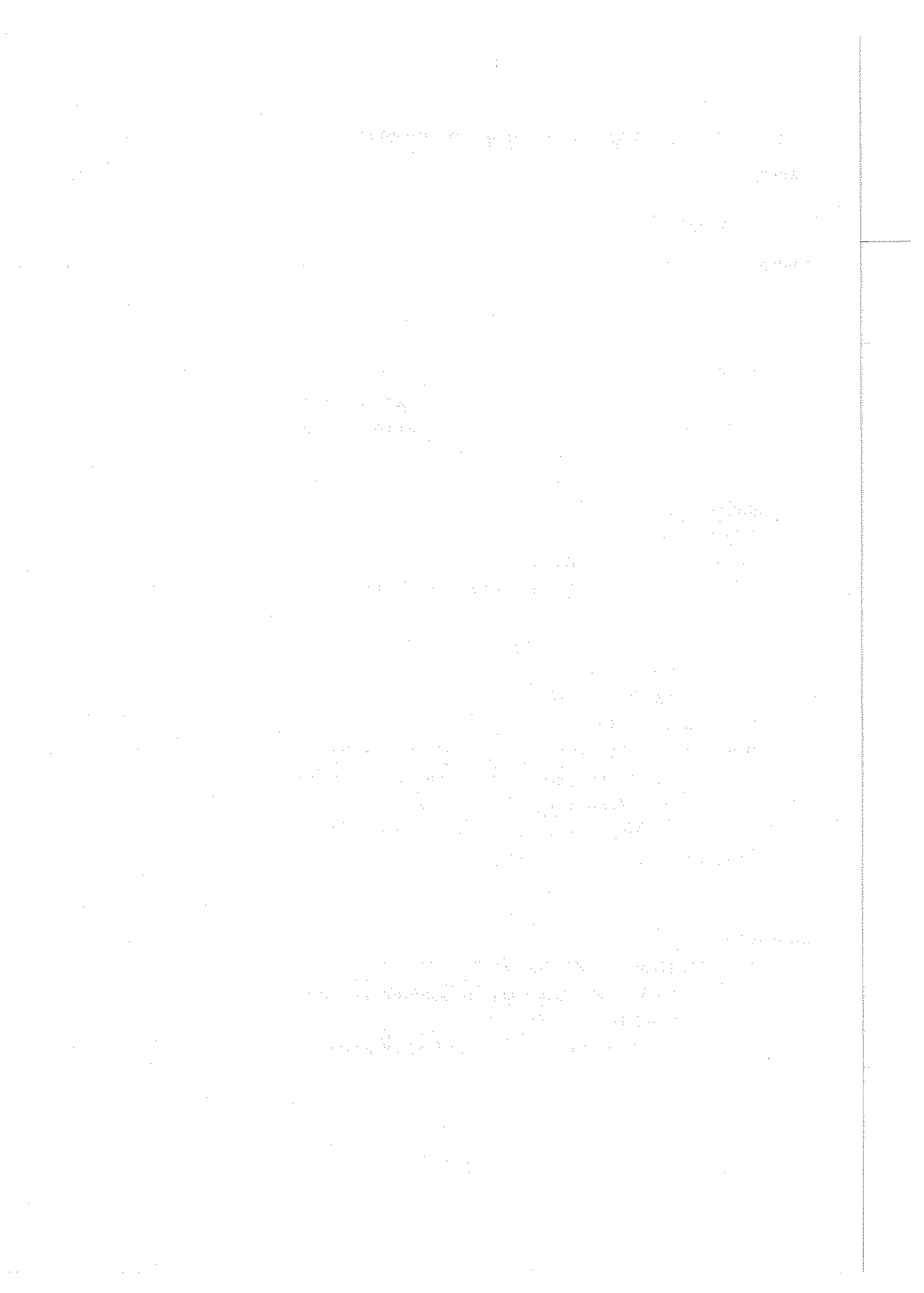
Secretary: Ms R.M. Holzman

Inquiry Staff: Mr P Ratas

Ms P Maher

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## LIST OF RECOMMENDATIONS

- Recommendation 1: The Committee recommends that in future, recommendations made by the Audit Office in any report should be consecutively numbered in that report (paragraph 22).
- Recommendation 2: The Committee recommends that as far as possible, Audit should include time frames for implementation of its recommendations (paragraph 24).
- Recommendation 3: The Committee recommends that efforts by the Department of Immigration and Ethnic Affairs and the Australian Customs Service be increased to ensure that the issue of control of passenger cards at Sydney Airport is resolved by 31 December, 1985 in favour of the Department of Immigration and Ethnic Affairs (paragraph 29).
- Recommendation 4: The Committee recommends that a system of bail be considered urgently by the Department of Immigration and Ethnic Affairs in conjunction with other appropriate authorities with a view to introducing a pilot scheme in the second half of 1986 (paragraph 53).
- Recommendation 5: The Committee recommends that before any new Commonwealth detention facility is erected in Brisbane or elsewhere, careful investigation be undertaken to determine whether a more cost-effective solution can be found in terms of entering into joint arrangements with the appropriate State authority (paragraph 55).
- Recommendation 6: The Committee recommends that an eligibility test on residence grounds be introduced for legal aid and that at the time of application for legal aid, a person must be able to demonstrate that he/she is in Australia lawfully (paragraph 68).
- Recommendation 7: The Committee recommends that persons who are not authorised to work in Australia should be prohibited from using Commonwealth Employment Service (CES) services. The CES should use its contacts with job seekers and employers to publicise this fact (paragraph 74).

- Recommendation 8: The Committee recommends that the Health Insurance Commission urgently review its procedures and practices both in terms of issuing Medicare cards and cancelling those which are held by ineligible persons (paragraph 80).
- Recommendation 9(a): The Committee recommends that the Department of Social Security review its procedures to ensure that where residence is an eligibility criterion benefits are paid only to legal residents (paragraph 84).
- Recommendation 9(b): The Committee also recommends that a clear statement explaining the meaning of the Australian residence requirement should appear on the appropriate application forms and in associated publicity (paragraph 84).
- Recommendation 10: The Committee recommends that a new and separate category of entry permits be created for tourists and short-term visitors to Australia to distinguish them from temporary residents. The Committee further recommends that this category be prohibited from seeking change of status (paragraph 100).
- Recommendation 11: The Committee recommends that children born to temporary residents, to the proposed tourist/visitor category and to prohibited non-citizens in Australia do not become Australian citizens unless they would otherwise be stateless (paragraph 103).
- Recommendation 12: The Committee recommends that the Department of Immigration and Ethnic Affairs should examine the Torres Strait Treaty in detail with a view to promoting changes which do not deprive those who take up Australian citizenship of traditional rights (paragraph 104).



## BACKGROUND

1. This is the fourth review of an Auditor-General's Efficiency Audit Report that has been carried out by the House of Representatives Standing Committee on Expenditure. The efficiency audit on control of prohibited immigration by the Department of Immigration and Ethnic Affairs was conducted in 1983. The report on the audit is contained in the volume entitled Reports of the Auditor-General on Efficiency Audits which was tabled in the Parliament in August 1984.

2. The objectives of the Committee in carrying out this review were the same as in examination of the earlier Efficiency Audit (EA) reports, that is to:

- . assess the substantive content of the audit exercise and the quality of the EA report; and

- . to examine the response of the Department.

The Committee also took up the general question of the extent to which prohibited non-citizens are able to obtain financial assistance and other benefits from Commonwealth sources.

3. It should be noted that while the EA report refers to 'prohibited immigrants', changes to legislation have introduced the form 'prohibited non-citizens' or 'PNC's'. No distinction is drawn between these terms in this report.

## CONDUCT OF THE REVIEW

4. Under a procedural arrangement which exists between the House of Representatives Standing Committee on Expenditure and the Joint Committee of Public Accounts, it was proposed on 28 February 1985 that the Expenditure Committee would review the EA report on control of prohibited immigration by the Department of Immigration and Ethnic Affairs.

5. The expenditure Committee resolved to undertake the review on 28 February 1985. A Sub-committee was formed on 20 March 1985 to proceed with the matter.

6. Between April and August 1985 the Sub-committee undertook inspections of the following:

- . Immigration control facilities at Tullamarine (VIC) and Kingsford Smith (NSW) international airports;
- . Immigration detention centres at Maribyrnong (VIC) and Villawood (NSW);
- . Computer facilities of the Department of Immigration and Ethnic Affairs in Belconnen (ACT);
- . Brisbane Prison Complex (QLD); and
- . the Department of Immigration and Ethnic Affairs operations on Thursday Island.

7. Evidence was taken in public hearings in Canberra on 22 and 23 May 1985 and in subsequent correspondence with witnesses. A list of witnesses and an index of documents authorised for publication are included at Appendices I and II respectively.

8. As is the usual Committee practice, the transcripts of the public hearings and other evidence authorised for publication have been incorporated in a separate volume, copies of which are available on request. References to evidence in the text of this Report relate to page numbers of that volume.

THE EFFICIENCY AUDIT REPORT - GENERAL COMMENT

9. According to the introduction to the EA report, 'The audit was concerned with the efficiency and effectiveness of the administration by the Department of Immigration and Ethnic Affairs of the provisions of the Migration Act 1958, particularly those relating to prohibited immigrants.' (1)

10. While definitions of efficiency and effectiveness may vary, the Committee considers that the EA report is a useful document in terms of assessing the administrative efficiency of the Department of Immigration and Ethnic Affairs in its control of prohibited immigration but does not fully address the question of effectiveness.

11. The Audit covered seven main functions of the Department. For each function, the EA report provides a short description of the activity or activities involved and then gives Audit's findings and recommendations.

12. It is in this latter area, that the Committee has reservations. The findings are usually that the Department's practices leave something to be desired and the recommendations simply suggest that these practices be improved. There is little analysis of the effectiveness of the practices in meeting the Department's objectives, nor do any of the report's recommendations suggest that perhaps the objectives can be met more effectively by using other means.

13. The Committee is aware of the sensitivity of auditors with respect to 'policy matters' and their philosophy that it is not an auditor's role to become involved in or make recommendations for changes to policy. The Committee has no difficulty with this philosophy. What it does say, however, is that too often, practice and policy become confused and consequently critical analysis of practices (i.e. the issue of effectiveness) is avoided either because of a fear that any suggestions for change to these practices will be regarded as intrusion into policy or because of a fundamental misunderstanding as to what constitutes policy and what constitutes practice.

14. This emphasis on efficiency as opposed to effectiveness is further demonstrated in this comment from the Auditor-General:

'I would expect that the audit on Control of Prohibited Immigration to lead to improvements in operational management, but the significance of the improvements will depend on the extent to which the Department responds positively to the audit recommendations.'(2)

15. According to the submission made to the Committee by the Department of Immigration and Ethnic Affairs:

'The audit has been most useful. Having to explain and to justify our activities and the quality of our results has been a good discipline and has drawn attention to some areas in which our data was deficient. It is comforting that the Report generally endorses the Department's course of action and its plans for future development.'(3)

16. While the EA report may be 'comforting', it is also the case that at the public hearings, the Department of Immigration and Ethnic Affairs stated that there were some areas of Audit comment which indicated misunderstandings at a detailed level of the Department's operations.

17. The Department also stated that the audit did not lead it to make any significant changes in procedures. According to the Department, 'In large measure, the suggestions for forward outlook which come forward in the Auditor-General's report reflect very much our own thinking'.(4)

18. It appears from the evidence taken from the Department that the value of the audit lay not in the recommendations but rather in the process of the audit. The Department supports this view by saying '...the process is valuable for us because we are required to answer questions from people who look at you from outside in a way which does not normally arise'.(5)

19. Both the Auditor-General's comments and those of the Department lead to the conclusion that the EA report has served a useful but limited purpose in measuring Departmental efficiency in certain defined areas. The Department claimed that Audit's recommendations did little more than clarify its own prospective plans.

#### SUBSTANCE AND QUALITY OF THE EFFICIENCY AUDIT REPORT

20. As stated earlier, the EA Report covers seven functions of the Department which have to do with control of prohibited immigration. They are:

- . the issue of visitors' visas;
- . passenger clearance at ports of entry;
- . identification of prohibited immigrants resident in Australia;
- . apprehension of prohibited immigrants;
- . detention of prohibited immigrants;
- . prosecution under the Migration Act of those offences relating to prohibited immigrants; and
- . recovery of deportation and maintenance costs.

21. In the EA Report, certain recommendations are made in connection with each function. These recommendations are not numbered which makes reference to them extremely difficult. This became particularly clear when officers from the Australian Audit Office appeared before the Committee. They were asked to comment on the Department of Immigration and Ethnic Affairs' response to the EA Report.

22. This was achieved, but not without confusion, as the EA report recommendations were not numbered but the Department had assigned them numbers in its response. For ease of reference, all the Audit recommendations as numbered by the Department of Immigration and Ethnic Affairs are listed at Appendix III.

Recommendation 1:

The Committee recommends that in future, recommendations made by the Audit Office in any report should be consecutively numbered in that report.

23. The Committee was also concerned that the recommendations did not set any time targets for implementation. For example, in talking about updating the Migrant Alert List, Audit recommends that '...implementation be completed promptly'.(6) On the use of forgery detection equipment, Audit recommends that the Department '...ensure that the equipment is fully operational as soon as possible'.(7) With respect to the Department's 'pre-movement' base, Audit recommends that the Department 'expedite the implementation of this system'.(8)

24. In addition, the Audit Office had no follow-up examination planned of the area. The Committee sees some obvious difficulties with such a loose system which might encourage departments not to address recommendations with which they disagree.

Recommendation 2:

The Committee recommends that, as far as possible, Audit should include time frames for implementation of its recommendations.

This would also assist Parliamentary Committees such as this one to examine and assess the degree of response of departments to Audit's recommendations.

### Specific Audit Recommendations

25. Of the fifteen recommendations identified by the Department of Immigration and Ethnic Affairs in its response to the EA report, evidence indicated that more than seventy percent had been accepted by the Department and some progress had been made towards their implementation. They are recommendations 1, 2, 4, 5, 6, 9, 10, 11, 13, 14 and 15. The remaining recommendations presented some problems and are discussed individually below.

(3) Audit recommends that the Department resolve the question of responsibility for control of passenger cards.

26. This recommendation arises from the process of checking the right of entry of persons to Australia at airports and seaports. Before an entry permit is granted at an airport, checks are made of passports, visas, warning lists and passenger cards. Passenger cards are collected from all persons arriving in and departing from Australia.

27. Passenger clearance at ports of entry is primarily undertaken by officers of the Australian Customs Service under joint management arrangements with the Department of Immigration and Ethnic Affairs. At Kingsford Smith Airport in Sydney, Immigration officers lacked control over the collection of passenger cards and were, therefore, unable to ensure that all cards collected from passengers by Customs officers were despatched for ADP processing in Canberra.

28. The Committee was advised that on the matter of the cards, a difficult relationship exists between the Australian Customs Service and the Department of Immigration and Ethnic Affairs at the airport. There was no dispute about the fact that the Department should have ultimate control of the passenger cards. According to information given to the Committee, the problem should be resolved when new facilities being built for the Department of Immigration and Ethnic Affairs at the airport are completed.

29. In the Committee's view, the problem should be able to be solved with the goodwill of the officers concerned.

Recommendation 3: The Committee recommends that efforts by the Department of Immigration and Ethnic Affairs and the Australian Customs Service be increased to ensure that the issue of control of passenger cards at Sydney Airport is resolved by 31 December, 1985 in favour of the Department of Immigration and Ethnic Affairs.

(7) Audit recommends that the Department expedite the implementation of the 'pre-movement' data base system.

30. The 'pre-movement' data base system is a means by which personal and travel details collected by overseas posts at the time of visa issue will be transmitted to the Department via the Department of Foreign Affairs communications network. This information will then be made available to Customs officers for checking right of entry at airports and seaports. The rationale is that this system will provide a more accurate means of determining the status of people entering and departing from Australia.

31. The Committee notes the Department's difficulties in implementing the system. It also notes Audit's expectation that the 'pre-movement' data base should lower the rate of mismatch on the Movements Data Base.

32. In the Committee's view, an accurate Movements Data Base is the linchpin of the effort to control prohibited immigration. The Committee considers that the Department of Immigration and Ethnic Affairs should put increased effort into implementing the recommended improvements to the system.



(8) Audit recommends that the Department, while adequately recognising privacy considerations, actively explore with other government authorities the development of procedures to assist in the location of prohibited immigrants and that other Commonwealth authorities assist to the extent possible in locating people who are in Australia illegally.

33. The Committee notes that the Department has made attempts to obtain assistance from other Commonwealth authorities in locating prohibited non-citizens. The Department's response to the EA report advises that it has had mixed success in its approaches to other government authorities.

34. On the one hand, the issue of privacy is offered by some authorities as a reason for not undertaking computerised checking. On the other hand, authorities argue that the lists provided by Immigration are not sufficiently accurate to enable such checking to take place.

35. The Committee considers that the emphasis should not be on location of prohibited immigrants, although this should continue to the extent possible, but rather that the Government should ensure that Commonwealth benefits are payable only to persons legally in Australia. The Government should further ensure that, where appropriate, legislation is amended to bring this to effect. Further discussion on this point appears in a later section of this report.

(12) Audit recommends conformity of policy, departmental instructions and practice concerning prosecution of prohibited immigrants.

36. This recommendation presents a problem of interpretation. It is not clear from the EA report whether Audit wanted all prosecution cases to be treated uniformly or whether it saw a need for uniformity among the Department's regional offices in their handling of different cases. The Department's response interprets the recommendation in the former sense and in doing so, argues correctly that the decision to prosecute has to be made on a case-by-case basis, taking the relevant circumstances into account.

37. The Audit Office was unable to shed much light on the matter when it commented:

'I guess what our recommendation is saying is that we think there should be a uniform approach in departmental policy and instructions in practice concerning prosecutions.' (9)

38. The Committee takes the view that uniformity of practice between Immigration offices is a desirable aim having regard to efficiency. It supports the Department's interpretation regarding the need to consider cases individually.

#### COST OF THE EFFICIENCY AUDIT

39. The Auditor-General advised the Committee that the cost of the audit (exclusive of general office overheads) was \$36,428. In evidence, it was established that this figure included approximately \$5,300 for travel. It was further established that there were six officers involved in the audit for varying periods of time.

40. The length of time taken to conduct the audit was approximately nine months from May 1983 to February 1984. The audit report was tabled in the Parliament together with several others in August 1984.

41. Ideally, it may have been possible to table the report on control of prohibited immigration at an earlier date. Nevertheless, the Committee acknowledges that this EA Report shows a marked improvement in the performance of efficiency auditing compared with earlier attempts.

#### FOLLOW-UP ON RECOMMENDATIONS

42. As with previous efficiency audits, the issue of who follows up on recommendations was raised. The Audit Office felt that while the Department of Immigration and Ethnic Affairs was in general agreement with the audit report, they were still moving fairly slowly in implementing the recommendations. However, Audit did not see its role as ensuring that the recommendations were taken up. Audit also saw the need for a trade-off between completing a timely audit which identifies problems and spending time working out solutions to those problems. As it was put in evidence:

'Our role in the business is to identify the problems, come up with recommendations and solutions where possible and then... follow up all our audits over a period. We do not really have any powers in persuasion or enforcement.' (10)

43. At its hearings from the review of the EA report on Management of the Main Battle Tank by the Department of Defence, the view was put by the Audit Office that its involvement ended when it had completed its report and made it available to Parliament. This was expected to change, however, with some re-organisation of management responsibilities which the former Auditor-General envisaged would take place.

44. The follow-up mechanisms which do exist seem to consist of the efforts made by Committees such as this one and the Joint Committee on Parliamentary Accounts, and a procedure whereby Ministers write to the Minister for Finance each quarter advising on action that has been taken on recommendations made by the Auditor-General. Each department has to satisfy the Department of Finance that it has taken steps to rectify shortcomings before the report is allowed to rest.

45. The Committee is pursuing the question of follow-up to recommendations in its inquiry into Public Service Efficiency Review Mechanisms. The results of that inquiry were not available at the time of writing this report.

#### SOUNDNESS OF AUDIT RECOMMENDATIONS

46. The Committee found that some of Audit's findings and recommendations were a source of concern. For example, some emphasis is placed by Audit on the development by the Department of profiles of the characteristics of prohibited immigrants for use by overseas posts and regional investigation officers. The Committee sees a potential danger in this in that it could result in institutionalised discrimination on the grounds of race. In evidence, the Human Rights Commission sounds a similar warning by suggesting that 'in the way in which the Racial Discrimination Act is at present cast, that (the development of profiles) would be an unlawful act, because it would be discriminating against people on grounds of their race'.(11)

47. The Commission suggests that the Racial Discrimination Act could be amended to provide for an exemption to be granted to the Department of Immigration and Ethnic Affairs to pursue the use of profiles if other efforts had proved unsuccessful. The Committee makes no formal recommendation on the matter but expects the Department to be conscious of the implications of developing its Movements Data Base to produce computer analyses of this kind.

48. When examining the section of the EA report on detention of prohibited immigrants, the Committee was surprised to note that the question of bail as an adjunct to the reporting system was not mentioned. The question was raised in hearings with the Attorney-General's Department, the Audit Office and the Department of Immigration and Ethnic Affairs. After the hearings supplementary correspondence addressing the matter of bail was received from the Human Rights Commission.

49. The Department of Immigration and Ethnic Affairs considers that in a sense there is no rationale for a bail system. Their view is that a judgement must be made on whether a person is likely to abscond. If a judgement is made that the person will abscond, then he/she is detained.

50. The Attorney-General's Department saw a bail system as worthy of consideration but was not convinced that there would be significant advantages in introducing such a scheme.

51. Evidence from the Audit Office indicated that there had been some thought given to the bail proposal, despite the fact that it was not mentioned in the EA report. In evidence, Audit stated that it was a policy issue upon which it was reluctant to comment. There was also the impression in the Audit Office that there would be legislative difficulties in implementing a bail system. At the hearings, Audit raised the further point that some individuals may not be able to provide bail:

'If bail was available it would be available to those who had the money. There could appear to be some sort of bias towards the wealthier prohibited immigrants, whereas those who did not have the money to pay the bail would have to be held in detention'.(12)

52. The Human Rights Commission is unequivocally of the view that such a system should be introduced. Through the use of bail, the Commission sees cost savings on accommodation for prohibited non-citizens who would otherwise be detained. The problem of 'bias towards the wealthier' is the same as in other areas of the law and is no argument against the introduction of a bail system.

53. The Committee agrees with Audit that the Department should work towards increasing the use of the reporting system in preference to detention. The Committee considers that the introduction of a form of bail has the potential to improve the reporting system.

Recommendation 4: The Committee recommends that a system of bail be considered urgently by the Department of Immigration and Ethnic Affairs in conjunction with other appropriate authorities with a view to introducing a pilot scheme in the second half of 1986.

54. The Committee recognises that there will still be a need for detention facilities of some sort for those people who cannot be put on report. However, there is some concern that the Commonwealth will be faced with considerable capital expenditure if plans proceed to build more Immigration Detention Centres.

55. The Committee is aware of the intention to proceed with building a new Commonwealth facility in Brisbane while at the same time, it appears that the Queensland State Government is proposing to erect a new remand centre to ease the overcrowding in the Brisbane Prison Complex. The Committee was assured by the State prison authorities in Brisbane that they would be very interested in negotiating with the Commonwealth to provide suitable accommodation for Commonwealth detainees at the proposed new remand centre.

Recommendation 5: The Committee recommends that before any new Commonwealth detention facility is erected in Brisbane or elsewhere, careful investigation be undertaken to determine whether a more cost-effective solution can be found in terms of entering into joint arrangements with the appropriate State authority.

## EXPENDITURE ON THE CONTROL PROCESS

56. The Committee was unable to obtain a complete account of the cost to the Commonwealth of controlling prohibited immigration. The figures given in the Department of Immigration and Ethnic Affairs Annual Report refer only to expenditure on detection, custody and deportation expenses and are exclusive of salaries costs. Expenditure on those items alone amounted to \$2,389,153 in 1983-84.

57. The Committee estimates that the cost to the Commonwealth would be far in excess of this amount if one takes into account the number of agencies involved in the control process apart from the Department of Immigration and Ethnic Affairs. These include the Australian Customs Service, the Australian Protection Service and the Australian Federal Police. In addition, one would have to include the costs to the community (if they could be calculated), of prohibited non-citizens using the services of such agencies as Australian Legal Aid offices, the Human Rights Commission and obtaining financial and other assistance from sources such as Social Security, Medicare and the Commonwealth Employment Service (CES). The Committee was surprised that costing of the control process was not given more attention in the EA report.

## ISSUES ARISING FROM THE REVIEW

58. In the course of undertaking this review, the Committee came across some important issues which require further comment. They all come under the general heading of availability of Commonwealth financial assistance and other benefits to prohibited non-citizens.

59. The Committee believes that as a matter of principle, people who are in Australia unlawfully should not be entitled to the same forms of assistance/benefits which are given to those who have legal status in Australia, regardless of whether they are temporary entry permit holders, permanent residents or citizens. As it was not possible for the Committee to conduct a full-scale inquiry into all aspects of Commonwealth assistance, the Members confined themselves to looking at five areas in particular:

- (a) the introduction of a national identity card system;
- (b) the availability of legal aid to prohibited non-citizens;
- (c) assistance from the Commonwealth Employment Service for prohibited non-citizens to obtain employment;
- (d) access to the Medicare system; and
- (e) the availability of benefits from the Department of Social Security.

60. The Committee was aware of the sensitive nature of its inquiries into these areas and of the need to respect the privacy of individuals in the Australian community. At the same time, it felt a responsibility to bring to public attention, the fact that there are considerable numbers of people in the country who having come to Australia legally on a temporary entry permit, decided to overstay their visa and then draw on the resources of the community for support.

61. The Department of Immigration and Ethnic Affairs estimates that there are 50,000 or more prohibited non-citizens in Australia. Each year a further 6,000 to 10,000 persons become prohibited non-citizens. The total number of prohibited non-citizens who left Australia in 1983-84 was 2,554. Thus despite its best efforts, the Department faces an uphill task in controlling prohibited immigration.



62. International law recognises that sovereign states are under no obligation to receive foreigners or to allow them to stay. Those states also have the right to determine to whom the benefits of the state will go.

63. As the Human Rights Commission said in evidence:

The Commission has not actually come to a conclusion on that matter, but ... broadly speaking, it would say that those (Medicare, legal aid, social security) are economic and social-type benefits which go with citizenship, or with accepted residence in the country, and although you might need to avoid some kind of cruel or inhuman treatment, there is a limit.'(13)

From the Committee's investigations, it became clear that, in practice, the limit varies.

(a) A national identity card system

64. A major element to be considered in the control of prohibited immigration is the ease with which prohibited non-citizens can become integrated into the community and obtain benefits from it. The Committee firmly believes that unlawful conduct should not be rewarded. An effort must be made to eliminate or at least reduce the benefits from Commonwealth departments to which prohibited non-citizens may be able to gain access.

65. The Committee notes that in his statement to the House of Representatives on 19 September 1985 the Treasurer announced that the Government would be introducing the Australia Card. The difficulty which departments have in establishing the identity and residence status of clients and thus their entitlement to benefits, is recognised by this Committee. The Committee accepts that a national identity card system may assist in alleviating this difficulty. While it may be stating the obvious, the Committee assumes that prohibited non-citizens would be prevented from acquiring an identity card.

The Committee acknowledges that the national identity card issue is a difficult and complex problem which is currently being debated in other quarters. It awaits the outcome of this debate with interest.

(b) Legal Aid

66. Existing legal aid policy provides that legal aid is available to all persons involved in legal proceedings in Australia regardless of their status as citizens or non-citizens. A similar situation operates in the United Kingdom. In Europe, some countries have restricted legal aid availability to nationals and aliens domiciled or habitually resident in the country.

67. Restrictions are also placed on the availability of legal aid funds in the United States. According to the Attorney-General's Department, there is a widely held view in the United State Congress that legal aid funds should be divided among citizens and lawful residents only. In the code relating to deportation proceedings in the United States, the following provision appears:

'(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorised to practice in such proceedings, as he shall choose;' (14) (emphasis added)

68. It was not possible for the Attorney-General's Department to provide any figures on the annual cost of providing legal aid to prohibited non-citizens. The Committee's impression from its discussions with officers from the Department of Immigration and Ethnic Affairs is that substantial costs have been involved in some cases. The Committee finds it particularly incongruous that legal aid is provided through one Commonwealth department for prohibited non-citizens to pursue cases against another Commonwealth department. The Committee considers that a change of policy is warranted on the grounds that the Government should not be seen to be supporting unlawful actions.

Recommendation 6:

The Committee recommends that an eligibility test on residence grounds be introduced for legal aid and that at the time of application for legal aid, a person must be able to demonstrate that he/she is in Australia lawfully.

(c) Commonwealth Employment Service

69. According to the Department of Immigration and Ethnic Affairs Annual Report for 1983-84, it is possible that up to 60% of prohibited non-citizens are working. With an estimated 50,000 prohibited non-citizens in Australia, this means that as many as 30,000 jobs could become available to citizens currently seeking work, if it were possible to ensure that only persons legally entitled to work in Australia, did so.

70. The Committee was concerned to establish whether prohibited non-citizens and visitors not authorised to work are obtaining jobs through the Commonwealth Employment Service (CES). One of the issues at stake was whether people who had been permitted entry to Australia on the undertaking that they would not work, subsequently broke that undertaking to one Commonwealth agency and used another Commonwealth agency's services to find a job.

71. According to its submission to this review, the CES does not check the bona fides of clients seeking assistance in finding employment. It is therefore possible that persons unauthorised to work in Australia are using CES services to obtain jobs. The Committee was advised that the CES has no charter at present to administer any form of eligibility test on its job-seeker clients.

72. The matter of employers giving jobs to people who are not permitted to work was examined by the Committee. The Committee had two concerns in this area. One was the leakage of jobs away from people willing and permitted to work to people who were breaking a condition of their entry permit by working. The second concern related to the exploitation of people who were working illegally and thus at the mercy of unscrupulous employers.

73. The Committee understands that sanctions against employers, such as fines, have been used in other countries with mixed success. It is difficult to envisage how such a system would work under present conditions, given the difficulty which employers would have in establishing whether a person was permitted to work in Australia.

74. The Committee considers that a national identity card system could assist in this process. If such a system is "introduced", it would then be possible also to have a system of sanctions against employers who employed people without the appropriate identification. An identity card system might also assist the CES in determining to whom its services should be given.

Recommendation 7: The Committee recommends that persons who are not authorised to work in Australia should be prohibited from using Commonwealth Employment Service (CES) services. The CES should use its contacts with job seekers and employers to publicise this fact.

(d) Medicare

75. Under the Health Insurance Act, benefits under the Medicare program are available only to eligible persons as defined or to Australian residents. Section 6 of the Health Insurance Act provides that the Minister for Health can, by order in writing, declare individuals or a class of people as Eligible Persons for the purpose of receiving Medicare benefits. On 24 January 1984, the Minister ordered that all persons entering Australia with approval to remain for more than six months be regarded as Eligible Persons.

76. The Committee noted that while the Operations Instruction Circular (OIC 341) of January 1985 gave detailed instructions to staff on how to assess Medicare eligibility, the basic enrolment form (EN1) was unclear and liable to give the impression that anyone in Australia for more than six months was automatically eligible for benefits under the Medicare program.(15)

77. During its inspections of the two Immigration Detention Centres in Melbourne and Sydney, the Committee was informed that prohibited non-citizens who are detained, are commonly found to be in possession of a Medicare card. The inference was drawn from this that prohibited non-citizens were using Medicare cards to obtain benefits from the Australian health system to which they were not entitled.

78. As a result of the Committee's inquiries to the Health Insurance Commission, it became apparent that this problem had not been drawn to the Commission's attention previously, although some contact had been made by the Commission with the Department of Immigration and Ethnic Affairs at the beginning of 1985.

79. Evidence was given that a limited review was conducted in Victoria following the Committee's letter to the Commission.(13) An examination was conducted of the cases of 400 persons who had been deported. It was found that 88 had been issued with a Medicare card. Of these, 43 persons had claimed a total sum of \$2,751.85. While this is not a large amount, it indicates an area of manipulation of the Medicare system which should not be allowed to continue.

80. The Committee was pleased that the Health Insurance Commission, having been made aware of the problem, was actively seeking solutions to it in conjunction with the Department of Immigration and Ethnic Affairs. Nevertheless, the Committee is disturbed by the fact that over 20 percent of people in the Commission's limited review, held cards which gave them access to benefits they were not legally entitled to claim.

Recommendation 8: The Committee recommends that the Health Insurance Commission urgently review its procedures and practices both in terms of issuing Medicare cards and cancelling those which are held by ineligible persons.

(e) Social Security Benefits

81. Most social security benefits in Australia are subject to an Australian residence requirement. Legal advice has been obtained by the Department of Social Security to the effect that where the eligibility criteria set down by the Social Security Act for the payment of a benefit include an Australian residence requirement, that requirement should not be accepted as having been met if the residence in Australia was or is unlawful. The principle which applies is that a person should not benefit from an unlawful act.

82. The Department of Social Security has procedures in place to check the travel documents of applicants not born in or newly arrived in Australia. This enables persons to be identified as prohibited non-citizens. In evidence, Departmental representatives stated that these procedures are undergoing review. There is close contact maintained with the Department of Immigration and Ethnic Affairs but some reservation was expressed about the quality of the data which was being received by Social Security from Immigration and Ethnic Affairs.

83. The Committee notes that there is room for improvement. Some improvement may result from the efforts being made by the Department of Immigration and Ethnic Affairs to upgrade its Movements Data Base.

84. It may also be possible to discourage ineligible persons from applying for benefits with appropriate changes to Social Security application forms. It became apparent to the Committee that there may be some misunderstanding about the term 'residence' on some Social Security forms which results in people who are actually ineligible, being able to obtain benefits.

Recommendation 9(a): The Committee recommends that the Department of Social Security review its procedures to ensure that where residence is an eligibility criterion benefits are paid only to legal residents.

Recommendation 9(b): The Committee also recommends that a clear statement explaining the meaning of the Australian residence requirement should appear on the appropriate application forms and in associated publicity.

#### THE TAXATION ISSUE

85. In addition to hearing evidence from the four agencies mentioned above, the Committee also approached the Commissioner of Taxation in pursuance of Audit's recommendation in the EA report that the Department of Immigration and Ethnic Affairs examine the possibility of a deportee's taxation refund being assigned to the Department.

86. The Commissioner of Taxation's position is that there would be difficulties in identifying prohibited non-citizens as they may be working and paying Pay-As-You-Earn (PAYE) tax under an assumed name. The Commissioner also expressed doubts about whether, even if identification were possible, the size of the refund would make any significant contribution towards defraying deportation costs. Other difficulties which Audit's recommendation poses is the matter of confidentiality of information provided by taxpayers to the Taxation Office, and the fact that there is no provision in the income tax law at present which permits the Commissioner of Taxation to pay a refund to the Department of Immigration and Ethnic Affairs, whether by assignment or otherwise.

87. The Audit Office was sceptical about the question of size of refunds, arguing that the size of a prohibited non-citizen's refund may be higher than the average if that person has worked for only part of a year. Be that as it may, the Committee considers that a more useful approach is to increase the efforts made to discourage employers, for example, from employing prohibited non-citizens and ensuring that only people permitted to work in this country are employed. The Committee's recommendations with respect to the CES follow that line.

88. The Committee notes the Commissioner's point with respect to the difficulty of identifying prohibited non-citizens who may be working under assumed names. The Committee takes the view that the introduction of a national identification system which is discussed both in this report and in the White Paper on Reform of the Australian Tax System would have an impact on the practice of working under assumed names.

#### MEASURES TO CONTROL PROHIBITED IMMIGRATION

89. As mentioned earlier, the EA Report, despite its introductory assertion, does not address the effectiveness with which prohibited immigration is currently controlled in Australia.

90. The Committee, during the course of its inspections, discussed a number of ways in which the control process could be improved. It was particularly attracted by three concepts:

- (a) limitation of benefits from the Commonwealth Government to lawful residents in an effort to ensure that such benefits do not act as an incentive for people to become prohibited non-citizens;



- (b) amendment to the Migration Act 1958;
- (c) amendment to the Australian Citizenship Act 1948;  
and
- (d) amendments to the Torres Strait Treaty.

(a) Limitation of benefits to lawful residents

91. This concept has been addressed earlier in this report and the Committee has made specific recommendations designed to address the problem as it manifests itself in certain key areas such as legal aid, social security benefits, etc. Clearly, the recommendations made in this report will not solve the problem entirely. The report, however, may serve to highlight the problem and stimulate other service/benefit providers to re-examine the basis upon which they operate.

(b) Amendment the Migration Act 1958

92. Section 6A of the Migration Act 1958 provides for the process which is normally known as 'change of status'. It outlines the conditions under which persons who enter Australia on a temporary entry permit may apply to change their status to permanent residents.

93. The Department of Immigration and Ethnic Affairs faces a considerable problem with the volume of applications for change of status. Complex procedures are involved and in some instances a case may take up to fifteen months to be decided. The Committee formed the impression that processing change of status applications is using up a large amount of Departmental staffing resources which might better be deployed in other areas.

94. Temporary entry permits are issued to a wide range of people wishing to come to Australia for varying periods of time. The largest group comprises overseas visitors to Australia who are mostly tourists, holiday makers and those seeing relatives. This group also includes business visitors and others coming for special pre-arranged medical treatment.

95. Temporary entry visas are also given to people seeking to enter Australia for longer stays than tourist visitors and with authority to work - for example, staff of Australian branches of overseas companies, entertainers, sportsmen and sportswomen, working holiday makers and temporary staff for Australian universities. Overseas students are another large group who are issued with temporary entry visas. Once in Australia, they are able, under certain conditions, to apply for change of status; i.e. from temporary entry to permanent residence under section 6A of the Migration Act.

96. The Committee believes that currently the provisions of section 6A of the Migration Act are an inducement to 'queue jump'. The availability of change of status provisions in Australia encourages some people to come to Australia as visitors in the hope of being able to stay permanently at the expense of others who apply overseas for permanent residence in Australia and are rejected because of limited intakes or specific requirements.

97. At present, no real distinction is made between the tourist visitor type of person and the longer stay person such as an overseas student. In 1983-84, 9,534 persons were approved for the grant of resident status. Of these, 61 percent of approvals went to visitors.

98. The Committee considers that as a matter of principle, short-term visitors should not be permitted to apply for change of status in Australia and that the legislation should be amended accordingly. In this context, the Committee believes that a period of six months or less should be regarded as 'short-term'.

The Committee accepts that there may need to be exceptions to this ruling but these should be kept to a minimum. Persons granted either political asylum or refugee status would not fall within the ambit of any new provisions.

99. The Committee is firmly of the view that any decrease in the number of persons who are granted change of status should be added to the number of persons approved for migration under the family reunion program. In other words, the Committee is arguing not for a decrease in the number of persons settling permanently in Australia overall but rather a shift towards everyone going through the proper application processes overseas.

100. The Committee recognises that while these legislative changes would not entirely eliminate prohibited immigration, the numbers may be reduced. The changes would also clarify the rules and make enforcement of them easier. The introduction of a separate visitor category would discourage those who have previously set out to beat the system by arriving in Australia, say as tourists, and who then apply for permanent residence.

Recommendation 10: The Committee recommends that a new and separate category of entry permits be created for tourists and short-term visitors to Australia to distinguish them from temporary residents. The Committee further recommends that this category be prohibited from seeking change of status.

(c) Amendment to the Australian Citizenship Act 1948

101. During the course of this review, the Committee became aware of the way that Australian citizenship provisions are being used by some prohibited non-citizens. Cases have arisen of prohibited non-citizens giving birth to a child while they are in Australia. As a result of the operation of the Australian Citizenship Act 1948, that child becomes an Australian citizen. It should be noted that Australia is one of only a small number of countries with such generous citizenship provisions. Others in

this group include the United States, Fiji, New Zealand and Canada. The parents have then argued that they should not be deported as prohibited non-citizens because their deportation would infringe the human rights of their Australian-born child.

102. A legislative measure which the Committee considered was to provide that any child born to persons entering Australia on a temporary basis or illegally here, does not become an Australian citizen unless the child would otherwise be stateless. This provision already exists in the Citizenship Act for the children of people who have diplomatic immunity or who are consular officials.

103. By removing the automatic right to citizenship which currently exists for Australian-born children of temporary residents and prohibited non-citizens, another incentive to 'queue jump' is removed in that people who are illegally in Australia would not be able to use an Australian citizen child as the reason why they cannot be deported. The Committee is aware that such a change to legislation would impose considerable administrative difficulties under the system presently operating whereby births are registered by State Registrars. These bureaucratic impediments would appear to have been overcome in other parts of the world.

Recommendation 11: The Committee recommends that children born to temporary residents, to the proposed tourist/visitor category and to prohibited non-citizens in Australia do not become Australian citizens unless they would otherwise be stateless.

(d) Amendment to the Torres Strait Treaty

104. The Committee, in the course of its inspections, became aware that a possible unintended consequence of the Torres Strait Treaty was that individuals in this area who are granted permanent resident status by the Australian Government can lose some of their rights of movement in the treaty zone if they take up Australian citizenship. The loss of access to traditional rights thus incurred can be a disincentive to seeking of Australian citizenship. The Committee does not believe that this sort of disincentive should exist.

Recommendation 12:

The Committee recommends that the Department of Immigration and Ethnic Affairs should examine the Torres Strait Treaty in detail with a view to promoting changes which do not deprive those who take up Australian citizenship of traditional rights.

105. The Committee also argues that the free movement of people through the treaty zone adds weight to Committee recommendation 12 that Australian citizenship should not necessarily be available on an "accident of birth" basis. It did not seem reasonable to the Committee that Papua New Guinean citizens who have access to the treaty zone should be able to have Australian citizenship conferred upon their children if these children were born in the treaty zone.

CONCLUSION

106. The Committee was generally satisfied that the EA report addressed the issues associated with the efficiency with which the Department of Immigration and Ethnic Affairs carries out its responsibilities in control of prohibited immigration. In the Committee's view, the structure of the report and the wording of the recommendations could have been more clearly presented and the Committee trusts that in future reports, such minor shortcomings will be rectified.

107. The greatest weakness was that the issue of effectiveness of administration had not been tackled in the EA report. The Committee considers that this weakness reduces substantially the value of the report. The Committee has attempted to redress this weakness to some extent by making its own recommendations.

108. The Committee notes that to a large extent, the Department of Immigration and Ethnic Affairs has accepted Audit's recommendations and has proceeded to implement them. While the Department gave explanations for some of the delays which have occurred in implementing a minority of recommendations, the Committee considers that the Department can reasonably be expected to put some additional effort into ensuring that further delays are minimised.

APPENDIX I

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APPENDIX II

INDEX OF SUBMISSIONS AUTHORISED FOR PUBLICATION

Submission No:

- 1 Australian Customs Service, submission dated 22 April 1985
- 2 Health Insurance Commission, submission undated, received 24 April 1985
- 3 Human Rights Commission, submission dated 24 April 1985
- 4 Office of the Auditor-General, submission dated 23 April 1985
- 5 Department of Social Security, submission dated 29 April 1985
- 6 Attorney-General's Department, submission dated 10 May 1985
- 7 Department of Immigration and Ethnic Affairs, submission dated 9 May 1985
- 8 Victorian Ethnic Affairs Commission, submission dated 15 May 1985
- 9 Department of Employment and Industrial Relations, submission dated 15 May 1985
- 10 Health Insurance Commission, document received at public hearings, 23 May 1985
- 11 Western Australian Multicultural and Ethnic Affairs Commission, submission dated 24 May 1985
- 12 Commissioner of Taxation, submission dated 5 June 1985

Recommendations 1-2

The Department proceed with its development of specific criteria covering the entry, review and removal of names from the Migrant Alert List and that this action be completed and implemented promptly. The Department proceed to reconcile additions and deletions to the List.

Recommendations 3-6

The Department:

- (a) resolve the question of responsibility for control of passenger cards;
- (b) complete the field trial for the forgery detection equipment without delay;
- (c) if the trial is successful, ensure that the equipment is fully operational as soon as possible;
- (d) obtain staff necessary to ensure that effective checking of documents takes place at points of entry.

Recommendation 7

That the Department expedite the implementation of the "pre-movement" data base.

Recommendation 8

The Department, while adequately recognising privacy considerations, actively explore with other Government authorities the development of procedures to assist in the location of illegal immigrants and that other Commonwealth authorities assist to the extent possible in locating people who are illegally in Australia.

### Recommendations 9-11

In relation to the arrest and detention of illegal immigrants the Department:

- (a) collects statistics on the use of the reporting system and its success rate;
- (b) the data collected should include information on the characteristics of the immigrants concerned so that criteria can be developed to guide judgement on when to use the reporting system rather than detention; and
- (c) with the support of this information the Department should work towards increasing the use of the reporting system in preference to detention.

### Recommendation 12

Conformity of policy, departmental instructions and practice concerning prosecution of illegal immigrants be achieved.

### Recommendation 13

The Department inform deportees progressively of their accruing liability for detention costs and attempt recovery while the persons are still in Australia.

### Recommendation 14

In relation to the recovery of deportation costs the potential for measures to provide the Department with power to freeze and recover from monetary or other assets in Australia should be explored.

### Recommendation 15

The Department examine the possibility of a deportee's taxation refund being assigned to the Department to recoup deportation costs.

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## ENDNOTES

1. Report of the Auditor-General on Efficiency Audits: Control of Prohibited Immigration by the Department of Immigration and Ethnic Affairs, AGPS Canberra 1984, p. 43
2. Submission No. 4
3. Submission No. 7
4. Evidence, p. 142
5. Ibid, p. 142
6. Report of the Auditor-General on Efficiency Audit
7. Ibid, p. 46
8. Ibid, p. 47
9. Evidence, p. 133
10. Evidence, p. 138
11. Evidence, p. 32
12. Evidence, p. 132
13. Evidence, p. 28
14. Exhibit No. 2
15. Submission No. 10
16. Evidence, p. 99

