

Procedural fairness? That doesn't apply to us, says Immigration department

Written by The Conversation

The day that then-immigration minister Scott Morrison announced an inquiry into allegations of abuse in the Nauru detention centre, News Corp tabloids ran dramatic claims against Save the Children.

The story, briefed by the government, said that the organisation was alleged to have “fabricated” stories of abuse. An “intelligence report” to the federal government had revealed that staff from Save the Children based at Nauru had also been involved in “encouraging and coaching” self-harm.

Orders had already been given by the Immigration Department for ten employees from Save the Children Australia to be removed from Nauru (though not all were there at the time, and one had resigned).

The scene having been set, Morrison told a news conference that making false claims was completely unacceptable.

Indeed.

Last Friday, the deadest news day of the working week, Morrison’s successor Peter Dutton and Mike Pezzullo, head of the Immigration department, fronted the media with the report by Philip Moss, former Integrity Commissioner, into both the allegations of abuse and the claims about Save the Children.

The inquiry found substantial abuse. As Dutton said in his press release, the Moss report “outlines some very disturbing matters including drug dealing, sexual assault and rape”.

But it did not find a case for the claims against Save the Children, a point unmentioned in Dutton’s press release. Specifically, the review says that “it has not obtained any information which substantiates the alleged misconduct in terms of inappropriate attitude, emotive reporting and links to refugee advocacy groups in relation to the ten Save the Children staff members”.

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Among other things, the review's report is an indictment of the Immigration department. One would hope that in a policy area where the government takes an out of sight out of mind attitude and has an obsession with secrecy, public service procedures would provide some focus on process and fairness. It's quite clear from the Moss report that this is not the way Immigration has operated.

The "intelligence report" referred to had been material compiled by Wilson Security, which operates at the detention centre. It concluded it was probable some contract service provider staff were coaching and encouraging self-harm.

Some Save the Children staff "may be engaged in conduct which evidences conflicts of interest with their primary purpose and conditions of employment", Wilson Security claimed.

Senior departmental officers were concerned about protest activity at Nauru and, Moss recounts, when the September 30 report came, "the department's senior officers formed the view that some Save the Children staff members were actively involved in the protest activity. Accordingly, the senior departmental officers decided to invoke the relevant clause of the contract to remove the ten Save the Children staff members."

No details of any specific allegations about the staff were provided to the department before it issued a "Notice to Remove" them, and the department didn't seek any. Save the Children wasn't given any specific details.

"Notwithstanding the fact that the Wilson Security Intelligence unit advised that they had no firm evidence of Save the Children involvement and that the intelligence unit believed that once the names were provided, an investigation would follow, neither the department, Transfield Services [another service provider] nor Wilson Security undertook an investigation before the department issued the Notice to Remove to Save the Children on 2 October 2014. The [Moss] review was announced on 3 October 2014."

The department told the review that the removal had been a "circuit breaker", regardless of what the people had or hadn't done.

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The review gives the department a sharp reprimand on the question of proper procedure.

“A better course of action would have been to direct Save the Children to remove the ten staff members, thereby alleviating any immediate threat, and conduct an investigation. Save the Children should have been afforded the opportunity to address the concerns raised about its staff members and Wilson Security could also have been given additional time to collect more information.”

But the department was unrepentant when responding to the review's draft report. It said it didn't believe there was a need to provide procedural fairness, telling the review “any requirement for procedural fairness on the department's part when making decisions under a commercial contract ... has potentially serious implications for our contract management and out obligations to service providers and their staff”.

The Moss review – while noting there is an ongoing police inquiry into the issue of leaks, something it therefore didn't investigate – concludes that the department should review its decision to remove the Save the Children staff members, considering them individually. It should also provide Save the Children with the information it relied on and the opportunity to address the allegations.

Asked on Friday about the employees being wrongly accused, Pezzullo said that “they weren't wrongly accused of anything in particular”. There had been a breakdown in trust, he said: there'd been credible allegations of behaving in a way that was about advocacy and “ideologically debating the policy”. Pezzullo is in discussions with Save the Children. “I met with the CEO last week and he and I've agreed to work on this collaboratively and collegiately.”

Morrison meanwhile has moved right onto another portfolio. Asked whether he'd apologise to Save the Children, he said: “I made no allegations; I referred allegations for a proper inquiry”. But not before they left a smear.

Michelle Grattan does not work for, consult to, own shares in or receive funding from any company or organisation that would benefit from this article, and has no relevant affiliations.

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