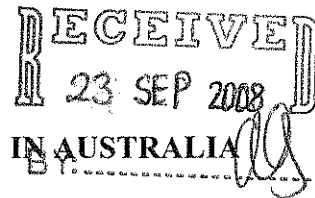


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JSCM INQUIRY INTO IMMIGRATION DETENTION IN AUSTRALIA

Questions following the JSCM's visit to Darwin in July 2008

1. You mentioned that since July last year, the average was 16 days for those 'without impediments', 41.5 days for those who were prosecuted, and 9.7 days for juveniles. Can you confirm this? What is the average length of time fishers currently spend in detention (across all fishers) and what main factors determine the length of time they are detained?

Yes we can confirm that for the 2007-2008 financial year the average turnaround time for adult detained foreign fishers not facing prosecution was 16 days in immigration detention. In the same period the turnaround time for adult detained foreign fishers facing prosecution was 41.5 days in immigration detention. During this period the average turnaround time for detained foreign fisher juveniles was 9.7 days in immigration detention.

The Department is committed to keeping fishers' time in immigration detention to a minimum. However, the timing of any removal is contingent upon a number of factors which include:

- the timing of notification by the Australian Fisheries Management Authority (AFMA) to DIAC regarding any charges to be laid and subsequent changes to these notifications based on new evidence available to AFMA;
- prosecution processes, including the timing of assessments for prosecution by the Commonwealth Director of Public Prosecutions (CDPP);
- court schedules, particularly in the Supreme Court of the Northern Territory;
- availability of removal travel documentation and flight availability for removal;
- timing of identity interviews and the availability of interpreters for those interviews;
- cases where removal is a priority, such as minors and their adult minders, and fishers who have been here for some time due to health reasons;
- identification and availability of an adult minder to accompany a minor home;
- health clearances;
- numbers of fishers waiting removal, the availability of charter or commercial flights, and the ability of the Indonesian Government to process large volumes of travel documents can due to impact on the speed of removal when fisher numbers are high; and
- staffing resources - if an exercise targeting illegal fishing results in large scale apprehensions, delays may occur until additional DIAC staffing resources can be made available to the Northern Territory Regional Office.

2. Has the average changed since 2005 and if so why? In 2005, DIMIA (as it was then), advised HREOC that the policy 'has reduced the average length of time fishers spend in detention from around five to six weeks to ten days.'^[1] On 14 May 2008, the Department of Immigration and Citizenship advised that: 'The department's processing of detained foreign fishers who hold travel documents and have no health concerns, normally takes no longer than three-four weeks, at which time the men are flown home to Indonesia.'

Yes the average processing times have changed since 2005.

In 2005, the average length of time fishers spent in detention was 28.4 days. In 2004/2005 there was no permanent immigration detention facility in Darwin and the majority of detained foreign fishers were held at Baxter Immigration Detention Centre. With the development of the Northern Immigration Detention Centre this practice was discontinued by the end of 2006.

Processing will not normally take longer than three to four weeks. For August 2008 the average removal time for foreign fishers not facing prosecution was 7.2 days.

Having an integrated facility in Darwin, coupled with the development of a whole-of-government centralised approach to the management of detained foreign fishers, has reduced the time needed for agencies to complete their statutory responsibilities and allowed for the speedy repatriation of fishers not facing prosecution. DIAC has also simplified the documentation associated with the removal processes for unlawful non-citizens by treating this population differently. For example the processes in place to confirm that we are not removing an Australian citizen have been simplified.

The cooperation of the Indonesian Consulate in fast tracking travel authorities has contributed greatly to the timely repatriation of their citizens.

Please note that the times provided for removing foreign fishers in the period May to July 2008, referred to in the question, was unrepresentative as it included a group of foreign fishers who contested the charges against them, and as such spent a longer period in immigration detention prior to their subsequent bail and release.

3. Regarding the 'rapid repatriation policy' of illegal foreign fishers introduced in July 2004 - what is the policy?

The rapid repatriation policy relates to the reduction in detention time for detained foreign fishers, brought about by the separation of the vessel bonding process managed by AFMA from the removal of fishers managed by DIAC.

4. According to an ABC News report of 8 July 2008 ("Fishermen prosecution wasteful and unfair: lawyer"):

Legal Aid's Greg Smith says the Commonwealth has withdrawn its consent for the (prosecution of illegal foreign fishermen) to be heard in the Magistrates Court, so they have to be heard in the Supreme Court instead.

Mr Smith says that means fishermen will be kept in immigration detention for months before their cases can be heard in front of a jury.

**Is the reported change of prosecution policy by the Commonwealth accurate?
If so, when was the new policy adopted and why?**

(The response to Q 4 was provided by Commonwealth Department of Public Prosecutions.)

No, the reported change of prosecution policy by the Commonwealth is not accurate.

In relation to twelve fishermen who are being prosecuted for particular offences relating to the fishing for trepang (sea cucumber) from Australia's continental shelf outside the AFZ, issues that have arisen from the way in which the cases are being contested by the fishers are such that it is appropriate that the matters be heard in the NT Supreme Court.

5. Are there specific policy guidelines relating to the detention of illegal foreign fishers (IFFs) e.g. whether to detain and form of detention?

The detention of foreign fishers is performed as a consequence of, and in accordance with, legislation.

Prior to coming into immigration detention, fishers are the holders of an enforcement visa and, as such, are lawful non-citizens in fisheries detention. Once fisheries detention ends, IFFs must be detained as unlawful non-citizens under the *Migration Act 1958* (the Act)

Guiding principles

- All IFFs are taken into fisheries detention. When fisheries detention ends, all IFFs become unlawful non-citizens and are taken into immigration detention.
- DIAC is responsible for immigration detention and removal of IFFs.
- IFF minors are not accommodated in an Immigration Detention Centre (IDC); they are accommodated in alternative detention.
- The Northern Immigration Detention Centre (NIDC) is a joint facility – it holds people either in fisheries detention under fisheries legislation or immigration detention under the Act.

6. At the briefing, you mentioned that fishers do not have the money to pay fines for illegal fishing, so if they return to Australia that unpaid fine often results in them being held for a period of time in a correctional facility. Do fishers in detention accrue a detention debt and if they return to Australia does this have similar ramifications? If it does accrue, what is the rate charged for each detainee per day in the Darwin facility?

Yes, detained foreign fishers do incur a debt to the Commonwealth for the cost of their detention in the same manner as any other person in immigration detention would. The current detention day rate for NIDC is \$125.40 (including GST). If a foreign fisher is re-apprehended by AFMA, brought to Australia and detained at NIDC at a later date, the cost of their detention would be added to their existing detention debt. Non payment of this detention debt does not result in a custodial sentence.

Please note that the detention debt policy is currently being reviewed by the Government.

7. During the tour it was mentioned that the detainees did not have any computers at present. Could you explain why that was and how long detainees have been without internet access?

On 18 May 2008 and on 3 June 2008, clients damaged the two computers located in the North 1 compound recreation room for their use. One computer has been repaired and one replaced. Additional computers will be placed in the South 1 compound recreation room for client use when the current construction upgrade is completed and the compound handed back to DIAC from the project managers.

8. During the briefing Annette was asked if any foreign fishers had ever claimed asylum in Australia. You thought there might have been just 2 in recent years - could you confirm this number and the time interval?

Since 2006 two foreign fishers from East Timor, one foreign fisher from the Peoples Republic of China and one from Indonesia lodged applications for protection. Of these one fisher was granted a Protection Visa, another withdrew his application a week after it was lodged and the other two were found not to be owed protection.

9. Could you provide a profile of the fines and charges levied on foreign fishers found to be fishing illegally?

(The response to Q 9 was provided by CDPP.)

There are a number of offences that may be alleged in respect of foreign fishers. Certain offences carry a fine of \$825 000, some offences are punishable by imprisonment

Most defendants are fined between \$1,500 and \$4,000. Many defendants are placed on a good behaviour bond, either in addition to or instead of being fined. Very few are sentenced to imprisonment, for example if the offence occurred within the territorial sea of Australia or involved an assault on Commonwealth officers.

The most common offences, under the *Fisheries Management Act 1991* (FMA), carry a maximum fine of \$550,000. These offences, under the FMA, are usually dealt with in the summary jurisdiction, in which case the maximum fine is \$27,500. The penalty imposed in any given case will depend on the circumstances of the case.