

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES
MAY 2023**

**Home Affairs Portfolio
Department of Home Affairs**

Program 2.3: Refugee Humanitarian, Settlement and Migrant Services

**BE23-710 - Visa cancellation and detention - people in held detention not engaged
in applications**

Senator Nick McKim asked:

How many asylum seekers, humanitarian entrants, and refugees (excluding persons transferred from Nauru or PNG) currently in a held Immigration detention facility are not engaged in any visa application process, merits review, judicial review, or ministerial intervention process?

Answer:

Please find the response attached (refer Table 1).



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Detention Statistics

All statistics in this document are current as at 31 March 2023.

Asylum seekers and refugees

For the purpose of this paper, 'asylum seekers and refugees' is taken to include detainees who have previously applied for or held a Protection visa (subclass 866, 785 or 790) or previously held a Humanitarian visa (subclass 200, 201, 202, 203 or 204).

Table 1: Asylum seekers and refugees in held detention

(excluding persons transferred from Nauru or PNG)

Detainees as at 31 March 2023	TOTAL	On removal pathway	Not engaged in any process*
All asylum seekers and refugees	615	263	232
Asylum seekers and refugees who have been refused a Protection visa	409	206	182
Asylum seekers and refugees who have been refused a Protection visa under s501	43	10	9
Asylum seekers and refugees who have been refused a Protection visa, and have also had <i>any</i> visa refused under s501	71	22	20

* Not engaged in any process means departmental records indicate an individual has no ongoing visa application, merits review, judicial review or Ministerial Intervention process.

As data has been drawn from a live systems environment, the figures provided may differ slightly in previous or future reporting.

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Cancellation of Protection and Humanitarian Visas

Humanitarian visas are subclass 200, 201, 202, 203, 204 visas. Protection visas are subclass 785, 790 and 866 visas.

Table 2: Protection and Humanitarian visas cancelled* under section 501 (s501) of the *Migration Act 1958* (the Act) between 1 July 2017 and 31 March 2023

Subclass of cancelled visa	Number of s501 cancellations	s501(3A) Mandatory Cancellations	S501(3A) cancellations subsequently revoked
200 – Refugee	138	130	20
201 – In-country Special Humanitarian	<5	<5	0
202 – Global Special Humanitarian	133	131	19
203 – Emergency Rescue	0	0	0
204 – Women at Risk	18	17	<5
785 – Temporary Protection	<10	<10	<5
790 – Safe Haven Enterprise	28	26	<10
866 – Protection – Permanent	89	84	27
TOTAL	419	400	74

*Individuals may be subject to visa cancellation more than once.

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Table 3: Protection and Humanitarian visas cancelled* under s501 between 1 July 2017 and 31 March 2023 by year

Subclass of cancelled visa	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 (to 31 Mar)
200	26	16	32	26	24	14
201	<5	<5	0	0	<5	0
202	19	24	40	23	21	<10
203	0	0	0	0	0	0
204	<5	<10	<5	<10	0	<5
785	<5	<5	<10	0	0	<5
790	0	<5	<10	<10	<5	<10
866	19	22	19	15	<5	10
TOTAL	68	74	107	76	54	40

*Individuals may be subject to visa cancellation more than once

Table 4: Detainees who previously held Protection or Humanitarian visas

Detainees as at 31 March 2023	Total
Protection or Humanitarian visa cancelled under s501	200
Protection or Humanitarian visa cancelled under s501(3A)	193
Protection or Humanitarian visa cancelled under s501 between 1 July 2017 and 31 March 2023	137

As at 31 March 2023, 250 detainees in held detention previously held a Protection or Humanitarian visa.

Detention releases of former Protection and Humanitarian visa holders

As at 31 March 2023, 172* people who had a Protection or Humanitarian visa cancelled under s501 between 1 July 2017 and 31 March 2023 had been released from detention with a visa.

*This figure includes people who were released as a result of the Federal Court’s decision in *Pearson v Minister for Home Affairs [2022]* and subsequently re-detained.

Residence determination

As at 31 March 2023, less than five people who had a Protection, Refugee or Humanitarian visa cancelled under s501 of the Act between 1 July 2017 and 31 March 2023 had been placed in residence determination.

Stateless people

Table 5: Time in held detention (cumulative)

Time in detention	All detainees	Stateless* people
Up to 2 years	636	11
2 to 5 years	305	13
5 to 10 years	165	15
Greater than 10 years	11	0
Total	1,117	39

* The data includes detainees whose claims of statelessness may still have been undergoing assessment by the Department of Home Affairs at the time.

Of the 39 stateless people currently in detention, ten are on a removal pathway and nine are not engaged in an ongoing visa application, merits review, judicial review or Ministerial Intervention process.

The average cumulative length of detention for stateless people in held detention is 1,427 days (3.9 years) (as at 31 March 2023).

Removal of detainees with Protection and Humanitarian visas cancelled under s501

Between 1 July 2017 and 31 March 2023, a total of twenty detainees whose Protection or Humanitarian visa was cancelled under s501 in the same period were voluntarily removed from Australia.

Table 6: Countries of citizenship for detainees removed from Australia voluntarily between 1 July 2017 and 31 March 2023

Country of citizenship*	Number of individuals
IRAN	<5
IRAQ	<5
SUDAN	<5
AFGHANISTAN	<5
EL SALVADOR	<5
TURKEY	<5
BURUNDI	<5
ZIMBABWE	<5
VIETNAM	<5
SOUTH SUDAN	<5
SRI LANKA	<5
SOMALIA	<5

* Citizenship is provided, as the destination country is not reportable from departmental systems.

Between 1 July 2017 and 31 March 2023, less than five detainees whose Protection or Humanitarian visa was cancelled under s501 in the same period were involuntarily removed from Australia.

Table 7: Countries of citizenship for detainees removed from Australia involuntarily between 1 July 2017 and 31 March 2023

Country of citizenship*	Number of individuals
VIETNAM	<5
SOUTH SUDAN	<5

* Citizenship is provided, as the destination country is not reportable from departmental systems.

Unlawful non-citizens are only removed if the Department is satisfied that their removal would not breach Australia’s non-refoulement obligations or other international obligations relating to the return of non-citizens.