

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING : 08 February 2016

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE16/121) - Conditions of Government Contracts and Agreements - Internal Product (DIBP)

Senator Ludwig, Joe (L&CA) written:

1. Do any contracts managed by the Department/Agency contain any limitations or restrictions on advocacy or criticising Government policy? If so, please name each contact. When was it formed or created?
2. What are the specific clauses and/or sections which state this, or in effect, create a limitation or restriction?
3. Do any agreements managed by the Department/Agency contain any limitations on restrictions on advocacy or criticisms of Government policy? If so, please name each agreement. When was it formed or created?
4. What are the specific clauses and/or sections which state this, or in effect, create a limitation or restriction?
5. For each of the contracts and agreements, are there any particular reason, such as genuine commercial in confidence information, for this restriction?
6. Have any changes to financial or resource support to services which advocate on behalf of groups or individuals in Australian society been made? If so, which groups? What was the change?
7. Has any consultation occurred between the Department/Agency and any individuals and/or community groups about these changes? If so, what consultation process was used? Was it public? If not, why not? Are public submissions available on a website?
8. If no consultation has occurred, why not?
9. Did the Minister/Parliamentary Secretary meet with any stakeholders about changes to advocacy in their contracts and/or agreements? If so, when? Who did he/she meet with?

Answer:

The Department of Immigration and Border Protection (DIBP) is not aware of any contracts or other 'agreements' managed by DIBP which contain any limitations or restrictions on advocacy or criticism of Government policy, nor is it aware of any changes to arrangements with services providers. The introduction of the *Australian Border Force Act 2015* does not have this effect on contractors/consultants, as advocacy is different to the disclosure of protected information.

Many DIBP contracts (especially contracts with not-for-profit organisations) state the opposite, i.e. that the contract does not limit or restrict advocacy or criticism of Government policy, in accordance with the *Not-for-Profit Sector Freedom to Advocate Act 2013* which prohibits Commonwealth agencies from including such clauses in contracts with charitable and other not-for-profit organisations (and even before that Act commenced, this was the Commonwealth policy).

More specifically, agreements between DIBP and providers for both the Assisted Passage and Immigration Advice and Application Service contain the provision: *“For the avoidance of doubt, no right or obligation arising from this Agreement is to be read or understood as limiting the Contractor’s right to enter into public debate or criticism of the Australian Government or its Personnel.”*

Contracts with providers to the Primary Application Information Service contain the clause: *“The Department confirms that no right or obligation arising under this Contract should be interpreted as restricting or preventing the Service Provider or its employees or its Specified Personnel from commenting on, advocating support for or opposing change to any matter established by law, policy or practice of the Commonwealth.”*