

## **QUESTION TAKEN ON NOTICE**

### **BUDGET ESTIMATES HEARING : 23 May 2017**

#### **IMMIGRATION AND BORDER PROTECTION PORTFOLIO**

#### **(BE17/116) - Cancellations - Protection claims - Programme 2.3: Visas**

Senator Macdonald, Ian (L&CA 69 & 70) asked:

Mr Pezzullo: Under the act there are slightly different constructions under section 109 or section 116(1)(d). We can get you further and better particulars on that. Senator Roberts, that gives a cumulative running total of 278. But I wish to advise the committee—and I have decided to release this information after taking advice—that currently for these material reasons, the ones that I have specified, we have 335 current protection visa holders. That is not to say that all those visas will be cancelled. I want to stress that those will not all be cancelled. They have to go through fair and reasonable process in terms of determination. Three hundred and thirty-five visa holders are currently being considered for cancellation for these reasons. The commissioner and I have decided to keep this project on foot, largely for the reasons that we explained in response to Senator Hume's line of questioning. Until we can get to the bottom of many of the identity issues, as well as the issues of return to country of origin, we intend to keep this project going.

CHAIR: Mr Pezzullo, do you have a tabulated form for what you have just told us?

Mr Pezzullo: We could fairly easily prepare one, yes.

CHAIR: We can get it from Hansard but sometimes a tabulated form is easier.

Mr Pezzullo: We could prepare such a document.

CHAIR: I think they are very important statistics you have given. We were talking about six yesterday.

Mr Pezzullo: We were talking about six. They were the subject of some public attention because the AAT had subsequently set aside the revocation decision, I think.

CHAIR: How many of those you have just mentioned are now subject to appeal to the AAT?

Mr Pezzullo: Mr Chairman, we know each other too well; I thought you were going to ask that. I have that work currently underway but I do not know that I will get it to you by the end of proceedings. I have asked the question: how many of the cancellations are the subject of either merits review and/or judicial review? I do not know if Ms de Veau can give us an indication of when that information might come to hand. It might require a bit of analysis that will extend beyond this evening.

CHAIR: I know you all hate doing this but can you give me a feel for whether it is a lot or a little? I know that you do not want to say but are we talking about one or two or are we talking about 50 per cent or more?

Ms de Veau: In relation to the 109 provision, the provision under which the visa is cancelled because the information is incorrect, I took on notice a question from Senator Hume yesterday that applied to both temporary and permanent visas, and the answer is: yes, it does. It would be any delegate's decision to cancel under 109, and you would think that would almost inevitably lead an applicant who has held a visa that has been cancelled to seek merits review in the AAT because in a sense there is not much to be lost.

Mr Pezzullo: In other words, there is a very high probability of merits review.

CHAIR: You were saying 55 per cent of those that were cancelled were on the basis of a

voluntary return by the applicant to their country of origin—

Mr Pezzullo: No, 65 per cent—two-thirds.

CHAIR: I would really like to get those figures in a tabulated form and perhaps we will wait for the rest of the information to come. I am sure it is something the ABC, for example, amongst all other media outlets, would love to publish those accurate details rather than some of the stuff they often published.

Mr Pezzullo: We will provide the data to the committee. It is on the public record, and the media will do with it as it wishes.

*Answer:*

The following table provides a breakdown by cancellation power of current and former Protection (subclass 866) visa and Humanitarian (200 series) visa holders who were cancelled on the basis of fraud (section 109 and the equivalent offshore power at section 116(1)(d) of the *Migration Act 1958* (the Act)) or on the basis of the identity of the visa holder not being satisfied (section 116(1)(AA) of the Act). The figures are for the period 1 July 2014 to **23 May 2017** and includes both primary and dependent visa holders.

<b>Protection and Humanitarian visa holders (primary and dependents) cancelled under s109, s116(1)(d) or s116(1)(AA) – from 01 July 2014 to 23 May 2017</b>			
s109*	s116(1)(d)**	s116(1)(AA)***	Total
<b>328</b>	<b>47</b>	<b>7</b>	<b>382</b>

\*s109 allows the Minister to cancel a visa if the visa holder provided incorrect information on their application.

\*\*s116(1)(d) allows the Minister to cancel a visa if its holder has not entered Australia or has so entered but has not been immigration cleared--it would be liable to be cancelled under Subdivision C (incorrect information given by holder) if its holder had so entered and been immigration cleared;

\*\*\*s116(1)(AA) allows the Minister to cancel a visa if they are not satisfied as to the visa holder's identity.

The table below highlights the number of cancellations for which the Department did, or did not have evidence that the visa holder had travelled to the country of reference.

<b>Protection and Humanitarian visa holders (primary and dependents) cancelled under s109, s116(1)(d) and s116(1)(AA) with evidence of travel</b>				
Travelled to country of reference	2014-2015	2015-2016	2016-2017	Total
No	9	38	94	<b>141</b>
Yes	15	76	150	<b>241</b>
<b>Total</b>	<b>24</b>	<b>114</b>	<b>244</b>	<b>382</b>

Of the **382** cancellations, **290** had sought merits review at the Administrative Appeals Tribunal (AAT) as at 23 May 2017. The Department is unable to provide the number of non-citizens who have sought judicial review of the cancellation decision.

The **278** cancellations referred to by the Secretary related only to primary Protection or Humanitarian visa holders, whose visas were cancelled onshore under section 109 of the Act. This did not include dependant family members.