QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(1) Output: Internal Product

Senator Ludwig (L & C 12) asked:

Provide a list of contracts that DIMIA has with values between $50,000 and $100,000.

Answer:

A list of DIMIA contracts with values between $50,000 and $100,000 as at 27 May 2004 is provided at Table 1.

Table 1

CONTRACT TITLE	ORGANISATION	CONTRACT LIMIT/VALUE **
Services for the Telecommunication Benchmarking Consultancy	AAS Consulting Pty Ltd	$60,654
IHSS - Client Survey	AMR Interactive	$64,005
Provision of Q-matic counter management system, including ongoing maintenance and support services, at the Department's Bangkok Office	Burton Technologies (Aust) Pty Ltd	$53,698
Provision of Q-Matic counter Management System at the Department's Parramatta Office	Burton Technologies Pty Ltd	$64,000
Provision of the Q-matic counter management system, including ongoing maintenance and support services at the Department's London Office	Burton Technologies Pty Ltd	$58,521
Provision of the Q-matic counter management system, including ongoing maintenance and support services at the Department's Perth Office.	Burton Technologies Pty Ltd	$75,105
Business Adviser to IHSS retender -CBS-04-01	Cogent Solutions Pty Ltd	$70,000
Financial Adviser to IHSS retender - CBS-04-02	Cogent Solutions Pty Ltd	$50,000
Processing of Settlement Details Forms and Related Tasks	Commercial Computer Centre Pty Ltd	$61,000
Provision of delivery of training courses in Certificate IV in Government (Tendering and Contracting)	Major Training Services	$50,000
DIMIA OLAP Data Mining and SQL Production Readiness	Microsoft Services	$66,000
Living in Harmony Partnership - Australian Laws and Role of the Police in Australia - A guide for Newly Arrived Migrants and Refugees	National Police Ethnic Advisory Bureau	$55,060
Review of Departmental requirements for the IMIRS Data Warehouse	Oakton Services Pty Ltd	$77,000
IT Specialist	Paxus	$68,255
IT Specialist	Paxus	$70,400
IT Specialist	Paxus	$88,825
IT Specialist	Paxus	$61,851
IT Specialist	Paxus	$68,200
IT Specialist	Paxus	$71,060
IT Specialist	Paxus	$75,900
IT Specialist	Paxus	$97,394
IT Specialist	Paxus	$71,500
IT Specialist	Paxus	$70,400
IT Specialist	Paxus	$75,500
IT Specialist	Paxus	$93,500
IT Specialist	Paxus	$96,360
IT Specialist	Paxus	$71,500
IT Specialist	Paxus	$97,680
IT Specialist	Paxus Australia Pty Ltd	$72,380
IT Specialist	Paxus Australia Pty Ltd	$65,450
Develop design concept and prepare construction documents in accordance with the Design Concept	Phillips Smith Conwell Architects Pty Ltd	$50,000
Consultancy Services for the Maintenance of the IRIS Computer System	Vanspall Nominees Pty Ltd	$70,200
IT Specialist	Wizard Personnel and Office Services Pty Ltd	$75,235

** It should be noted that these figures may either be a fixed or estimated contract value ie a reflection of projected expenditure.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(2) Output: Internal Product

Senator Ludwig (L&C 13) asked:

Provide a copy of the instruction to staff in relation to privacy.

Answer:

DIMIA's privacy policy is set out in Administrative Circular 198, and this document is provided as Attachment A.

The Circular and any privacy awareness training given to staff within the context of their operational environment, form the Department's instruction on the *Privacy Act 1988*.

Privacy issues are also reinforced in the Department's training on the APS values and code of conduct.

Department of Immigration and Ethnic Affairs

ADMINISTRATIVE CIRCULAR

Unless re-issued or deleted sooner this instruction lapses 12 months from the date of issue.

Administrative Circular No: 198	Date of Issue: 20.8.93	File No.
Relevant legislation:	*Privacy Act 1988, FOI Act 1982, Crimes Act 1914, ASIO Act 1979, Migration Act 1958, Australian Citizenship Act 1948, Ombudsman Act 1976, Archives Act 1983, Public Service Regulations.*	

PRIVACY ACT 1988 – DISCLOSURE OF PERSONAL INFORMATION TO THIRD PARTIES

CONTENTS

C CONYBEARE
Secretary

MINIMUM DISTRIBUTION	**SUBJECTS FOR INDEXING**
CENTRAL OFFICE: ☒ Branch Heads & above ☐ Section Heads & above REGIONAL OFFICES: ☒ OVERSEAS: ☒ All Posts ☐ DIEA Posts Last number issued to Overseas Posts: AC 197	Administrative Law / Release of information
FREEDOM OF INFORMATION ACT ☒ PUBLICLY AVAILABLE ☐ PARTIALLY EXEMPT (See Text) ☐ EXEMPT	**EFFECT ON OTHER INSTRUCTIONS** Supersedes PC181 Augmented by AC 205

1 Introduction

1.1 The Ombudsman, Privacy and FOI Section in Central Office has responsibility for administering and coordinating departmental actions and decision-making under information access legislation, particularly the *Freedom of Information Act 1982* and the *Privacy Act 1988*. The Section provides direct advice, training, operational manuals and administrative instructions. All supervisors have responsibility for ensuring that their staff are made aware of the provisions of this instruction.

1.2 **This instruction supersedes Administrative Circular 181** and provides guidelines for the disclosure of personal information to third parties in the light of statutory obligations under the Privacy Act. Information privacy, comprises the collection, storage and security of the information and control over its quality, use, access and correction, is addressed in Administrative Circular 180 of 15/10/91, which remains. Administrative Circular 194 of 3/2/93 provides guidelines for personal information disclosure on departmental forms.

1.3 This instruction applies to all DIEA officers, as well as to officers from other government agencies exercising delegations or powers under the Acts administered by this Department. Personal information collected by the latter under Acts administered by this Department may not be used by them in their capacity as officers of other agencies other than as formally disclosed by this Department to their agencies in accordance with IPP 11, and specifically IPP 11(3).

2 The Privacy Act

2.1 The Privacy Act came into operation on 1 January 1989. The main purpose of the Act is to protect individual privacy by requiring personal information collected and held by Commonwealth departments and agencies to be managed in accordance with eleven Information Privacy Principles (the IPPs) set out in s.14 of the Act. IPPs 1, 2, 3, 10 and 11 apply only in relation to information collected after 1 January 1989; IPPs 4-9 apply in relation to all information, whether collected before or after the commencement of the Act (see s.15).

2.2 "Personal information" is defined in s.6(1) of the Privacy Act as:

> *information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

2.3 Disclosure of personal information is also regulated by the FOI Act, the *Archives Act 1983* and the *Ombudsman Act 1976*, as well as certain enactments which confer on officers of other government departments powers to obtain information. The Privacy Act, under IPP 11(1)(d), leaves those enactments in place. The **key difference** between the Privacy Act and those enactments is that they can require the disclosure of information whereas the Privacy Act is primarily a bar to the disclosure of personal information to third parties except in the prescribed circumstances summarised at paragraph 8. Third parties may comprise any "person, body or agency" other than the individual concerned.

3 Information Privacy Principle 11

3.1 Information Privacy Principle 11 (copy attached) regulates disclosure of personal information to any person, body or agency other than the individual to whom it relates. Although this principle applies only to information collected after 1 January 1989, as a matter of preferred policy it should also be applied to pre-1 January 1989 information.

3.2 Information Privacy Principle 11 prohibits disclosure of personal information to third parties subject to certain exceptions which are set out in IPP 11 (1) (a)-(e). The exceptions to the basic rule of non-disclosure occur when:

- the individual concerned either is reasonably likely to be aware or has consented to the disclosure (IPP 11(1)(a) or (b) respectively);
- there are reasonable grounds for believing that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life health of a person concerned or of another person (IPP 11(1)(c));
- the disclosure is required or authorised by or under law (IPP 11(1)(d)); or
- the disclosure is reasonably necessary for the enforcement of criminal or revenue laws (IPP 11(1)(e)).

4 Form of disclosure

4.1 Disclosure should be in writing unless the person seeking the information is the individual concerned, their sponsor or a Member of Parliament inquiring on their behalf. In the case of oral inquiries, if there is any doubt about either the identity or the authorisation of the inquirer, details should be taken and the inquirer's bona fides established before the disclosure is made.

5 Disclosure statement

5.1 With the exception of disclosures to Members of Parliament (but not their staff) and sponsors, the following statement is to be made when disclosing personal information in writing(to reflect IPP 11(3)). Whenever personal information is disclosed in writing:

Note: *A person, body or agency to whom personal information is disclosed under clause 1 of Information Privacy Principle 11 of the Privacy Act 1988 shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.*

5.2 A similar statement should be used when personal information is disclosed to an agency (eg, a State police force) not covered by the other Information Privacy Principles.

6 Disclosure to other government agencies

6.1 In deciding whether disclosure to another government agency may be made, the guidelines provided at paragraphs 10 to 15 should be observed. These guidelines generally relate to disclosure in response to actual requests for access by other government agencies or concern routine data transfer to other government agencies. Voluntary disclosure, which is non-routine disclosure initiated by an officer of this Department in the absence of an actual request from another agency, although rare, may be authorised under IPP 1 l(l)(c), (d) or (e). Circumstances warranting voluntary disclosure would normally relate to discovery by an officer of this Department of a serious wrongdoing committed by a client of this Department or to avert a public harm.

6.2 **IPP ll(l)(a) makes an exception to the non-disclosure rule where the individual concerned is reasonably likely to have been aware, or has been made aware under IPP 2, of the disclosure practice** (refer to AC 194). In assessing whether individuals are reasonably likely to be aware of a disclosure practice, officers of the Department should stand back from their own specialist knowledge and consider the state of awareness of the average client. Where information is solicited directly from the individual, the inclusion of a statement on the relevant form, that personal information of that kind is usually passed to another agency or agencies will ensure that individuals are made aware of the disclosure practice.

6.3 **Statements identifying third-party agencies to which information is usually passed must therefore be accurate and up-to-date.** Before a notification in accordance with IPP 2 is included on forms, it must be clearly ascertained that it is the usual practice of the Department to disclose personal information of that kind to the agencies named. Where no such usual practice exits it is possible to establish an administrative arrangement whereby such practices may be started. IPP 1l(l)(a) is not available where another agency seeks access on an ad hoc basis to personal information which relates to individuals who may time to time be "of interest" to that agency (paragraph 14 also refers) because a person would not be reasonably aware of ad hoc disclosures.

6.4 **IPP ll(l)(b) authorises disclosure with the consent of the individual concerned.** "Consent" is defined in s.6 (1) of the Privacy Act to mean "express consent or implied consent". The Privacy Commissioner strongly advises against relying upon implied consent. If there is any doubt that a person is reasonably likely to be aware that information is usually passed to another agency, for example, their consent must be sought unless one of the other exceptions provided in IPP 11(1) applies.

6.5 **IPP 11(1)(c) allows disclosure to be made if the Department has been given reasonable grounds for believing that disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person.** If a request for personal information is received from another agency under IPP 11(1)(c) the requesting agency must identify by name the individual(s) whose personal information is sought and provide sufficient evidence that a "serious" (ie, not minor) and "imminent" (ie, not merely speculative) threat exists. In urgent situations, calling back by telephone may be acceptable after

consulting the telephone directory or other sources to establish the bona fides of the caller.

6.6 **IPP 11(1)(d) permits disclosure when it is authorised by or under law, including laws which confer on other agencies powers to obtain information.** Agencies which administer Acts that confer such powers include inter alia the Australian Taxation Office and the Department of Social Security. Their requests (and requests from other agencies) **must** be accompanied by reference to the relevant statutory provisions which confer upon them the power to obtain the information. The provisions cited will also indicate whether disclosure should be restricted to the personal information of named individual(s) or extends to that of the class of individuals. To assist compliance with IPP 11(3), formal written agreements will be concluded in due course with agencies which have statutory powers to obtain personal information.

6.7 Regulation 3.2 of the *Migration (1993) Regulations* authorises disclosure to other agencies of personal information collected from passenger cards, passports or contained in notified databases. Disclosure under this regulation requires ministerial approval in writing. The Entry Branch should retain a register of all such approvals and disclosures made under this Regulation.

6.8 While the Department does not officially accept the HIV/AIDS Guidelines, as adopted by the Privacy Commissioner, it has decided to apply the general rule concerning the safe storage and security of such information. Departmental policy is that HIV/AIDS related information, like other confidential medical information about clients is to be stored in such a manner that only officers who "need-to-know" this information have access to it.

6.9 **IPP 11(1)(e) permits disclosure when it is reasonably necessary for the enforcement of criminal or revenue laws.** Requesting agencies must identify by name the individual(s) whose personal information is sought, and the DIEA record is to be annotated each time information is disclosed. As most of DIEA's databases can not accept such an annotation, the request and reply is to be attached to the individual's personal file. Agencies seeking disclosure under IPP 11(1)(e) should be asked to provide sufficient information to allow the disclosing officer to judge whether the disclosure is reasonably necessary for the purpose stated in this IPP.

6.10 A direct relationship between the information-seeking agency and the enforcement of the criminal law should be established. The Privacy Commissioner's view is that:

- "criminal law" would cover both Federal and State laws, and
- protection of the public revenue should be interpreted narrowly to cover taxation by Federal, State or Local authorities, but not more general considerations of efficiency in the use of public funds. Requests under IPP 11(1)(e) would usually need to be made in writing.

6.11 In disclosing information (personal or otherwise) in the possession of this Department to a person, body or agency, whether the disclosure is authorised under the Privacy Act or another Act, the officer making the disclosure is required to make a file note.

This is a requirement of the Privacy Act, as well as being a good administrative practice.

7 Disclosure to ASIO Permitted

7.1 It should be noted that the Privacy Act does not apply in relation to an act done, or a practice engaged in, by this Department to the extent that the act or practice involves the disclosure of personal information to the Australian Security Intelligence Organisation. The Privacy Act is therefore inapplicable to disclosure of personal information to ASIO on and from 17 January 1990 (see s.93A of the *ASIO ACT 1979* as amended). **ASIO is not to be named or otherwise referred to in the disclosure of personal information statement on departmental forms (AC 194 refers).**

8 Spent convictions Scheme (DIEA exempt)

8.1 Amendments of 30 June 1990 to the *Crimes Act 1914* established provisions to prohibit the disclosure of , or discrimination against a person on the basis of, a spent conviction, a quashed conviction, or a conviction for which the person received a pardon. A conviction is spent if the person convicted was not sentenced to imprisonment for more than 30 months, if a period of ten years (or five years in the case of a person dealt with as a child) has expired since the date of the conviction and the person has not re-offended; or where a person has been granted a pardon for a reason other than that the person was wrongly convicted of the offence - s.852M(s)(a) of the *Crimes Act 1914.*

8.2 Persons who make decisions under the *Migration Act 1958* and the *Australian Citizenship Act 1948* are exempted from the provisions of the scheme as it relates to spent convictions i.e., such convictions must be disclosed and may be taken into account in decision making. Such persons are not, however, exempt from the provisions relating to pardons and quashed convictions.

9 Disclosure to Members of Parliament

9.1 Disclosure of personal information to a Member of Parliaments (including their staff) who are representing constituents should proceed on the basis as if the individuals concerned were making the request directly. Care should be taken to ensure, however, that personal information thus released relates only to the individual represented by the MP and not to other parties (eg., family members). If the personal information of other parties is proposed to be released, their consent in writing must be provided.

9.2 If the information relates only to the individual represented by the MP, it may be assumed that a proper professional relationship has been established and that the MP is fully authorised and instructed to act on behalf of that individual. If the request from a MP is for personal information or documents that would not normally be released to the individual concerned, the applicant should be advised to make a FOI request. The operative principle in this case is IPP 6, which provides that the individual concerned is entitled to have access to personal information held by an agency except to the extent that access may be refused under the applicable provisions of any law of the Commonwealth that provides for access to documents.

9.3 The disclosure of personal information to Members of Parliament and sponsors is an exception to IPP 11(3) (see paragraph 5. 1 above).

10 Disclosure to sponsors or to Members of Parliament acting on behalf of sponsors

10.1 Where a sponsor, or a Member of Parliament (including a Member's staff) acting on behalf of a sponsor, seeks access to personal information of an applicant, only as much information may be disclosed as the applicant would be reasonably likely to expect would be disclosed to the sponsor (that is, IPP 11(1)(a) applies). Personal information which it would be reasonable to disclose in response to inquiries from sponsors or from Members of Parliament acting on their behalf includes:

- whether application has been lodged;
- stage reached;
- points awarded;
- decision made; and
- if rejected, reasons for that decision, unless they are of a personal or sensitive nature. Assessments based on occupational considerations, for example, would not normally give rise to privacy concerns. Assessments based on health or character, however, would normally be regarded as sensitive and details would not normally be released without the consent of the applicant.

10.2 Certain general information is non-personal in nature and can be disclosed. Such information includes:

- advice on processing times;
- advice on requirements which apply to a particular visa class;
- passmark, pooling provisions, etc.

10.3 It should be noted, however, that disclosure under IPP ll(l)(a) may apply to sponsors or MPs acting on their behalf, but not to other third parties (see paragraph 12.1 below). The officer to whom the request is made, whether orally or in writing, must therefore be satisfied that the inquirer is in fact the sponsor of the named individual or, in the case of a Member of Parliament, that the Member of Parliament is acting on behalf of a person who is in fact the sponsor. The officer may then proceed on the basis that the MP is fully authorised by the sponsor to make the inquiry, and disclosure should proceed as if the sponsor were making the inquiry directly.

11 Disclosure to other third parties

11.1 Proof of consent, ie, written authorisation from the individual concerned, under IPP ll(l)(b) is required in the case of any other third party claiming to represent them (eg, a relative, solicitor or a registered agent).

11.2 Nothing in this instruction places an onus on an individual to provide consent in a set format. However, they should be encouraged to complete Form 956 -Appointment of Person to Act as Agent - a sample of which is at Attachment B. A supply of the forms will be given to the Migration Institute of Australia Limited for dispersal to its members. Offices are encouraged to include the form in application packs.

11.3 Local versions of the instrument (Form 956) should not be developed.

12 Disclosure to the press/media

12.1 Disclosure of personal information to the media is authorised under IPP 11(1)(a) for the purpose of correcting false or misleading information given to the media by or with the knowledge of the individual concerned. It may be assumed that the individual concerned will be reasonably likely to be aware that disclosure will be made as a matter of usual practice. Nevertheless, consideration should be given to the circumstances of each case, and a public disclosure by an individual should not be a trigger for the release of any more personal information than is strictly required to correct any inaccuracy.

12.2 It would be a breach of IPP ll to disclose information to the media when it is another party who approaches the media on the person's behalf. It must not be assumed that the person has authorised or is even aware of the approach. It therefore cannot reasonably be expected that the individual would expect or consent to any information being released even if it is correct. In this case the individual's consent must be obtained to disclose correcting information.

12.3 In the event of a "community spokesperson" making a misleading statement based on personal information in an immigration case, the options open to the Department would be to obtain the person's consent to disclosure of correcting information, or to seek from the Privacy Commissioner a public interest determination covering the case. Public Interest Determinations should be considered as a last resort as the process is involved and time consuming.

13 Handling of applications where a registered migration agent is appointed

13.1 In dealing with registered migration agents, officers should relate to the agents in a similar fashion to the manner they relate to Members of Parliament (see paras 9.1 - 10.3 above). Where a registered agent has been appointed by a client to act on his/her behalf, the agent should be considered to stand in the shoes of the client (satisfies IPP l l(l)(a)). That is, all correspondence (subject to any conditions set by the client for non disclosure to the agent) should be sent to the agent. This includes notification of decisions although it would also be prudent to send a copy of any decision to the client as well.

13.2 **There is an important distinction between registered migration agents and unregistered agents.** Unregistered agents will normally be encountered only outside Australia. An agent operating in Australia without being registered is subject to prosecution. Registered migration agents have agreed to abide by a code of conduct and are subject to disciplinary action if they breach that code. An unregistered agent has no such restrictions on their activity. It should also be remembered that, in some circumstances, a client can appoint a friend or relative to lawfully act on their behalf without that person being registered.

13.3 Written proof of any agent's status (whether registered or otherwise) as a representative of a client is required so that IPP 11(b) is satisfied. If a person purports to be a client's representative and authority for that person has not been given by an

applicant as part of the application form, staff should ask the person to provide written authority on the agent's appointment form (sample at Attachment B). This will establish the bona fides of the agent and also define any limitations set by the client on information that should be released to his/her agent.

13.4 If a registered migration agent (including a lawyer who is generally required to be registered as a migration agent if he or she acts in the migration area) requests information from the Department by phone, and provides reasonable proof to a Departmental officer that they act on behalf of a Departmental client, then they should be given the information requested. **However, only information that would normally be released to the client should be given.** For example, if the agent acts on behalf of a sponsor, then only information that would be released to the sponsor would be released to the agent; information on the applicant that would not be released to the sponsor should not be released to the agent.

13.5 As in all areas where information is given to a third party, Departmental staff must exercise due care in establishing that a legitimate client-agent relationship exists, whether the agent represents the applicant or the sponsor and whether the request is for information that the applicant/sponsor may have directed the Department not to reveal to the agent - such as health or character matters. In some circumstances, a Departmental officer may need to determine the client's wishes before giving the information to the agent.

14 FOI ACT

14.1 When a request is made in writing by a third party who does not represent the individual concerned and disclosure is not permitted by any of the exceptions provided under IPP 11, it is generally preferable to treat it as a FOI request. This engages the legal framework which reconciles the public interest in both the disclosure and non-disclosure of documents. The granting of access under the *FOI Act 1982* is accommodated by IPP ll(l)(d) of the Privacy Act, that is, disclosure that is required or authorised by or under law. Disclosure under the *FOI Act 1982* also offers:

(a) protection from legal proceedings alleging defamation, breach of confidence or infringement of copyright; and

(b) protection from criminal offences relating to unauthorised disclosure which would follow, for example, from s.70 of the *Crimes Act 1914* or *Public Service Regulation 35*.

14.2 To be processed under the FOI Act a request must:

- be in writing,
- be accompanied by the application fee or seek remission and
- provide sufficient detail to enable the documents containing the information sought to be identified.

A number of exemption provisions exist to deny access in specific circumstances.

Legal notices obliging the Department to produce documents, eg, subpoenas, should be referred to the Litigation and Refugee Law Branch for advice only if doubt exists as to the effect of such notices. (It should be noted that a subpoena requiring the production of documents to a court is a legal requirement falling within IPP 11(1)(d) of the *Privacy Act 1988).*

15 Archives Act

15.1 Requests from third parties for access to personal affairs records thirty or more years old (the "open access period" within the meaning of the *Archives Act*) should be referred to the Australian Archives unless the request is specifically made under the *FOI Act* (s. 12 of the FOI Act refers).

16 Privacy Contact Officers (PCOs)

16.1 To promote uniformity in decision-making concerning disclosure of personal information to third parties, a PCO should be nominated for each region. The name and telephone number of the nominated officer should be advised to the Ombudsman, Privacy and FOI Section. It is recommended that where possible the FOI contact officer should also be the PCO because close liaison is already established between FOI contact officers and the Ombudsman, Privacy and FOI Section.

17 Summary

17.1 Third parties seeking disclosure under IPP 11(1)(b), (c) or (e) must name the individual(s) whose personal information they are seeking and under (b) must produce evidence of consent (or consent must be obtained before access is granted). Disclosure under IPP 1l(l)(d) is limited by the statutory power which requires or authorises the disclosure. Although disclosure under IPP 11(1)(a) is not subject to such restrictions, officers should first assure themselves that individuals are reasonably likely to be aware that disclosure to the third party is a usual practice either by notification under IPP 2(e) or because the practice is generally known.

17.2 Except in the case of routine data transfer under IPP ll(l)(a) or (d), the onus is on the "person, body or agency" making any request for disclosure of personal information to establish, to the satisfaction of the Department, that the provisions of IPP 11(1) of the *Privacy Act* are complied with. Officers dealing with and determining such requests should insist that any evidence or advice necessary to fulfil the provisions of the Act be provided before any decision to disclose is made.

17.3 Personal information therefore may be disclosed only under the exceptions provided by IPP 11 and may not be disclosed to another agency for purposes which fall outside the terms of those exceptions or for unspecified purposes. There will also be requests for disclosure which do not fall easily within IPP 11(1) and these will need to be considered on a case-by-case basis.

17.4 Where personal information may be disclosed without breaching the *Privacy Act*, the issue whether to disclose or withhold that information becomes a policy matter to be decided without further reference to the *Privacy Act*.

17.5 Any inquiries about this instruction should be directed to the Director, Ombudsman, Privacy and FOI Section, Central Office.

ATTACHMENT A

Principle 11

Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:

   (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;

   (b) the individual concerned has consented to the disclosure;

   (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;

   (d) the disclosure is required or authorised by or under law; or

   (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.

3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

ATTACHMENT B

APPOINTMENT OF PERSON TO ACT AS AGENT

I,.....
(name)

of.....
(address)

agree to the following person acting on my behalf in relation to my sponsorship/application currently before the Department of Immigration and Ethnic Affairs.

Agent's Name.....
Agent's Address.....
Agent's Registration Number (if applicable).....

cross (X)
one box only

❒ All correspondence relating to my sponsorship/application is to be sent the above agent. If any information, additional documentation or action is required on my case, the above agent is to be contacted.

or

❒ With the exceptions nominated below, all correspondence relating to my sponsorship/application is to be sent to the above agent and if any information, additional documentation or action is required, the above agent is to be contacted. These exceptions are:

more than one box
may be crossed (X)

❒ health matters
❒ police records
❒ other (please specify below)

.....
.....

or

I authorise only information on the progress of my sponsorship/application to be released to the above agent.

signed..... date / /19

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(3) Output: Internal Product

Senator Kirk (L&C 82) asked:

In relation to IT funding [of the IT measures on page 108 of the PBS for DIMIA's overall IT outsourcing and then on page 109 for the implementation of IT disaster recovery measures], provide a breakdown for each outcome.

Answer:

The impact of the cross-outcome measures on each outcome is reported below:

Measure: Department of Immigration and Multicultural and Indigenous Affairs – information technology costs

Expenses ($m)	2004-05	2005-06	2006-07	2007-08
Outcome 1	16.2	14.8	15.0	13.4
Outcome 2	2.7	2.5	2.5	2.2
Outcome 3	0.1	0.1	0.1	0.1
Total *	19.0	17.4	17.5	15.7

Measure: Investing in Australia's security – information technology systems disaster recovery

Expenses ($m)	2004-05	2005-06	2006-07	2007-08
Outcome 1	8.7	5.8	5.8	5.8
Outcome 2	1.4	1.0	1.0	1.0
Outcome 3	..	..	..	..
Total*	10.2	6.8	6.7	6.8

* sum of the unrounded numbers

.. not zero but rounded to zero

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(5) Output: Internal Product

Senator Ludwig asked:

Anna Burke MP, Member for Chisholm, made representation to the Minister on behalf of Mr John King relating to the Dandenong Branch of the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA). Ms Burke's letter and the Minister's response are attached.

Despite the assurance of the Minister that Mr King can make a cash transaction directly at a DIMIA office, he was refused such a service on 13 May 2004.

(1) Can you please advise whether this matter has now been rectified?

(2) Can you advise of the process undertaken where the Minister's office has confirmed that a Departmental branch does not follow correct administrative procedures?

(3) When was the Dandenong Branch advised of the Minister's position and why wasn't the branch able to undertake the correct procedure nearly three weeks after the Minister's response to Ms Burke?

Answer:

(1) The Department of Immigration and Multicultural and Indigenous Affairs' (DIMIA) policy is to accept several forms of payment of Immigration fees and charges. The forms of payment accepted are cash, credit card or EFTPOS, cheque or money order or electronic funds transfer (EFT). To minimise security risks to clients and staff associated with cash handling, DIMIA encourages payment in forms other than cash. However, the option to pay cash is still available.

Discussions were held with the Dandenong office when this issue was first raised by Ms Burke and again during the preparation of this response. On both occasions the manager of the Dandenong office stated that counter staff were familiar with Departmental procedures and policy in this area. The manager also confirmed that counter staff do encourage payment of Immigration fees and charges in forms other than cash and that there are signs posted in the client service area to this effect. To assist our clients, cash is accepted as payment if paying by means other than cash is inconvenient for them.

(2) If it is brought to attention and confirmed that a branch or office of DIMIA has failed or is failing to follow correct operational or administrative procedures the management and staff would be informed of this and counselled appropriately. An investigation would be conducted to ascertain the reasons for the lapse and training and support provided to ensure that non-compliance with Departmental procedures did not occur in the future. However, for the Department to investigate further as to whether a breach of

procedure has in fact occurred in this particular case, more specific detail would be required from the client. Included in the response to Ms Burke of 22 April 2004 was an invitation to provide more information if a more detailed response was required.

(3) As previously stated, the Dandenong office was consulted on this issue when Ms Burke first raised the matter with the Minister in her letter of 3 March 2004 and again during the preparation of this response. Dandenong counter staff are aware of and adhere to the Department's policy relating to methods of payment of immigration and citizenship fees and charges.

If no payment from Mr King has been received and receipted and he has not lodged a valid application of some description there would be no record of any transaction on DIMIA's systems, which removes the possibility of using this avenue of investigation of this matter. The manager of the Dandenong office has spoken with counter staff and none have any recollection of Mr King or this particular matter. In the absence of more information it is not possible to give a more detailed response in reference to this specific alleged incident.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(6) Output 1.1: Non-Humanitarian Entry and Stay

Senator Ludwig (L&C 4) asked:

What are the incidentals in relation to the contract with Health Services Australia that relates to the health requirement for people who are onshore and applying for a visa?

Answer:

There are two components to the 'Contract between DIMIA and Health Services Australia (HSA) in relation to Services for Medical Examinations and Opinions for Primary and Review Visa Applicants and Other Defined Services for provision of health services to DIMIA'.

The first and by far greater part involves the fee for service paid by onshore visa applicants undergoing medical examinations by HSA. In 2002-03 there were 104,934 such services and in 2003-04 to date (end of May 2004) 106,082. The small number of examinees attending Authorised Medical Practitioners in regional and rural areas directly pay the examining doctor fees, not HSA. Where examinations are conducted at HSA premises the fees are:

SERVICE	**UNIT/FREQUENCY**	**FEE**
Medical Examination	Per examination	$125 (additional charges apply for any pathology services, chest x-rays or other health testing where relevant to assessing the health criteria).
Digital photograph	Per photograph	$15

The second component involves payments by DIMIA to HSA for various professional opinions and tasks on a fee for service basis, and as arising from time to time. In 2002-03 this involved 124 Opinions by the Review Medical Officer of the Commonwealth (RMOC) at a cost of $55,428. In the year to date (to end May 2004) DIMIA has bought 105 opinions at a cost of $46,935. There have been no billings for Statements of Reasons or Consultancy services in recent years. The table below gives fees payable for these services:

SERVICE	UNIT/FREQUENCY	FEE
Opinions by RMOC	Per opinion	$447.00
Statement of Reasons	Per statement	$1273.00
Consultancy Services	Per hour The Contractor's fee for these services will only apply when the Contractor advises beforehand it is to apply and if the Department provides an acceptance of the offer in writing. The Contractor will detail the application of the fee in its monthly invoices.	$207.00

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(7) Output 1.1: Non-Humanitarian Entry and Stay

Senator Kirk (L&C 18) asked:

In relation to the state government sponsored retired investor category, provide a copy of the discussion paper.

Answer:

The discussion paper is attached.

DISCUSSION PAPER: PROPOSED INVESTOR (RETIREMENT) VISA

PURPOSE

To seek comment on possible criteria for the proposed Investor (Retirement) visa.

INTRODUCTION

Background

2. In January 2004 the Commonwealth Government announced the introduction of a new visa to encourage self-funded retirees to settle in regional and low growth areas of Australia.

3. The proposed Investor (Retirement) visa would target retired business and professional people with significant assets, who can benefit Australia through major investment but whose presence in Australia would be at no cost to the Australian taxpayer.

4. The new visa would complement the Australian Government's broader strategy to assist State/Territory governments to attract investment to regional and low growth areas. It would provide State/Territory governments with another avenue to attract significant investment, particularly if the future interests of low growth/regional areas can be met. The following benefits are expected to flow to States and Territories:

   - provide another avenue to attract investment in State/Territory bonds/specified projects;
   - targets people with spending power to establish themselves and live in regional/low growth areas;
   - most applicants would typically have a successful business or professional background with potential to make a positive "life skills" contribution to the community in which they live;
   - retirees would act as "attractors" for others to follow who are from similar socioeconomic backgrounds, potential business skills applicants and young professionals (for example relatives from overseas, former business contacts/colleagues).

5. The Investor (Retirement) visa is expected to commence on 1 November 2004 and replace the current subclass 410 Retirement visa. It is expected to have a number of characteristics in common with the existing subclass 410 visa.

6. The existing subclass 410 Retirement visa would be “closed off” to new applicants from a date in 2004 yet to be determined. Existing subclass 410 visa holders would continue to be able to apply for further subclass 410 visas to remain in Australia based on current criteria.

7. It is assumed that around 105 offshore applications (150 people) could be received in 2004/05 with numbers increasing to 350 applications (500 people) each in 2005/06 and 2006/07.

8. Onshore applications are likely to be initially small, numbering around 6 (10 people) in 2004/05 increasing to around 65 (100 people) each in 2005/06 and 2006/07. Those applying onshore are unlikely to be holders of the subclass 410 (Retirement) visa, due to the higher asset threshold. Onshore applications are likely to increase from 2008/09 as initial Investor (Retirement) visas expire and further visas are sought onshore.

Existing subclass 410 retirement visa –outline

8. A Retirement visa has been in existence (in one form or another) from the early 1980s, initially as a migrant (ie permanent) visa category for “self-supporting retirees".

9. The Retirement visa was changed to a temporary visa in December 1988. This change largely reflected concerns that permanent residence provided retirement visa holders with access to Medicare and other Government benefits.

10. The objectives of the existing subclass 410 retirement visa are two-fold:

    - to provide an economic and budgetary benefit to Australia from the injection of funds by the entry of retirees with capital and income; and
    - to enable those parents who cannot meet the balance of family test for the parent visa classes but are self-supporting, and other independent retirees, to spend some retirement years in Australia as long as this does not involve a net cost to the Budget.

8. The subclass has been subject to ongoing review and scrutiny. Most recent changes include:

    - changes in November 2003 to ensure that all subclass 410 holders, including long term holders who were granted a subclass 410 visa prior to December 1998 (previously known as “established applicants”), have health insurance as a condition of their visa; and
    - updating, from 1 January 2004, the financial requirements for an initial subclass 410 visa to bring them in line with inflation and the high level of house prices since December 1998.

9. The existing subclass 410 Retirement visa therefore does not lead to permanent residency in Australia or to Australian citizenship. Initially, a subclass 410 Retirement visa allows a four-year period of stay in

Australia. If retiree visa holders meet the eligibility criteria, second or subsequent temporary retirement visas are usually granted for two-year periods at a time.

10. Applicants for a temporary retirement visa must be aged 55 or over and have no dependants other than a spouse.

11. Subclass 410 retirement visa applicants (and if relevant the spouse) are required to have resources[1] available for transfer to Australia of:

- $870,000; or
- $350,000 and an annual income of over $52,000.

These amounts are reduced slightly if the applicant has a non-dependent adult child living permanently in Australia, to

- $800,000; or
- $315,000 and an annual income of over $50,000.

12. For second or subsequent temporary retirement visa applications, applicants are not required to show funds equating to the initial thresholds. Holders of subsequent 410 Retirement are not expected to resort to Government benefits to sustain themselves.

13. Applicants applying for an initial subclass 410 visa must meet strict health and character requirements. For second or subsequent applications, the health requirement is relaxed so that the applicant must only be free from tuberculosis and other public health and safety risks.

14. All applicants for a subclass 410 retirement visa are required to provide evidence of adequate health insurance with each subclass 410 application.

15. In the 2002-2003 program year there were 1298 applications (2229 people) for a subclass 410 visa made offshore and 1358 applications (2204 people) made onshore. There were 920 applications (1587 people) and 404 applications (640 people) on hand at the end of the 2002-2003 program year. The 2002-2003 program year resulted in 1584 subclass 410 visas granted and 36 people refused. This represented a refusal rate of 2.2%.

16. Subclass 410 visa holders are dispersed throughout Australia. Based upon the number of visa grants by State/Territory over a period July 1999 to February 2003, the “retiree population” is concentrated (in numerical order) as follows:

[1] All references to $ amounts in this discussion paper are Australian dollar equivalents.

State	Number of applications	Number of persons
Queensland	975	1629
Western Australia	624	1053
New South Wales	585	909
Victoria	240	379
South Australia	132	201
Australian Capital Territory	47	74
Tasmania	31	45
Northern Territory	9	15
Total	2643	4305

Issues with existing subclass 410 visa

17. There is concern that the subclass 410 retirement visa is no longer meeting its original objective of providing an economic and budgetary benefit to Australia by attracting relatively wealthy retirees.

18. Earlier consultations within the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) have indicated that while extremely difficult to estimate, retiree visa holders, in terms of their use of Commonwealth resources, are a positive economic benefit. But in terms of State and Territory expenditure, retiree visa holders would be a negative economic benefit. This is particularly in the area of access to health services (including aged care). While all subclass 410 holders are now required to hold health insurance, this does not cover aged care costs. The Department of Health and Ageing has advised that temporary visa holders, like permanent residents, are able to access government benefits relating to aged care services on a means-tested basis.

19. In recent years, some parents who have applied to migrate to Australia under the Parent category and who have already been "queued" have sought access to the subclass 410 Retirement visa. It has been used by them to satisfy the desire for long-term stay in Australia while waiting for their "queue date" to fall due.

20. This is no longer considered necessary. The Contributory parent visa subclasses that were implemented in July 2003 allow an alternative avenue for the temporary retirement visa holders who are parents of Australians.

21. The proposed Investor (Retirement) visa would provide the option of long term temporary residence for those self-supporting parents of Australians who have not previously held a subclass 410 visa and who do not meet the balance of family test.

PROPOSED CRITERIA – INVESTOR (RETIREMENT VISA)

22. The proposed Investor (Retirement) visa seeks to provide States and Territory governments with more benefits than currently afforded under the existing subclass 410 Retirement visa, by targeting avenues for significant investment and addressing interests of low growth/regional areas, while addressing concerns regarding access to health services, particularly aged care.

23. It is proposed that the Investor (Retirement) visa would only confer "temporary" and not "permanent" residence. This is to ensure that:

    - there is minimal leakage to social welfare entitlements or access to health benefits available to permanent residents of Australia; and
    - sponsoring State/Territory governments are able to encourage settlement to regional/low growth areas.

24. The Investor (Retirement) visa is expected to have the following broad characteristics:

    - main applicant would be 55 years or older (spouse could be under 55 years of age);
    - payment of a second visa application charge of $8,000 per person per visa application to offset the possible cost of some applicants accessing aged care/nursing home services at a future time (discussed further below);
    - each applicant to be sponsored by a State/Territory government with sponsorship being maintained for the entire period of the visa applicant's stay in Australia and with preference to be given by State/Territory governments to those prepared to live in regional/low growth areas;
    - applicant for an initial Investor (Retirement) visa to provide evidence of assets that can be used to establish a lifestyle in Australia; investments/pensions generating an indexed income; and, for grant of initial Investor (retiree) visa**,** an investment in State/Territory government bonds/project. The level of funds required is discussed below. Options for more flexible financial criteria for grant of subsequent Investor (Retirement) visas are also discussed;
    - limited work rights, to allow visa holders to pursue activities such as volunteer work or investment management without breaching visa conditions;
    - meet full migration health and character criteria, at first entry only (this is discussed further below);
    - no dependants other than spouse (discussed further below);

- health insurance requirement to be maintained throughout the period of stay;

- initial maximum period of stay would be 4 years;

- visa being renewable for further 4 years at a time, but with possible streamlined assessment at time of renewal;

- visa-holders being allowed to purchase property in Australia and to acquire other assets in Australia (subject to agreement of the Foreign Investment Review Board);

- the State/Territory government designated investment amount could be set at a higher level than the proposed $500,000 minimum amount, as part of the State/Territory sponsorship arrangement;

- any agreements/conditions as to where visa holders reside, plus sponsorship requirements for applications for a *further* Investor (retirement) visa, would be a matter between the visa holder and the relevant State/Territory government.

ISSUES FOR DISCUSSION

Financial criteria

25. For grant of an **initial** Investor (Retirement) visa, it is proposed that the applicant, or the applicant and the spouse together, provide evidence of:
    - assets available for transfer to Australia sufficient to establish themselves independently;
    - capital for investment, pension rights or both pensions rights and capital for investment being in total money and entitlements sufficient to provide a minimum gross annual income in Australia; and
    - a minimum investment in a State or Territory Treasury bond or other investment acceptable to the relevant sponsoring State/Territory Government.

26. It is proposed that the applicant (or the applicant and their spouse together) be required to provide evidence of having between $800,000 and $1,000,000 for transfer to Australia to cover establishment costs which would be adjusted based on CPI increases over a reasonable period. The current subclass 410 visa requires applicants to have assets of $870,000 (or $800,000 if the applicant is a parent of an Australian permanent resident or citizen, or eligible New Zealand citizen) available for transfer to Australia.

27. It is further proposed that the applicant (or the applicant and their spouse together) be required to provide evidence of capital for investment, pension rights or both pensions rights and capital for investment sufficient

to provide a minimum gross annual income in the region of $50,000 - $60,000 per annum. This would be subject to future variation based on CPI increases. The current subclass 410 visa requires the applicant to provide evidence of capital and/or pension rights sufficient to provide an income $52,000 000 (or $50,000 if the applicant is a parent of an Australian permanent resident or citizen, or eligible New Zealand citizen).

28. In addition to the amounts shown in paragraphs 26 and 27, it is proposed that the applicant (or the applicant and their spouse together) be required to make a minimum investment of $500,000 in a State or Territory Treasury bond or other acceptable project designated by the potential sponsor.

29. Despite the amounts proposed in paragraphs 26-28, it may be that State/Territory government sponsors should have discretion to set their own amounts as part of the sponsorship arrangement and *the Migration Regulations* when framed reflect this. For example State/Territory sponsors might have the discretion to require higher levels of investment if potential visa holders insisted on settling in high growth/urban area as opposed to a low growth/regional area. The same principle could apply to the asset levels to meet establishment costs, in recognition of the likelihood that costs in some regional areas would be considerably lower than urban areas.

30. In addition to comment on the level of investments and assets to meet initial establishment costs, comment is also sought as to whether the funds used for the investment in State/Territory treasury bonds may be part of the funds claimed for establishment costs or income generation. That is, whether:

    - assets used to make the investment in State/Territory treasury bonds (or any higher amount required by the State/Territory government for sponsorship purposes) should be *over and above* the requirement that the applicant has $800,000-$1,000,000 available for transfer to establish themselves in Australia; or
    - the investment in State/Territory treasury bonds (and income subsequently accrued) *be over and above* the requirement that the applicant has pension rights/capital for investment sufficient to generate a gross income in Australia in the region of $50,000 - $60,000 per annum. An investment of $500,000 would generate a gross income of $25,000 pa based on an interest rate of 5%; or

    Care would need to be taken that assets were not “double counted”. These options are discussed further in relation to applications for a *further* Investor (Retirement) visa at paragraph 47.

31. Consideration could also be given to options varying the level of assets required for visa purposes based on where the applicant intends to reside. For example:

    - lower income levels (eg $50,000) could be required for applicants seeking to reside in regional areas. Applicants seeking to reside in

non-regional areas could be required to demonstrate assets sufficient to generate a higher income (eg $60,000); or

- where an applicant is seeking to reside in a regional area, their investment in a State/Territory treasury bond could be part of the funds claimed for income generation (as suggested in paragraph 30).

32. Alternatively, it may be appropriate to leave any higher asset test for applicants seeking to live in non-regional areas as a matter for State/Territory governments when considering sponsorship, as suggested in paragraph 29.

33. Comment is also sought on other types of investments or projects that may be suitable, apart from State/Territory treasury bonds.

34. It is expected that the amount to be invested with State/Territory governments will be set as a minimum amount of A$500,000. However it may be that sponsors requiring amounts in excess of that, would allow visa holders to draw upon the investment, provided the total investment did not fall below A$500,000.

35. Further details such as draw down procedures and where visa holders would live would be the sole jurisdiction of the relevant State/Territory government as part of ongoing sponsorship arrangements with applicants.

36. Under current subclass 410 visa requirements, a lower level of funds is required where the applicant is a parent of an Australian permanent resident or citizen, or eligible New Zealand citizen (see paragraph 11). Comment is sought as to whether this model should be adopted for the proposed Investor (Retirement) visa. If adopted, it would continue to facilitate family reunion for those parents who cannot meet the balance of family test for migration under the parent classes. It would also recognise financial support that may be provided to parents by their children.

37. On the other hand, the differential criteria would add to the complexity of criteria and processing. It could also be argued that it undermines a key objective of the proposed visa - that any Investor (Retirement) visa holder be fully financially independent.

Comment is sought on:

- *whether the proposed level of funds required for an **initial** Retirement (Investor) visa are appropriate benchmarks that is:*
  - *$800,000-$1,000,000 to enable establishment in Australia;*
  - *plus additional resources to generate a gross annual income in the region of $50,000 - $60,000 per annum;*
  - *plus investment of at least $500,000 in a State/Territory government bond or project;*
- *the extent to which these amounts should be left to the discretion of the sponsoring State/Territory government to decide as part of an agreement to sponsor depending on whether urban or regional residence is intended ;*
- *other types of investments, if any, apart from State/Territory government treasury bonds, which may be a suitable investment vehicle.*
- *whether the investment in State/Territory treasury bonds, and any interest derived, should be part of, or in addition to, requirements that they demonstrate assets sufficient to establish themselves in Australia ($800,000-$1,000,000) and to generate an income in the region of $50,000 - $52,000 per annum*
- *whether the level of income an applicant should demonstrate should vary depending on whether they intend to live in a regional area;*
- *whether there should be asset concessions for applicants who are parents of children living permanently in Australia.*

38. Applicants would be expected to maintain their investment in State/Territory treasury bonds/other projects during the course of their initial visa. Should funds be withdrawn early, it would be open to the State/Territory government to withdraw their sponsorship. Specific visa cancellation provisions are not proposed in these circumstances. Applicants would be required to show, when applying for any further application, that they held State/Territory sponsorship throughout the period of their last visa. The department could also use general cancellation provisions where necessary.

39. It is expected that assets for transfer for establishment purposes should be in a form that can be readily transferred and objectively valued. Household goods, automobiles, jewellery or collectables are considered inappropriate, given the unreliability of valuations in some countries. It may therefore be appropriate to limit assets available for transfer and capital for investment from sources such as:
    - cash;
    - liquidated real estate ,

- gold bullion; or
- stocks and bonds

legitimately owned and held by the applicant or the applicant and/or their spouse.

40. It is important to ensure that applicants genuinely hold funds for transfer to Australia. This may be even more critical should more flexible, streamlined criteria be adopted for applicants applying for a further Investor (Retirement) visa.

41. Additional criteria may therefore be appropriate to ensure that the funds are not provided by family members for visa purposes only (for example, family members do not "give" funds, or applicant does not borrow funds from a financial institution, for the period of visa assessment only). One option could be that assets for transfer, for lodgement in a designated investment and capital for investment be held by the applicant (and/or their spouse) for at least 2 years prior to application, or if held for a shorter period, were acquired as part of a superannuation pay-out. The two-year period is consistent with current requirements for Investment-linked Business Skills visas.

Comment is sought on:

- *Whether it is appropriate to limit assets available for transfer and capital for investment to:*
  - *cash;*
  - *liquidated real estate ,*
  - *gold bullion; or*
  - *stocks and bonds*

  legitimately owned and held by the applicant or the applicant and/or their spouse.
- *whether all assets claimed for visa purposes should be held by the applicant and/or their spouse for at least 2 years prior to grant, or if held for a lesser period, were from a superannuation (or similar) pay-out.*

42. Where an applicant is seeking **a further** Investor (Retirement) visa, applicants could be requested to provide evidence that they have:
    - transferred, or have available for transfer to Australia, assets of at least $800,000-$1,000,000;
    - capital for investment and/or pension rights sufficient to ensure a gross income in Australia in the region of $50,000 - $60,000;
    - continue to be sponsored by a State/Territory government;

- have held medical insurance throughout the period of their previous Investor (retirement) visa that is still current, and undertake to continue coverage during the period of any visa which is granted.

43. The two-year “ownership” criterion may or may not continue to apply.

44. Views are also sought on whether investment in State/Territory government bonds or projects should be an ongoing visa requirement, or whether this could be left as a matter for States and Territories to determine as part of their further sponsorship approval. If the latter was to be the case, and a sponsoring State/Territory government was prepared to sponsor without another $500,000 investment (or lesser amount) being made, this would not effect visa eligibility.

45. If, on the other hand, an investment in State/Territory government bonds were to be an ongoing requirement, consideration could be given to whether the amount should be a sliding amount commensurate with their period of stay. For example, it could be that in order to renew their visa, evidence of a designated investment of a $500,000 may be required again, but at third and fourth visa renewal stages this amount could be significantly less or not required at all.

46. It is expected that applicants will wish to retire in Australia will expect some certainty regarding further stay. Once Investor (Retirement) visa holders have been in Australia for an extended period, their advanced age is likely to make any departure from Australia and re-settlement in their home country problematic.

47. Changes in circumstances could also occur resulting in income or assets falling below prescribed visa requirements. For example, investments to ensure an “annual income” in the region of $50,000 - $60,000 pa could fail. Post arrival sale of assets could be needed to offset debts accrued or to ensure access to aged care/nursing home facilities; or income may not keep pace with increases in subsequent financial visa requirements due to CPI adjustments.

48. In these circumstance, applicants may argue (particularly where a spouse has died and there is only one visa applicant, or where amounts are only just under prescribed levels) that their remaining income is nevertheless sufficient for them to live independently without presenting a financial burden to the Australian community. Where the applicant is elderly, and has family in Australia, the Commonwealth and State/Territory governments are likely to be criticised should they refuse a further visa or sponsorship and require the applicant to return to their home country.

49. It could therefore be appropriate for some key criteria, such as financial and health criteria, to made more flexible where the applicant is applying for a further Investor (Retirement) visa. These could be offset by strict criteria to ensure Investor (Retirement) visa holders do not have a significant impact on health and aged care services.

50. An option for streamlined financial requirements for a further Investor (Retirement) visa could be that the applicant provide evidence of sufficient assets to support themselves independently in Australia. Further guidance on level of funds could be provided under policy. These assets may or may not be in addition to funds invested in, or income received from, State/Territory government investments. Applicants would be required to continue to provide evidence of health insurance and payment of a second visa application charge of $8,000.

51. While this option would make the visa class more attractive to potential retirees, and allow greater flexibility for individual circumstances, it may undermine the integrity of the proposed visa class. It could, for example, lead to applicants "gifting amounts" to relatives after arrival on the understanding that relatives would provide financial assistance should it become necessary. Such promised assistance would not be enforceable.

52. A further option could be to leave the level of funds to the discretion of State/Territory governments when applying for a further Investor (Retirement visa). This would allow for variations in cost of living between states and regional areas to be taken into account.

53. An alternative option could be to continue to have high requirements as outlined in paragraph 42, but for the purpose of a *further* investor visa, not require *additional* evidence of funds for any investment in state/territory bonds. That is, the assets used, and income derived from, any subsequent investment in State/Territory bonds could be counted towards either the transfer of assets to Australia for establishment purposes or income requirements.

54. This option would work if, at time of decision for an initial Investor (Retirement) visa, funds for, and income from, any State/Territory investment were *in addition* to the funds required for establishment and income generation (see paragraph 30). Those additional funds used for investment in State/Territory Treasury bonds could then provide a "buffer" against possible future fluctuations in income and assets. This would provide greater certainty to Investor (Retirement) visa holders that they can meet future financial requirements, while ensuring the program continues to provide temporary residence to those retirees who remain financially independent.

*Comment is sought on what the financial criteria should be for the grant of a **further** Investor (Retirement) visa, in particular:*

- *whether a continuation of a minimum designated investment be a visa requirement or an issue for the sponsoring State/Territory government to determine without DIMIA intervention; and*
  - *if a minimum designated investment continues to be a visa requirement, whether there be a sliding scale of investment so that the longer a person remains in Australia, the lesser the amount of investment need be;*
- *whether streamlined financial criteria are appropriate to provide greater certainty to applicants, and if so, whether:*
  - *thresholds be general and specified in policy only; or*
  - *left to State/Territory governments to determine; or*
  - *high thresholds be specified in relation to the level of assets transferred and available for income generation for both initial and further Investor (Retirement) visas. However, at time of further application, evidence of asset transfer/income could include either assets in, or income derived from, investments in State/Territory bonds, providing greater flexibility in meeting financial requirements.*

Health issues

55. The possible impact on aged care resources has been discussed with the Department of Health and Ageing (DHA). As the Investor (Retirement) visa will only confer temporary residence, access to health benefits is contained. Nevertheless, while it is improbable that all visa holders would seek to access aged care services, undoubtedly some will.

56. DHA informal advice is that a second VAC of $8,000 per visa applicant for *each* visa application is sufficient over time to ameliorate the costs of 10% of a possible Investor (Retirement) visa population accessing aged care facilities in the next 20-30 years.

57. Proceeds from the second VAC would go to consolidated Commonwealth revenue and be disbursed as part of normal Commonwealth/State funding arrangements for aged care. There is no intention to administer a “bond” arrangement to offset the cost to aged care resources.

58. A mandatory requirement of the proposed visa class would be that private health insurance would be maintained at all times. Medical requirements similar to those applying for migration would have to be met at the time of

first visa application. Consistent with the existing subclass 410 Retirement visa, it is proposed that subsequent medical requirements for visa renewal would only focus on whether or not a medical condition exists that is a public health risk (eg tuberculosis). This is because as applicants age, they are likely, at some point, to fail Australia's strict health requirements. In these circumstances, it is not considered appropriate (or practicable) to require such applicants to depart Australia where health insurance continues to cover medical costs.

- *Comment is sought on the appropriateness of streamlined health criteria for the grant of a further Investor (Retirement visa), taking into account strict criteria to limit/ameliorate access to health and aged care services.*

Other issues for comment

59. Consistent with the current subclass 410 visa, it is proposed that an applicant for an Investor (Retirement) visa should not have any dependant family members apart from a spouse. It is possible, however, that some wealthy retirees, with potential to contribute to Australia, may have young children from a second marriage. As these applicants are retired, they are also precluded from the Business Skills classes. These applicants would continue to "fall between the cracks" under the proposed Investor (Retirement) visa.

60. This requirement also means that the mere existence of a dependant (non-spouse) family member would render the applicant ineligible, regardless of whether the family member intends to join the applicant in Australia.

61. While an option could be to include a dependent family member(s) who is not a spouse, this is not considered appropriate. This is because pressure may be placed on the Australian government after visa grant to permit family reunion. In some situations, family members may be dependant on the applicant due to intellectual or other disabilities, and not meet Australia's health requirements. In other situations, younger family members may not be able meet requirements of other temporary visa subclasses (eg student visa subclasses). It is not intended that the Investor (retirement) visa provide an avenue for the circumvention of policy and procedures of other visas covered in the *Migration Regulations*.

62. Changes in circumstances after visa grant may potentially impact on the right to hold an Investor (Retirement) visa. In many instances, this may result in the applicant being ineligible for the grant of a further Investor visa. These include:

- marital breakdown thus rendering a person ineligible to hold an Investor (Retirement) visa (spouse may be too young or have insufficient assets to apply in their own right);

- single visa holders subsequently (re)marrying a person with children from a previous relationship who themselves are not permanent residents or citizens of Australia;

- failure to maintain medical insurance cover, or medical insurers refusing to renew medical insurance cover or making coverage available at prohibitive rates;

- State/Territory governments choosing not to provide further sponsorship (for example, for failure to comply with sponsorship undertakings including movement to another State/Territory without the knowledge of the sponsoring government).

63. In these situations, criticism is likely where changed circumstances are outside the applicant's control and they otherwise meet criteria. However, suitable options, which do not impact on the integrity of the proposed visa class, are unlikely. Where the applicant is very elderly or unfit to travel, it may not be possible or practicable to enforce departure. In these situations, alternatives such as ongoing stay on a medical treatment visa or bridging visa can be investigated. These options remain, however, inappropriate for the longer term.

64. Holders of Investor (Retirement) visas as a group are likely to be highly articulate, well educated and well versed in agitating for change. As with holders of the current Retirement visa, there would in most cases be a liability to pay Australian income tax. Some may argue that as taxpayers in Australia and as temporary residents only, it is unfair that they are not able to have input into the political process.

65. As taxpayers, they may also argue it is unfair to deny access to government services available to "normal" taxpayers. However, temporary residence has been adopted to support the important policy theme of "self support". Permanent residence would give direct access to Centrelink and Medicare benefits, thus compromising the notion "self support".

> ➢ *Comment is sought on the proposed requirement that applicants do not have any dependants other than a spouse.*

COMMENTS

Written comments should be provided by 27 February 2004 to:

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QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(8) Output 1.1: Non-Humanitarian Entry and Stay

Senator Kirk (L&C 20) asked:

How many skills assessing bodies are there?

Answer:

There are 34 skills assessing authorities. These authorities are gazetted to assess the skills of applicants nominating an occupation on the Skilled Occupation List (SOL).

Some of these assessing authorities are specific to a particular profession, for example, the Institution of Engineers, Australia. Other assessing authorities cover a broad range of occupations for example, Trades Recognition Australia assesses the skills of applicants who nominate a trade on the SOL. VETASSESS assesses the qualifications of applicants nominating a broad range of generalist occupations that require a tertiary degree.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(9) Output 1.1: Non-Humanitarian Entry and Stay

Senator Kirk (L&C 21) asked:

In relation to onshore students applying for the skilled migrants category visa, when does the new passmark come into effect?

Answer:

The passmark for the offshore skilled independent category was raised to 120 on 14 April 2004.

However, the passmark for Skilled Independent Overseas Student visa applications (subclass 880) lodged before 1 April 2005 was retained at 115 to minimise the number of existing students in Australia that would fail to qualify for migration as a result of the pass mark increase.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(10) Output 1.1: Non-Humanitarian Entry and Stay

Senator Kirk (L&C 22) asked:

In relation to the recent changes to the business migration scheme, provide statistics to show what has occurred and the applications prior to the introduction of the new scheme.

Answer:

Business Skills Category (BSC) application figures on a month by month basis are set out in the attached table for the period July 2001 to May 2004. This table shows that applications averaged just under 700 per month during the period July 2001 and January 2003.

It also shows that an unprecedented surge in application numbers was experienced in February 2003 when 5464 applications were lodged. This surge was due to migration agents encouraging their clients to apply ahead of planned changes to BSC processing arrangements on 1 March 2003. Under the new policy, an initial period of temporary residence was only followed by permanent residence if applicants engaged in business in Australia and linkage with State/Territory governments was encouraged through sponsorship arrangements.

Following the February 2003 surge that drained demand, BSC applications during the first six months operation averaged some 220 a month. Since September 2003, the application rate has grown, averaging 465 a month, with recent months data being well above this average. In March, April and May 2004 applications have been 608, 501 and 595 respectively.

It also needs to be recognised that the previous problem of BSC migrants obtaining migrant visas without ever establishing businesses was addressed through the March policy changes. The scale of this problem is illustrated by visa cancellation statistics – in 2003-04 some 1200 business skills visas will be cancelled. When these statistics are taken into account, it is clear that application rates have returned to the levels experienced before the policy changes were announced.

Business Skill Category: Visa Applications lodged from July 2001 to May 2004

Month	Total
07/2001	654
08/2001	763
09/2001	703
10/2001	730
11/2001	672
12/2001	765
01/2002	526
02/2002	493
03/2002	632
04/2002	621
05/2002	609
06/2002	1063
Total 2001-02	8231
07/2002	489
08/2002	539
09/2002	751
10/2002	960
11/2002	820
12/2002	805
01/2003	658
02/2003	5464
03/2003	156
04/2003	167
05/2003	169
06/2003	546
Total 2002-03	11524
07/2003	285
08/2003	289
09/2003	588
10/2003	431
11/2003	333
12/2003	406
01/2004	365
02/2004	363
03/2004	608
04/2004	501
05/2004	595
Total 2003-May 2004	4764

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(11) Output 1.1: Non-Humanitarian Entry and Stay

Senator Kirk asked:

(1) Has there been a noticeable increase in student visa cancellations since the Government announced changes to the proof of financial security a student must provide when applying for the visa?

(2) Is the Department aware of severe financial difficulty some students face when they commence study in Australia?

(3) Does the Department consider such financial hardship more significant in regional towns where there is higher unemployment?

(4) Has the Department undertaken activity with any Australian University to work resolving this problem?

Answer:

(1) The financial capacity requirements for student visas were changed as part of the Overseas Student Program reforms introduced from 1 July 2001. The number of cancellations has increased since the introduction of the reforms resulting from a combination of improved reporting by providers, increased resources devoted to student compliance and a reflection of growth in the number of student visas granted. Although the number of cancellations has increased, the proportion of cancellations to grants has not changed.

It should also be noted that the number of cancellations is only a very small proportion of the total numbers of students granted a visa. During 2003-04 the number of cancellations to grants was approximately 5 per cent. Approximately 40 per cent of cancellations are due to students completing courses earlier or deciding to return home earlier.

(2) The assessment of financial requirements is designed to ensure that students have sufficient funds to cover the cost of their study and stay in Australia before they can be granted a student visa. The Department has heard anecdotally that some students face financial hardship. The Department is concerned if this anecdote is correct. DIMIA will investigate any such cases, but details are required in order to do this.

(3) No. Student visa financial requirements apply universally, irrespective of where the student intends to study. Calculations of living costs as part of the assessment criteria are the same whether the student intends to study in a city or a regional town. Travel, tuition and living expenses are likely to be lower for students in regional communities than those living in major cities. It should also be noted that

unemployment levels in some regional towns are in fact quite low.

(4) DIMIA and DEST are working together to develop better resources that overseas students can access if they experience difficulties, be they financial, social or psychological. DIMIA is also consulting with Industry and DEST on options that may help to prevent students getting into financial difficulties.