QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(65) Output 1.3: Enforcement of Immigration Law

Senator Buckland asked:

At an RRT hearing in 2000, a decision to reject an asylum seeker's claims was made on the grounds that the applicant was not telling the truth with regard to his 'home' country. The man was wrongly believed to have come from Pakistan not Afghanistan as he claimed. This I understand was because a 'language analyst' claimed and I quote "his language background is obviously to be found in Quetta Pakistan".

(1) Can DIMIA now, after that same person has spent three years in detention, furnish that same person they deemed to be Pakistani with an Afghani passport?

(2) Explain to me how you can issue a person with a passport for a country you claim they do not come from?

(3) On what grounds can DIMIA issue a passport to a person for a country other than that country where the person originated?

(4) Isn't it a fact that DIMIA officers got it wrong in the case of this man?

(5) What if any action has been taken against the officer or officers that got it wrong?

(6) Is that same language analyst still analysing people's language backgrounds?

(7) How many other asylum seekers have been wrongly analysed by this same language analyst?

(8) How many asylum seekers in total have been wrongly assessed by language analysts?

(9) On what grounds can Australia force an asylum seeker to be deported to Afghanistan when there is a continuing deterioration in the security of that country?

Answer:

(1) Passports are issued by the relevant country. If the individual is identified by the Afghani authorities as a national, the Afghan Embassy will be asked to issue a passport. If the individual is identified by the Pakistani authorities as a national, the Pakistan High Commission will be asked to issue a passport.

(2) & (3) The issuing of passports is a matter for the country concerned.

(4) &(5) Refugee Review Tribunal members are not officers of the Department. However, protection visas decision-makers, both in the Department and in the Refugee Review Tribunal, are required to consider all relevant information when

making a decision. Language analysis provides information of relevance in some cases, particularly where, as was the case with most of the unauthorised boat arrivals claiming Afghan nationality, the individuals are unable to produce any reliable documentation to support their claims about who they are and their country of nationality.

Language analysis is not determinative of a person's origin. Its relevance and the weight it is given depend on the circumstances of the individual case. Language analysis, in the bulk of the Afghan caseload, provided the only independent source of substantiation for claims being made by applicants to be Afghan nationals. In the overwhelming majority of cases the language analysis supported the claimed nationality.

(6) The analysis is undertaken by specialist agencies which are experts in precisely this style of work. These agencies provide equivalent services for refugee decision makers in European countries.

The language analysis agencies that Australia uses all engage native speakers, many of whom hold University degrees in Linguistics and Dialectology. The analysts have their analyses cross-checked through internal and external quality control mechanisms. Emphasis in recruitment is given to people who can regularly return to the relevant areas.

(7) & (8) The overwhelming majority of Language Analysis assessments have substantiated claims by individuals arriving in Australia regarding their country of origin. If the refugee decision maker has serious concerns about a language analysis assessment it is open to them to request a second opinion from a different analyst or agency.

(9) The Government takes seriously its obligations not to return refugees to face persecution in their homeland. Protection visa applicants in Australia are not returned to their homeland unless their claims for protection have been thoroughly examined and the individual has been found not to be owed protection. Applicants found not to be owed protection by the Department are able to seek a merits review of their case by an independent tribunal, usually the Refugee Review Tribunal. If the individual is still not owed protection, the Minister has a power to grant a visa in the public interest. This enables Australia's international protection obligations under other human rights instruments to be addressed, should any exist in a particular case.

Protection visa and intervention decisions are not based on assessments about whether an entire country is ‘safe’ or ‘not safe’ for its citizens. Rather, they reflect the individual facts of each case.

If there are specific changes in the country situation which mean that a need for refugee protection has emerged after a protection visa has been refused, then arrangements can be put in place to re-examine the affected cases. On 24 December 2003 the Minister announced that Australia would be re-examining some of its Afghan caseload on Nauru, and in detention in Australia, in the light of recent changes in some parts of Afghanistan. This work has been completed on Nauru,

with 146 Afghan nationals in Australia's caseload found to now be refugees. A similar exercise is well under way in relation to the caseload in Australia.

This work needs to be put in perspective with other developments relating to Afghanistan. Between March 2002 and August 2004, nearly 3.1 million Afghans returned home to Afghanistan from other countries, with more than 2.7 million returning home with the assistance of UNHCR. In addition, it is estimated that some half a million internally displaced persons have returned to their places of origin in Afghanistan.

UNHCR figures show that more than half a million Afghans have returned to Afghanistan since the beginning of 2004. UNHCR continues to facilitate returns to Afghanistan and has stated that the number of returnees looks set to increase.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(66) Output 1.3: Enforcement of Immigration Law

Senator Buckland asked:

(1) What is the Government's policy in relation to physical and psychological wellbeing of people held in detention on Australian soil?

(2) Do you think detainees being placed in isolation cells could be interpreted as a form of punishment?

(3) For what reason are detainees placed in the isolation cells?

(4) Are the isolation cells used as a means to deter other foreign nationals from seeking refuge in Australia?

(5) What is the cost of keeping a detainee in an isolation cell at Baxter compared to the normal compound accommodation?

(6) How many detainees are in isolation cells at any one time?

(7) How many detainees are in isolation at Baxter at the moment?

(8) How often is the Department advised on the numbers of detainees in isolation at Baxter?

(9) How many detention officers are employed to work in the isolation cell block?

(10) Does the number vary depending on the number of detainees being held in detention?

(11) Do detention centre personnel working in the isolation block have additional skills and training?

If yes:

(a) What is the cost of the additional training?
(b) Who provides the training?
(c) Where does the training take place?
(d) Who assesses that an isolation inmate can return to normal accommodation?

(12) If there are no detainees in isolation at Baxter, are the isolation block staff stood down or redeployed to other duties?

Answer:

(1) The Immigration Detention Standards (IDS) of the Detention Services Contract set out the services including those required to care for the physical and psychological well being of detainees. These standards were developed by the Department in consultation with the Commonwealth Ombudsman's office and the Human Rights and Equal Opportunity Commission.

Under the IDS, detainees may access a range of physical and mental health services, as required. The health services available to detainees meet the standard normally available to Australians living in the community.

The physical and mental health of detainees is managed with care.

- On entering immigration detention, the Detention Services Provider (DSP) is required to screen all detainees for evidence of physical and/or mental conditions, including signs of past torture or trauma, depression, mental illness and developmental or learning disabilities.
- The DSP accesses health professionals, as needed, who have experience in the provision of health care to people who have suffered from torture and/or trauma.

(2) Detainees in Immigration Detention Facilities (IDF) are never held in isolation cells but may be placed in a Management Support Unit (MSU) for various reasons, which are addressed in the answer to question (3) below.

Detainees are never placed in an MSU for punishment. The reasons for their placement are carefully explained to them by the DSP.

(3) An MSU is never used as punishment. Detainees may be separated from the general detainee population under the following circumstances. In addition, detainees themselves from time to time request accommodation in an MSU for personal reasons.

The security of the facility and the safety of all those within it

There are times when detainees present a danger to themselves, other detainees or staff, for example, by undertaking threats or acts of self-harm, committing property damage, or behaving in a violent or abusive way towards others. In these circumstances and as a last resort, detainees may be placed in an MSU to ensure their own safety and well-being as well as the good order and security of the facility as a whole and the safety of all those within it.

Detainees identified as being 'At Risk' are provided with an individual management plan overseen by a Suicide and Self-harm Team (SASH). The function of a SASH is to observe, manage and ensure appropriate treatment of the 'At Risk' detainee. The SASH team includes representatives of the DSP, psychologists, mental health experts, medical staff, and others as required.

If a detainee is accommodated in an MSU, the Department requires that it be advised by the DSP of the circumstances of that placement and is provided with regular and ongoing advice on that individual.

An 'At Risk' detainee is assigned an individual case manager who is a psychiatrist, counsellor, doctor or mental health nurse.

Subject to the detainee's individual management plan, access to visitors, telephone calls, radio and television may be granted. At all times, a detainee's access to departmental, legal, consular, religious and Australian Red Cross representatives is facilitated.

The decision to remove an individual from SASH is determined by the members of the SASH team and is dependent upon the individual's response to their individual management plan.

Similar to SASH, a detainee may not be at risk of self-harm but of harming others. Detainees separated to protect the safety and welfare of other detainees are managed by the Management Unit Review Team (MURT). The MURT composition usually includes the DSP Operations Manager, centre psychologist, centre mental health nurse, centre nurse, DSP case manager and the departmental manager, deputy manager or case manager.

The role of the MURT is to assist the detainee to reintegrate into the general compounds as quickly as possible without posing a future threat to the safety and well-being of other detainees or staff or the safety and security of the centre.

Similar to SASH, and subject to the individual management plan of a detainee and the security and good order of the facility, telephone calls and access to radio and television may be granted. At all times, a detainee's access to their legal practitioner, the Commonwealth Ombudsman's office, the Human Rights and Equal Opportunity Commission or other professional visitors is facilitated.

The decision to remove an individual from the MSU is determined by the members of the MURT and is dependent upon the individual's response to their individual management plan.

(4) No. Detention in an MSU is used for the purposes outlined above.

(5) The cost per day of accommodating a detainee in the MSU at the Baxter IDF does not differ from the cost of accommodating a detainee in the general compounds.

(6) The number of detainees accommodated in an MSU in an IDF at any one time depends on the circumstances outlined in the answer to question (3) above and subject to the capacity of the individual facilities.

(7) As at 6 August 2004, there was one detainee accommodated in the MSU at the Baxter IDF.

(8) The DSP is required to report all incidents at all detention facilities including Baxter IDF. This advice includes incidents which may lead to the placement of a detainee in the MSU. The ongoing advice about a detainee in the MSU is provided in daily updates between the Department and the DSP.

(9) The MSU at the Baxter IDF is usually staffed by two detention services officers during the day and one at night.

(10) Staffing levels in detention facilities, including MSUs, are provided according to need. The response to question number (9) is the 'normal' staffing levels for an MSU, but these can be increased by the DSP if circumstances require it.

(11) All detention services officers undertake the same training. While no specific training is undertaken by officers to work in the MSU, officers working within it are carefully selected for that purpose. Any detainee accommodated within the MSU has their individual needs cared for by a specific case manager, usually a range of medical and other professionals. That specific case manager is not a detention services officer stationed within the MSU.

(12) When there are no detainees in an MSU at the relevant facility, detention services officers are deployed on other duties.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(67) Output 1.3: Enforcement of Immigration Law

Senator Buckland asked:

On the 13th of May the Foreign Minister, Alexander Downer, spoke highly of the work of the UNHREOC. This was during an interview on the Lateline program.

(1) Senator Vanstone said there were still 12 children in detention centres. Did I hear that right or was she referring to a specific group of children.

(2) What did the Minister mean that some of the children were still in detention centres because their parents wanted them there?

(3) Wouldn't any parent be concerned at having their children taken from them in these circumstances?

(4) With this high praise for the Commission why is the Government continuing to ignore the plight of those people referred to in the UNHREOC report, tabled on the 14th May this year?

(5) Has the Department been directed by the minister to cost a program to release all children from Australia controlled detention centres?

(6) If so, please provide the estimated cost of the program, broken down by detention centre.

(7) If not, please provide the current cost of keeping a child in each of the various detention centres, as well as the cost of keeping a child in each of the various alternate housing complexes.

Answer:

(1) As at 13 May 2004 there were 12 children in mainland immigration detention centres whose parent/s arrived as unauthorised boat arrivals. Senator Vanstone has referred to this group in interviews and correspondence. This number has further reduced and as at 4 August 2004 there were two children in mainland immigration detention centres whose parent/s arrived as unauthorised boat arrivals.

(2) The Government is committed to the development of creative and innovative alternative detention options for children. This has included:

- Residential Housing Projects,
- Foster care placements
- Community detention, often in partnership with a Non-Government Organisation (NGO).

A transfer to a Residential Housing Project (RHP) is an option available to the mothers of the two children in mainland immigration detention centres whose parent arrived as unauthorised boat arrivals. In fact, one of these families has previously participated in the Port Augusta RHP.

(3) Children transferred to a Residential Housing Project would be accompanied by their mother. They maintain regular contact with their father and adult male siblings through organised visiting between an RHP and the detention centre.

(4) The Attorney-General tabled a report on children in detention from the Human Rights and Equal Opportunity Commission (HREOC) on 13 May 2004. Following tabling of the report the Minister for Immigration and Multicultural and Indigenous Affairs and the Attorney-General released a news release that details the government's position. A copy of this release can be found on the Minister's website.

In summary the Government rejects the major findings and recommendations contained in this report. The Government also rejects the Commission's view that Australia's system of immigration detention is inconsistent with our obligations under the United Nations Convention on the Rights of the Child.

The Government takes very seriously its international obligations towards children in immigration detention, and its responsibility for the care of all asylum seekers and protection of their human rights. The Government considers that current Australian policies take all measures necessary to ensure that the rights of children are protected.

(5) No. There has been no costing of a program to release children from "Australian controlled detention centres."

The Government continues to explore alternative detention options for children in immigration detention. The Government announced its intention to establish Residential Housing Projects in Villawood and Perth in the 2004-05 Budget. On 10 June 2004 Senator Vanstone said, "Australia is committed to alternative detention arrangements, a commitment supported by the extension of Residential Housing Projects announced in the recent Budget."

On 10 June 2004 Senator Vanstone said, "To release all children from detention in Australia would be to send a message to people smugglers that if they carry children on dangerous boats, parents and children will be released into the community very quickly."

(6) Not applicable.

(7) There is no differentiation between the costs of children and adults in immigration detention. The table below identifies the average cost per detainee day of operational mainland detention facilities.

DETENTION CENTRE PER DETAINEE DAYS FOR FINANCIAL YEAR 2003-04

Centres	Cost per Day
Immigration Detention Centres	
Villawood	$109
Maribyrnong	$247
Perth	$543
Immigration Detention Facility	
Baxter	$281
Residential Housing Projects	
Port Augusta Residential Housing Project	$408

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 MAY 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(68) Output 1.3: Enforcement of Immigration Law

Senator Buckland asked:

(1) What is the current government policy in relation to people arriving by boat?

(2) Does country of origin or suspected country of origin influence where the unauthorised asylum seekers are detained?

Answer:

(1) People who enter Australia by boat without a visa have breached section 42 of the *Migration Act 1958*, which provides that a non-citizen must not travel to Australia without a visa. For those people who choose to arrive without a valid visa, and are therefore unlawful non-citizens, Australian law requires that they be placed in immigration detention until they either obtain the legal authority to stay or they are removed.

(2) No.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(69) Output 1.3: Enforcement of Immigration Law

Senator Buckland asked:

(1) Do you think it is reasonable to continue to call the alternate housing or community housing by these names?

(2) How much does it cost to keep a person in this type of facility?

(3) How much does it cost to maintain the facilities themselves?

(4) The staff at these centres, do they have specialised training, that is training different to the staff at a facility like Baxter?

(5) What is the different training they get?

(6) Who does the training?

(7) What is the ratio of staff to inmates?

(8) Has money been set aside in the 2004-2005 financial year for additional community housing projects?

(9) If so, please indicate how much money has been set aside along with the locations of any additional facilities.

(10) Is there currently a recruitment drive on for further detention centre staff?

(11) If so, what is the reason for this increase in staffing levels?

Answer:

(1) The Government is committed to the development of creative and innovative alternative detention options for children, women and people with special needs.

This has included a number of forms of alternative detention:

- Residential Housing Projects,
- Foster care placements,
- Community detention, often in partnership with a Non-Government Organisation (NGO).

(2) The Department has access to a range of alternative detention arrangements. The main types of facilities used by the Department are the Residential Housing Projects, private housing, accommodation organised by community groups and state government welfare agencies (such as foster care).

Residential Housing Projects operate under the umbrella of the Detention Service Contract. For the financial year 2003-04, the cost of the only operational Residential Housing Project (at Port Augusta) was $408 per detainee per day.

All other alternative detention costs are negotiated on a case by case basis and are highly dependent on the individual circumstances (for example: family, individual or those with special health needs).

(3) For the financial year 2003-04, the total maintenance paid for all Residential Housing Projects was $75,000.

The Department does not maintain community based facilities, as they are not Commonwealth property. Contributions to arrangements provided by community groups and private housing are negotiated as part of the care plan on a needs basis. Any costs associated with maintenance for these facilities are considered at that time.

(4) The staff at the Residential Housing Projects undergo the same training as those officers who are employed at the detention centres.

However the Detention Services Provider (DSP) endeavours to roster staff at that location on a consistent and regular basis so that staff develop particular understanding and familiarity with the residents of that project.

(5) Not applicable.

(6) The training that is provided to those officers, who are employed at the detention centres referred to in response to part (4) of this question, is provided mainly by DSP officers. However, for specialised areas, outside sources are used. For example, St Johns Ambulance is engaged to provide first aid training, fire service providers are engaged to undertake fire prevention and fire fighting training, state agencies and/or private consultants are engaged to provide training in relation to child protection. In addition, the Department also provides training covering the legislative background and contract requirements.

Other consultants are engaged from time to time to provide specific expertise and education, for example, in the development of programs in areas such as cultural awareness.

The training program is consistently under review, and this includes reviewing feedback received from all course participants.

(7) The Detention Services Contract is output and outcome based, with the DSP providing services to meet contracted deliverables. There is no set staff to detainee ratio. The number of staff will depend on the operational requirements of the facility and the number of detainees located in the detention centre.

(8) Budget funding has been provided in 2004-05 for the establishment of a Residential Housing Project at Villawood.

(9) In 2004-05, $4.8m has been allocated to the Department to cover site works and construction costs for the development of a Residential Housing Project at Villawood. Operational costs have also been allocated in the forward years.

The Government has also agreed to establish a Residential Housing Project in Perth in 2005-06. $2.0m of Budget funding has been set aside for the acquisition of a suitable site and buildings, as well as associated operational costs in the first year.

(10) The DSP advised that there is no current recruitment drive.

(11) Not applicable.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(70) Output 1.3: Enforcement of Immigration Law

Senator Buckland asked:

Concerning the well stage managed raid on a prominent Sydney restaurant recently that had in its employ, knowingly or unknowingly, illegal foreign workers.

(1) Can you tell me how much money has been spent on this 'clean up' program in each financial year since the program commenced?

(2) Can you tell me what is thought to be the current number of people in Australia illegally?

(3) How many are estimated to be working in rural areas?

(4) Of the illegal workers detained in the recent Sydney raids, where are they now?

(5) Will the employer be prosecuted as a result of the raids?

(6) How long had DIMIA suspected the company of employing foreign workers illegally?

(7) Had there been earlier enquires by DIMIA into the status of employees engaged by this company?

(8) Are the illegal workers wage records investigated by the arresting officer or by your department?

(9) Are the wages and conditions of employment of these illegal workers checked against current award rates and conditions?

(10) What is done if it is found the wages are inconsistent with the award rates?

(11) Is an employer who employs an illegal worker or a number of illegal workers usually prosecuted on the first occasion they are found to be in breach of the law?

(12) How many times can an employer be in breach of the law this way before being prosecuted?

(13) Is this the case even if the employer knowingly employs illegal workers?

(14) Has the current Government ever prosecuted an employer for engaging illegal workers?

(15) Is any additional consideration being given by the Department to the prosecution of employers in the courts?

(16) When an employer engages a worker could they reasonably expect that there might be a problem if the employee was unable, or unwilling to provide a tax file number or something of that nature?

Answer:

(1) Separate data on compliance action is not available. However, compliance action is included in output 1.3.3 which also covers aspects of entry control and associated corporate costs. The total cost of that function has been around $25.6 million, $25.7 million and $25 million in 2001-02, 2002-03 and 2003-04 respectively.

(2) The Department's most recent estimate is that there were some 59,000 overstayers in Australia as at 31 December 2003.

(3) There is no specific data available on illegal workers who are working in rural areas.

(4) Eleven Illegal workers were identified at Doyle's restaurants following DIMIA visits on 13 May 2004. Of these

- 3 have departed Australia
- 1 has been granted a bridging visa E to await MRT review of student visa cancellation
- 7 remain in Villawood Immigration Detention Centre pending their removal from Australia

(5) No.

(6) The Department received information in April 2004 that indicated Doyle's had illegal workers in their employ.

(7) Yes.

(8), (9) & (10) The Department has the specific role of ensuring compliance with the Migration Act 1958. Matters of employment conditions, rates of pay and award rates are matters for other agencies. Where any indications of trafficking arise, the matter is immediately referred to the Australian Federal Police.

(11) No.

(12) & (13) An employer could be prosecuted for aiding and abetting (Commonwealth Criminal Code 1995) an illegal worker to commit an offence under section 235 of the Migration Act 1958. This is dependent on evidence that the employer knew their employee was an illegal worker, not the number of times they have been found to be employing people working without authority.

Where such evidence is available and the case falls within the Commonwealth's prosecution guidelines, a brief of evidence could be forwarded to the Director of Public Prosecutions who would determine whether a prosecution should be instituted.

(14) Yes. In 2001, the owner of an employment agency was prosecuted before the Victorian Magistrate's Court under section 5 of the Crimes Act 1914 for being knowingly concerned in people working in breach of their visa conditions. The owner pleaded guilty to nineteen counts of being knowingly concerned in people working in breach of a condition of their visas. He was found guilty and fined $15,000 plus costs.

(15) Employer sanction legislation is under consideration by the Government.

(16) Yes. However provision of such information is not a guarantee that a person is entitled to work.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(71) Output 1.3: Enforcement of Immigration Law

Senator Buckland asked:

(1) Earlier this year, Minister Vanstone introduced the Dob-In hotline for illegal foreign workers and visa over stayers, how many successful apprehensions of illegal foreign workers can be attributed to the hotline?

(2) Does the hotline get a call a day or a couple of calls a day or a couple of calls a month?

(3) Are all of the calls followed up?

(4) How are they followed up?

(5) How much does it cost to maintain the hot line?

(6) Is it a separate position or is it combined with someone else's job?

(7) How many officers of the department are engaged in the investigation process?

(8) How much is set aside for the investigation of employers of illegal workers?

Answer:

(1) As Senator Vanstone made clear in her launching of the Dob-In line and in her response to this question on 26 May 2004, the Dob-In line is one component of an integrated set of strategies to ensure that persons who are here illegally are caught or made aware of their illegal status. Consequently, separate data is not available on locations resulting directly from the introduction of the hot-line. However, about 2,000 calls are now being received per month resulting in some 460 referrals per month to compliance and investigations.

(2) See the response above for the number of calls to the Dob-In line.

(3) Calls are followed up when required. Some inquiries may be resolved on the spot.

(4) Immigration Dob-In Line telephone calls and faxes are received by operators who currently answer the existing 'Employer Work Rights Checking Line', which is part of the two national contact centres in Melbourne and Sydney. Operators ask the callers questions aimed at identifying the location of the individuals of concern and

then transfer the calls to the Compliance Section in the appropriate state/territory office. Compliance officers process the calls and action them as appropriate.

(5) Costs of maintaining the Immigration Dob-In Line in the first year are estimated at around $10,000.

(6) Please refer to (4) above.

(7) The Department has some 375 compliance and investigation officers.

(8) Investigation of employers of illegal workers is a routine facet of compliance work and there is no specific funding component.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(72) Output 1.3: Enforcement of Immigration Law

Senator Carr asked:

QON 55 from February is very detailed – about the extent of international students working in the sex industry. You note that the number of student visa holders who have been caught in breach of their visa conditions while working in this industry is very small. You say, by extension, that a very low number of students are working in this industry.

(1) How do you know?

(2) You have only provided a list of those in breach. What about others?

(3) Does DIMIA think it's OK for students to work in sex industry, if it's for less than 20 hours/week?

(4) Do you see any problems in general terms (eg welfare issues, international reputation of the Aust education industry) with students being able to work in the sex industry at all?

(5) How can those reputation issues be addressed?

(6) Have you discussed this with DEST?

(7) If so, what have the nature of those discussions been? What have the outcomes of any such discussions been?

Answer:

(1) and (2) In 2003-04, 23 student visa holders were located working unlawfully in the sex industry. The Department has also been collecting manually data on persons found working in the sex industry and where no action is taken by DIMIA. From March-October 2004 emerging data trends indicate that 15% of those found working lawfully in the sex industry held student visas (a total of 50 persons).

(3)-(7) DIMIA takes seriously any issues that arise in relation to care and welfare of overseas students. DIMIA, together with DEST, has put in place a series of complementary strategies to address such concerns:

- DIMIA Student Welfare Reference Groups have been established in four states (Sydney, Melbourne, Brisbane and Perth). Participants include representatives from DEST, state education agencies, welfare and community groups, education

peak bodies, education providers, police services, overseas student representatives, and international education officers. Other state/territory offices also liaise with industry or other stakeholders that attend information sessions they provide, and investigate issues that are raised.

- These reference groups have a dual purpose: (1) to quickly identify emerging student welfare concerns, and (2) to address these through early intervention with providers and/or targeted information sessions on the obligations and responsibilities of providers and students.

- DIMIA officers have a regular schedule of liaison and information visits to institutions. These occur mainly at course commencement time and during orientation week programs. The sessions give newly arrived overseas students information ranging from visa conditions to life in Australia and where students can go to seek support and assistance if circumstances arise that might place them in difficult situations.

- The welfare and care of students is a standing item at all DIMIA meetings with peak education bodies – both at a state and at a national level.

- As part of the student policy communication strategy, DIMIA has improved information on both its website and in its visa approval letters. The website now contains clear information on welfare issues such as the requirements that apply to students who are under the age of 18, student guardian visas, and a section explaining an education provider's responsibilities when approving care arrangements for a student who is under 18 years of age. Information on where students can seek assistance on financial or cultural issues has been incorporated into student visa approval letters.

- DIMIA works closely with communities where issues of specific concern have been identified.

DIMIA will continue to keep these issues under close scrutiny and liaise with DEST on appropriate action and responses where the welfare of students is a concern.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(73) Output 1.3: Enforcement of Immigration Law

Senator Carr asked:

Providers with most student visa cancellations – QON No. 57 Feb 04:

(1) You have provided a list, for 2001-02 and 2002-03, of the top 25 education providers in terms of student visa cancellations.

Have you undertaken a study of any trends or patterns?

(2) A large number of these providers have been universities. Some have had a very large numbers of cancellations.

For example, in 2002-03:

- QUT cancelled 413 visas – that's 18% of its overseas student numbers for that year.
- James Cook Uni – 17%
- Central Qld Uni – 156 (plus 125 Melbourne campus and 125 Sydney campus) or 10%
- Murdoch Uni – 12%

Can you explain the high levels of cancellations?

(3) Other universities had much lower levels, Monash Uni cancelled 6% – 355 students, UNSW – 98 or only 2%.

How do you account for very high proportion in some institution, the lower level in others?

(4) Similar trends are evident in 2001-02.
(a) How do you explain this emerging trend?
(b) Have you discussed this with DEST?
(c) What are the details of those discussions?
(d) What have been the outcomes of those discussions?

BRIDGE BUSINESS COLLEGE

(5) I note that Bridge Business College is listed as cancelling 60 visas in 2001-02. How many did they cancel the following year? What about this year?

(6) Have you heard reports that Bridge recruits students by telling them that they only have to attend one day per week? They refer to this as "flexible" attendance

requirements.

(7) How many visas were issued for Bridge each year for the last 4 years? How many cancellations?

(8) Have you investigated this? What is the outcome of any investigation?

TAYLORS

(9) In 2002-03 Taylors College cancelled 92 visas. Is this of concern?

(10) Have investigations been conducted? Can you supply details?

(11) What proportion does this represent?

(12) Has Taylors come to your attention regarding breaches or other irregularities? Can you supply details?

SYDNEY BUSINESS AND TRAVEL ACADEMY

(13) This college had 105 cancellations in 2002-03.

(a) What proportion is this of the total?

(b) Have investigations been conducted? Can you supply details?

AUST COLLEGE OF TECHNOLOGY

(14) ACT had 84 cancellations in 2001-02. Details?

(15) I understand the college changed hands (To Garratts) that year.
(a) Did the new owners instigate a number of cancellations?
(b) How many?
(c) On what grounds?

REGISTRATION OF EDUCATION AGENTS

(16) What progress has been made on a register of education agents?

(17) When will such a register be up and running?

Answer:

(1) There have been no formal studies although we will keep under review. The main trend has been the rise in student visa cancellations from 3986 in 2000-01 to 7049 in 2001-02. This follows the introduction of mandatory reporting by providers through the Department of Education, Science and Training's (DEST's) PRISMS system. This new student reporting mechanism has allowed departing and defaulting students to be better identified and visa cancellation action taken where

appropriate. Student visa cancellation numbers have levelled out to over 8000 in 2002-03 and 8241 in 2003-04.

(2) Nearly 38% of the total 8241 student visas cancelled in 2003-04 related to students offshore. These routine cancellations mainly occur after a provider reports that a student is no longer enrolled and our records show they have departed Australia. The increase in the total number of student visa cancellations can mostly be attributed to improved reporting by providers of students no longer enrolled and routine follow up action by DIMIA.

(3) Cancellations for Monash University and the University of NSW are mostly onshore cancellations. Better student retention rates may account for lower numbers of early student departures resulting in fewer offshore cancellations.

(4) (a)-(d) The significant rise in student visa cancellations in 2001-02 is consistent with improved provider reporting of student departure and non-compliance. Student visa cancellations have levelled out to around 8000 per year since 2001-02. DEST and DIMIA meet on an ongoing basis to discuss ways of improving provider reporting and student visa compliance and to discuss the outcomes of the new student reporting and visa cancellation regime. DEST and DIMIA have worked closely in implementing mandatory student reporting by providers through the DEST PRISMS system. In consultation with DEST, DIMIA is currently updating reporting guidelines which appear on the DIMIA website. Furthermore, DIMIA is drafting a new section 20 notice to enable education providers to better report student non-compliance with condition 8202.

(5) DIMIA cancelled the visas of 63 Bridge Business College students in 2003-04.

(6) We are aware of such reports and, as with any information DIMIA receives in relation to the conduct of education providers, DIMIA has referred it to DEST for follow up.

(7) Information for student visas granted for individual providers is not readily available.

In 2001-02 the visas of 60 students attending Bridge Business College were cancelled; in 2002-03 76 visas were cancelled while in 2003-04 63 visas were cancelled for the same provider.

(8) DIMIA usually conducts investigations in relation to individual students, while general concerns about a provider's overall performance are investigated by DEST in cooperation with DIMIA. DEST recently conducted a monitoring visit at Bridge and is undertaking follow up compliance and enforcement action.

(9) Yes.

(10) DIMIA investigations showed that Taylors was reporting students with an incorrect reporting code. They were reporting students as code 8 (breaching attendance requirements) when in fact they were simply not re-enrolling with Taylor College. This resulted in a number of inappropriate automatic cancellations.

(11) Information for student visas granted for individual providers is not readily available so the proportion cannot be calculated.

(12) DIMIA enquiries show that Taylors appears to take their reporting responsibilities seriously. DIMIA conducted an information session for staff on 18 February 2004 and covered reporting issues in that presentation. On 12 May 2004 DIMIA addressed approximately 400 Taylors students on student visa issues.

(13) (a) Information for student visas granted for individual providers is not readily available so the proportion cannot be calculated.

(b) DIMIA Compliance is investigating this issue so no comment can be made at this stage.

(14) Of the 84 cancellations, 41 were for breach of condition under s116, 10 were automatic cancellations under 137J and 33 were offshore cancellations under s128.

(15) In 2002-03 the Australian College of Technology, under the ownership of Garratts, had 77 visas cancelled. Of the 77 cancellations, 33 were under s116 of the Migration Act for breach of visa conditions, 18 were cancelled automatically under s137J as a consequence of being reported by the Australian College of Technology for failure to meet course requirements, 25 were offshore cancellations under s128 and 1 was a consequential cancellation under s140.

(16) & (17) The former Minister for Citizenship and Multicultural Affairs, The Hon Gary Hardgrave, and the Minister for Education, Science and Training, The Hon Dr Brendan Nelson, on 26 May 2004, jointly released the discussion paper *Options for Regulating Migration Agents Overseas and the Immigration Related Activities of Education Agents* (http://www.immi.gov.au/general/agent_reg_paper/index.htm) for consultation with key government and industry stakeholders, and the public. The consultation period closed on 9 November 2004.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(74) Output 1.3: Enforcement of Immigration Law

Senator Kirk asked:

(1) Can you advise us of the process the Department undertakes to determine the level of debt a person receives once they are released from immigration detention?

(2) Has there been a change in the last financial year in the assessment of such debts?

(3) Can you advise if people released from immigration detention after a successful 417 application for Ministerial intervention automatically receive a debt for their period in detention?

(4) Are you aware of reports that not every person who is released from detention under 417 receives a detention debt? Can you explain this inconsistency?

(5) In the case of 417 releases, does the Minister (or her office) or the Department determine the recovery of the detention debt?

Answer:

(1) A person's detention debt is determined in accordance with the relevant provisions of the *Migration Act 1958*, particularly sections 207-209. In summary:

- A daily maintenance amount for each place of immigration detention is determined from time to time, which is to be no more than the day-to-day cost of detaining a person at that place.

- A person held in immigration detention is liable to pay that daily maintenance amount multiplied the number of days they are held in that place of detention. In addition, they are liable for the costs of transporting them to and between places of immigration detention and the costs of removing or deporting them.

If a detainee is granted a Temporary or Permanent Protection visa or a Humanitarian visa then their debt is not pursued and the invoicing process suspended. This process also applies to those detainees who accept a reintegration package to return to their homeland.

(2) No. The method used to calculate detention debts has not changed in the last financial year. However, daily maintenance amounts are re-calculated from time to time and other costs, such as transport costs, will vary from case to case.

(3) Every unlawful non-citizen who is detained incurs a detention debt. However, consistent with answer (1), if the person is granted a Protection or Humanitarian visa by Ministerial Intervention or otherwise, the debt is not pursued.

In some cases, the Minister may specifically request that a person satisfies a criterion that “the applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment” before a visa is granted under section 417 intervention.

(4) See answers (1) and (3) above.

(5) See answer (3) above.