

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(151) Output 1.3: Enforcement of Immigration Law

Senator Faulkner (L&C 83) asked

Can someone indicate to the committee whether when Mr Palmer recommended Mr Comrie to undertake the balance of these important duties, Mr Palmer indicated either a current or previous business association with Mr Comrie?

Answer:

On the basis of information held by the Department, Mr Palmer did not provide written advice on any current or previous business association with Mr Comrie.

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BUDGET ESTIMATES HEARING: 26 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(152) Output 1.3: Enforcement of Immigration Law

Senator Nettle (L&C 86) asked:

In relation to the legal advice that was sought about Red One, was any advice sought about whether the facility and the conditions amounted to punishment?

Answer:

Yes. Advice was sought from the Department's Special Counsel on this matter in March 2005. He confirmed that the current use of the Baxter IDF Red One compound is lawful, and that detainees may be placed in the Management Support Unit (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.

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BUDGET ESTIMATES HEARING: 26 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(153) Output 1.3: Enforcement of Immigration Law

Senator Nettle (L&C 91 and in writing) asked:

I understand that there is an immigration detention standard which says:

Staff do not carry or use firearms. For riot control or other security incidents, detention officers appropriately trained and authorised are permitted to use emergency response equipment.

(a) Could you explain what emergency response equipment is permitted to be used by employees of GSL in immigration detention centres (such as batons; chemical agents; water cannon)?

(b) What is the approval process for the use of the emergency response equipment?

(c) Is the Department informed of its use?

(d) In how many instances was the emergency response equipment used in immigration detention centres since the commencement of the contract with GSL (August 2003)?

Answer:

The Immigration Detention Standard (IDS) to which the Senator refers is IDS 6.4.8. The IDS are set out in Schedule 3 of the Detention Services Contract (DSC), which is available on DIMIA's website.

(a) As noted in IDS 6.4.8, GSL officers are prohibited from carrying or using firearms. Under Operational Procedures, other emergency response equipment may be used in certain circumstances. GSL uses batons and shields in this capacity. The main criteria for the use of such equipment are as follows:

- The officer using the equipment must be fully trained and certified in the use of the equipment, and must also meet any and all State or Territory licensing or certification requirements.
- Force and restraints may **only** be used as a last resort and **only** for the purpose of maintaining the order and security of the Immigration Detention Facility (IDF).

- Force may **never** be used as a form of punishment.
- Force may be used in the following circumstances:
 - Preventing escape.
 - Preventing a detainee injuring themselves or others.
 - Preventing a detainee inflicting large-scale damage to property.
 - Enforcing an order given by a GSL or DIMIA officer given for the purpose of maintaining order and security, and where the detainee has been given every opportunity to comply with the order and force is the only means to ensure the order is complied with.
 - It is the only means of restoring good order and ensuring the safety of staff and detainees, or preventing wholesale disorder or the destruction of property.

(b) Officers are not permitted to wear or carry items such as batons, handcuffs or shields unless the carrying of such items has been specifically authorised by on-site GSL management as a response to a particular situation.

Emergency Response equipment may only be used with the authority of the facility General Managers or their delegates. It is appropriate to leave such decisions with GSL because they are the entity contracted to supply the day-to-day management of the IDF, as well as provide physical security and ensure the good order of the IDF.

(c) The DSC requires GSL to inform DIMIA of any use of force against detainees. GSL's reporting obligations are set out in Schedule 3 of the DSC, which is available on DIMIA's website.

(d) Emergency response equipment includes many items, as discussed above. At Maribyrnong, Perth, Villawood and Christmas Island detention facilities, there has been no instance of "full kit" (that is, use of batons, shields and handcuffs) emergency response equipment being used with detainees. At Baxter IDF, full kit has been used twice and batons were drawn on one of those occasions.

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(154) Output 1.3: Enforcement of Immigration Law

Senator Bartlett (L&C 99) asked:

Provide an update on the Bakhtiyari family's situation.

Answer:

The Department is not monitoring the Bakhtiari family's situation. The Australian Government respects the principles of state sovereignty and does not monitor citizens of other countries in their homeland. Australia is not responsible for the future wellbeing of people in their homeland because at some stage they spent time in Australia.

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(155) Output 1.3: Enforcement of Immigration Law

Senator Bartlett (L&C 101) asked:

In relation to the ACM guard who was found guilty of assaulting a detainee, given that that is a fairly serious matter, was there any action on the part of the department towards the then service provider or anybody else in relation to the incident?

Answer:

The Department makes a formal quarterly assessment on the Detention Services Provider's (DSP's) compliance with the Immigration Detention Standards (IDS), which are the contractual obligation benchmarks for service delivery, and sanctions can be applied where standards are not met.

In relation to the incident referred to above, sanctions were applied.

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(156) Output 1.3: Enforcement of Immigration Law

Senator Kirk (L&C 108) asked:

In relation to compliance activities, provide a copy of the guidelines about approaching schools.

Answer:

Please refer to Question on Notice 208.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(157) Output 1.3: Enforcement of Immigration Law

Senator Kirk (L&C 109) asked:

How many children have been born in detention centres in the last 4 years?

Answer:

As at 21 June 2005, 41 children had been born since 1 July 2001 to parents that were detained in immigration detention. All of these were born in hospitals, none have been born in Immigration Detention Facilities.

Source: DCC Births data sheet as at 23 June 2005

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(158) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

In relation to section 501(2) of the *Migration Act 1958* (the Act);

1. How many persons have been issued with notices stating that the Minister intends to cancel their visa under section 501(2) of the Act?
2. Of the notices issued under section 501(2) of the Act, how many were in relation to permanent residence visas and how many were in relation to temporary residence visas?
3. How many visas were cancelled under section 501(2) of the Act?
4. Of the visas cancelled how many were permanent residence visas and how many were temporary residence visas?
5. Of the permanent resident visas cancelled under section 501(2) of the Act how many of those decisions were made by the Minister personally and how many were made by a delegate of the Minister?
6. Of the temporary resident visas cancelled under section 501(2) of the Act how many of those decisions were made by the Minister personally and how many were made by a delegate of the Minister?
7. Of the decisions made not to cancel a permanent resident visa after the issue of a notice of intention to do so, how many of those decisions were made by the Minister personally and how many by a delegate of the Minister?
8. Of the decisions made not to cancel a temporary resident visa after the issue of a notice of intention to do so how many of those decisions were made by the Minister personally and how many by a delegate of the Minister?
9. Under what circumstances is a case in which a notice of intention to cancel a visa has been issued under section 501(2) of the Act presented to the Minister to personally make a decision as to whether or not a non-citizen's visa should be cancelled?

Answer:

1. For the period 1 July 2004 to 20 June 2005, 570 notices were issued.

2. Data available does not differentiate between permanent and temporary visas cancelled under section 501(2). However, most cases considered for cancellation under section 501(2) are Permanent Residents who have incurred criminal records.

3. In the period 1 July 2004 to 20 June 2005, 146 visas were cancelled under section 501(2) of the Act.

4. Refer 2 above.

5. In the period 1 July 2004 to 20 June 2005, the Minister personally cancelled 12 visas and delegates of the Minister cancelled 134 visas under section 501(2) of the Act,

6. Refer 2 above.

7. In the period 1 July 2004 to 20 June 2005, after review of the individual cases, the Minister personally decided not to cancel two visas, and delegates of the Minister opted not to cancel 367 visas.

8. Refer 2 above.

9. The Minister has directed that she will be the section 501(2) decision-maker for cases involving matters of national security and/or high-level criminal activity including drug trafficking and organised crime. Many of these cases contain sensitive information protected under s.503A of the Act.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(159) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

In relation to section 501(3);

1. How many permanent resident visas have been cancelled by the Minister personally under section 501(3)(b) of the Act?
2. How many temporary resident visas have been cancelled by the Minister personally under section 501(3)(b) of the Act?

Answer:

- 1.-2. For 2004-05, the Minister has personally cancelled only one temporary resident visa under section 501(3)(b) of the Act.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(160) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

1. Please provide data on the number of detainees who have been placed in 'management units' in immigration detention centres in 2002, 2003 and 2004.
2. Please provide data on the total number of detainee days spent by detainees in management units for the years 2002, 2003 and 2004.
3. What is the longest time that any detainee has spent in a management unit?
4. The Baxter detention centre has a 'Management Unit Review Team' (MURT) which decides if and when a detainee should be moved in or out of the Management Unit.
 - (a) How long has the MURT been in place at Baxter?
 - (b) Is there also a MURT at Villawood IDC?
 - (c) If so, how long has it been in place?
5. Is there an upper limit on the length of time a detainee can be placed in a management unit?
6. Is there a mandatory review of decisions to place a detainee in a management unit?
7. When exactly was the Red 1 compound in Baxter re-opened? Why has it been re-opened? Has anyone been put into Red 1? If so, what for?

Answer:

1.-2. Not all the information requested is readily available, but the Department can advise the following:

Management Support Units operate in the Baxter Immigration Detention Facility (IDF) and Villawood Immigration Detention Centre (IDC).

Baxter IDF was commissioned in July 2002 and the first detainees were accommodated there on 6 September 2002.

During 2002, the Baxter Management Support Unit (MSU) was utilised on 23 occasions with the average period of stay being 2.73 days.

During 2003, the MSU was utilised on 163 occasions with the average period of stay being 5.88 days.

During 2004, the MSU was utilised on 87 occasions with the average period of stay being 3.04 days. For the 87 occasions the MSU was utilised during 2004, 62 individuals were transferred there.

Of the 62 individuals:

46 individuals were transferred on one occasion;
10 individuals were transferred there on two occasions;
four individuals were transferred there on three occasions;
one individual was transferred there on four occasions; and
one individual was transferred there on five occasions.

The Department does not have information from this period readily available for Villawood IDC and to collate this would involve a manual examination of many departmental files, which would be an unreasonable diversion of departmental resources.

3. The longest period of stay within the Baxter MSU was 59 days, which occurred in 2003. It should be noted that for a significant proportion of this period the individual concerned refused to leave the management support unit of his own volition and had an open door policy, which included no restrictions on his visits and attendance at centre activities.

4. (a) ACM conducted MURT meetings prior to the transition to GSL on 19 January 2004. They were similar to those adopted by GSL and met each day that the Management Support Unit (MSU) was being utilised. Placement of a detainee in the MSU was reviewed daily.

GSL conducted its first MURT meeting at Baxter on 20 January 2004 after taking over the facility on 19 January 2004. MURT meetings under GSL are always conducted each day that the MSU or Red 1 are being utilised.

(b) At Villawood IDC, there is not a group referred to as MURT. However, there are two Case Management Teams at Villawood IDC, one for adults (Special Needs Care Team) and one for families and children (Child Care Protection Group). The two teams include:

The Operations Manager
The Programs Manager
The DIMIA Manager
A medical representative
A specialist advisor (e.g. mental health professional)
A welfare officer.

(c) The Child Care Protection Group (CCPG) first met on 12 May 2004. At the end of its meetings, the CCPG also discussed adults in the MSU. On 26 May 2005 a separate team, known as the Special Needs Care Team (SNCT) and with the same members as the CCPG, was formed to manage the cases of adults and special

needs detainees.

5. There is no upper limit on the length of time a detainee can be placed in an MSU. However, it remains an underlying principle of more restrictive places of detention that transfers to the MSU will only occur when there is no viable alternative to ensure the good order of the facility and the safety of those within it, including the detainee being transferred.

The emphasis during placement in an MSU is on the detainee's return to general accommodation as soon as circumstances allow.

Detainees have full access to visits by, and phone calls to, departmental, legal, consular, religious and Australian Red Cross representatives. They also have access to public scrutiny bodies, such as the Commonwealth Ombudsman and HREOC.

6. The decision to place a detainee in an MSU requires the initial approval of the General Manager of the IDF, except in emergency situations. If a transfer to an MSU is made without approval of the General Manager, this must be sought as a matter of priority after the transfer. In all cases, the decision to transfer must also be subsequently endorsed by senior, central office GSL management. The DIMIA Manager at the centre is also consulted prior to transfer where possible.

7. Red 1 has never "closed" and has always been available to meet operational needs. Red 1 was first used on 21 April 2004 when 9 detainees were relocated to this compound. It is not occupied on a continuous basis but as needs arise. As at 21 June 2005 Red 1 is not occupied.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(161) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

Can the department tell me how many detainees have voluntarily asked to be returned to their home countries and are still in detention? How long have they been detained?

Answer.

Compiled statistics are not readily available and to collate this would involve a manual examination of individual files, which is an unreasonable diversion of departmental resources.

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(162) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

How many overstayers are currently in detention centres around Australia? Please give a breakdown of:

- a. Nationality.
- b. Gender.
- c. Age.
- d. Duration they have been in Australia.
- e. Duration they have been detained.

Answer:

As at 27 May there were 490 overstayers in immigration detention facilities, excluding alternative facilities.

- a. The Top 10 Nationalities of overstayers, as at 27 May 2005, were as follows:

Citizenship	No of Detainees
Chinese	182
Indonesian	36
Korean	25
Malaysian	25
Indian	22
Tongan	21
Fijian	16
Vietnamese	16
Bangladeshi	13
Thai	13
Other	121
Total	490

- b. Approximately 77% of overstayers detained as at 27 May 2005 were male and approximately 23% were female.

- c. The age breakdown of the overstay detainee population by percentage, as at 27 May 2005, was as follows:

Age	Percentage
1-17	5%
18-29	17%
30-39	32%
40-49	30%
50-59	11%
60 +	4%

d. The Department does not have this information readily available and to collate this would involve a manual examination of each individual detainee's record, which would be an unreasonable diversion of departmental resources.

e. The time spent in detention by overstayers, as at 27 May 2005, was as follows:

Length of detention	Percentage
1 month or less	36%
1-2 months	9%
2-3 months	10%
3-6 months	13%
6-12 months	14%
12-24 months	12%
2 years or more	6%

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(163) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

Could the Minister provide information on how many asylum seekers by state on release from detention on mental health grounds are receiving money for living costs?

- a. How many are receiving money for medical expenses and in what states?
- b. Why are some detainees released on BVEs on mental health grounds denied such support?

Answer:

As at 22 June 2005, there are 24 persons (including 4 families) currently on Bridging E Visa (subclass 051) under regulation 2.20(9)(c). All of these people have lodged and had their Protection Visa application finally determined by the relevant merits review tribunal. Regulation 2.20(9) refers to persons with specific needs that are unable to be met within the immigration detention environment. Of these 24 persons:

- 7 persons reside in South Australia;
- 10 persons reside in Western Australia; and
- 7 persons in New South Wales

When considering releasing a person from immigration detention, the Minister has to be satisfied that adequate arrangements have been made for the person's support in the community. The Department recognises that the cost of such an arrangement may be significant and community organisations may find it difficult to meet all of the associated costs. As such requests to meet costs associated with the ongoing care arrangement for persons released on a Bridging E Visa (subclass 051) are considered on a case-by-case basis in partnership with established Non Government Organisations (NGO).

There is no formal scheme for provision of support and the circumstances of each placement are considered. The Department will consider contributing towards these costs, by providing the NGO, a weekly living allowance and reimbursement for some medical and health costs. As at 22 June 2005, the Department contributes towards the costs associated with the ongoing care arrangements for 2 people (1 family) and have contributed to medical costs for a further family of 5. These families are in New South Wales and Western Australia. The Department is willing to discuss cost issues with relevant organisations for cases involving people on Bridging E Visa (subclass 051).

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(164) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

1. What is the agreed amount that is paid between the Commonwealth and the state mental health system for Baxter detainees transferred to mental health facilities?
2. What contractual implications are there for GSL when a detainee is transferred to
 - a. any hospital
 - b. a mental health facility?
3. What specific medications, in what quantities have been dispensed to how many detainees each year at each detention centre?
4. What is the cost of medication for depression etc dispensed each year in each detention centre?
5. Is the cost per detainee rising?

Answer:

1. Mental health services, including meeting requirements of the Children's Protection and other Acts, are provided by the South Australian Department of Health on a fee for service basis on request.
2. (a) & (b) There are no contractual implications.
3. The Department does not have this information readily available and to collate this information would involve a manual examination of individual files, which is an unreasonable diversion of departmental resources.
4. The Commonwealth has a contract for the provision of all detention services within detention facilities. This contract includes all of the services required for the daily care of detainees including mental health. The payment for these contracted services is made on an outcomes approach as a fixed fee and as such does not identify the cost of any one component of the services provided.
5. Refer to 4 above.

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(165) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

How much has DIMIA paid out in compensation for out of court settlements over the last 10 years? Has DIMIA ever received legal advice on how much compensation it would have to pay out if it is found that they've breach their duty of care? How much have they been for? Where is the money paid out of?

Answer:

According to our records since 1995 DIMIA has paid out \$318,075 in compensation for out of court settlements related to unlawful detention.

The Department's practice is to obtain legal advice on liability and quantum in all claims for compensation. Legal advice on quantum is commonly provided as a range of potential damages that could be awarded by a court in the event of a court finding liability. Settlement negotiations are guided by that range and involve consultation with and approval from DIMIA's insurers.

Comcover commenced insuring the Commonwealth in July 1998. It was phased in across the various departments. DIMIA commenced on 9 November 1998. Prior to Comcover all departments, including DIMIA, were self insured.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(166) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

1. Do long-term detainees who apply for a Subclass 070 Bridging (Removal Pending) Visa: (a) have access to legal and/or migration advice after receiving that offer; (b) who provides that advice; and (c) how is that advice funded?
2. To date how many long-term detainees:
(a) have been invited to apply to date?
(b) are expected to be invited to apply at a future date?
3. What is the country of origin of those long-term detainees invited to apply to date?
4. How many long-term detainees remain in immigration detention?
5. What is the Government's intention with respect to those long-term detainees who: (a) refuse the Government's invitation to apply for a Bridging (Removal Pending) Visa; or (b) the Government fails to invite to apply for a Bridging (Removal Pending) Visa?
6. If any long-term detainee has been granted a Bridging (Removal Pending) Visa experiences changes in their circumstances (either of a personal nature or in their country of origin), can that long-term detainee choose to forego the benefits of the Bridging (Removal Pending) Visa and return to detention to initiate a fresh application for either:
(a) further protection visa; or
(b) any mainstream migration visa
7. What is the Government's intention with respect to those long-term detainees currently detained on Nauru?

Answer:

1. (a) Detainees are encouraged to seek advice from their lawyer or agent after being invited to apply for a Bridging (Removal Pending) Visa (RPBV). Once granted a RPBV, the holder is not restricted from obtaining legal or migration agent advice.

(b)-(c) Detainees, if they wish, are able to make their own arrangements to obtain the services of a lawyer or migration agent.
2. (a) As at 27 July 2005, 58 persons had been invited to apply for a RPBV.

(b) The Department continues to review the detainee caseload for cases suitable for referral to the Minister. The Department anticipates that further invitations will be made in the future, but the number will depend on the circumstances of each case. Also, the Minister may choose to use her non-compellable, non-delegable power under section 195A of the *Migration Act 1958* rather than invite people to apply.

3. The 58 RPBV invitees are from Cuba, India, Iran, Iraq, Pakistan, the Palestinian Authority, Sudan and Yemen.

4. As at 27 July 2005, there were 142 persons in immigration detention who have been detained longer than two years.

5. (a) The RPBV has been developed as an option for longer term detainees whose removal is not reasonably practicable at this time. If a detainee declines the Minister's invitation then other visa or detention options may be considered.

(b) Detention continues to be appropriate for such cases.

6. It is open to a RPBV holder to bring new information to the attention of the Minister without returning to detention. For example, a further Protection Visa application could be made after the exercise of the Minister's power under Section 48B of the *Migration Act*.

7. Persons in the Offshore Processing Facility in Nauru are neither in Australia nor in 'immigration detention' for the purpose of the Migration Act and as such cannot be eligible for a RPBV.

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(167) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

1. How many international students are currently detained at Maribyrnong Detention Centre and at other detention centres across Australia?
2. What part of their visas did they breach?
3. What is the duration they have been in detention?
4. Give a breakdown of nationality.

Answer:

1. As at 27 May 2005, by facility, the following number of former student visa holders was detained.

Place of Detention	Number of students
Villawood IDC	25
Baxter IDF	4
Maribyrnong IDC	3
Perth	1
Total	33

2. They were detained in immigration detention for the following reasons.

Reason for Detention	Number of students
Overstayer	26
Attendance Breach	3
Other Breach	3
Work Breach	1
Total	33

3. Length of stay of students in immigration detention across Australia as at 27 May 2005.

Length of detention	Number of students
1 month or less	17
1- 3 months	7
3 – 6 months	5
6 -12 months	2
12+ months	2
Total	33

4. Nationality of students in immigration detention across Australia as at 27 May 2005.

Nationality	Number of students
China, Peoples Republic of	14
Vietnam	5
India	3
HKSAR of the PRC	2
Malaysia	2
Bangladesh	1
Indonesia	1
Jordan	1
Mozambique	1
Nepal	1
Philippines	1
Unknown	1
Total	33

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(168) Output 1.3: Enforcement of Immigration Law

Senator Crossin asked:

1. Please outline what is AFMA's role or what is intended to be AFMA's role regarding the Darwin Detention Centre?
2. What costs are associated in terms of new entrance and/or road works that are required to facilitate the excising of the Darwin Detention Centre to allow the sale of defence land at Defence Establishment Berrimah?
3. What has delayed the commissioning or use of the Darwin Detention Centre?
4. Given recent deaths and injuries is there a review of the handling of AFMA's management of illegal fishing crews detained on their boats in Darwin Harbour?
5. Please outline the relationship DIMIA will have with AFMA in operating the Darwin Detention Centre?
6. What has the Darwin Detention Centre cost to establish and run with a breakdown of capital costs and other ongoing costs on a year by year basis for the last three years?
7. How many people have been detained there and for how long on average?
8. Budget Paper No 2 page 11 provides a funding allocation of \$77.9 million over five years.
 - (a) Can you provide a breakdown of what this money will be used for?
 - (b) How much of this will be allocated for the Darwin Detention Centre?
 - (c) What is meant by a joint fisheries/migration detention facility?
 - (d) Will this money be used to build a kitchen/s at the Detention Centre?
 - (e) If so how many and what is the cost?
 - (f) Why are there not kitchens already provided in this facility?
 - (g) There had been claims that this facility had to be ready at any stage to detain asylum seekers, how could these people have been detained in the Darwin Centre if there were no kitchens already available?
9. What is the cost to DIMIA of the contract with AFMA regarding the detention of illegal fishers? When is this contract due to be renewed?

Answer.

1. The response to this question is provided in the context of illegal foreign fishers apprehended in Australia's northern waters and DIMIA's proposed upgrade of

the northern compound of the Darwin Detention Facility, as agreed by Government, and proposed legislative amendments to support the operation of a joint fisheries/immigration detention facility.

All illegal foreign fishers, no matter their nationality, who are apprehended for alleged breaches of the *Fisheries Management Act 1991* (FMA) are held in fisheries detention on an enforcement visa. An enforcement visa is granted by operation of law to a non-citizen detained in 'fisheries detention' under the FMA. Fisheries detention may last for a maximum of 168 hours or seven days (refer paragraph 84A(1)(ia) of the FMA).

Upon the expiration of fisheries detention, the enforcement visa automatically ceases (refer subsection 164C(1) of the *Migration Act 1958* (the Migration Act)) and the person becomes an unlawful non-citizen and must be detained under section 189 of the Migration Act.

From the perspective of the person detained, there is a seamless transition from fisheries detention to immigration detention.

All illegal foreign fishers, no matter their nationality, who are apprehended for alleged breaches of the *Torres Strait Fisheries Act 1984* (TSFA) are held in immigration detention from the time of their apprehension prior to their removal from Australia as unlawful non-citizens.

Amendments to the FMA, the TSFA and the Migration Act are currently before the Parliament (the *Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005* (BPLA)) to regularise this framework, including creating an enforcement visa regime for foreign fishers apprehended under the TSFA and provisions to enable holders of an enforcement visa – who are, therefore, lawful non-citizens in fisheries detention – to be detained in a joint fisheries/immigration detention facility, e.g. the proposed Darwin Detention Facility (DDF).

The DDF will be managed by the Department through a contracted detention services provider.

If proposed legislative amendments in the BPLA to enable the DDF to operate as a joint fisheries/immigration detention facility are enacted, AFMA and the Department will administer functions relevant to each agency's responsibilities.

In addition, because there will be a seamless operational transition between fisheries and immigration detention, a single detention services provider will deliver detention services under contractual arrangements and according to the *Immigration Detention Standards* to both fisheries and immigration detainees.

2. This question is best referred to the Department of Defence.

3. As estimated capital costs to utilise the DDF as an ongoing operational facility exceed \$6 million, the project is required to be referred to the Parliamentary Standing Committee on Public Works (the Committee).

As part of the referral processes, the Department made a submission to the Committee on 26 May 2005. The Committee held a public hearing in Darwin on 18 July 2005.

4. This question is best referred to AFMA.
5. Refer to Question 1 above.
6. The Darwin immigration contingency facility at HMAS Coonawarra (now known as the Darwin Detention Facility at Defence Establishment Berrimah) was established in 2001-02 at a cost of \$7.4 million. A breakdown of this amount is as follows:

2001-02	Supply, transport, construction and fit-out of demountable units	\$4.5m
	Perimeter security (site preparation, fence, lights)	\$1.2m
	Site works including services upgrade, minor civil works and drainage	\$1.0m
	Electrical, data and minor establishment works	\$0.4m
	Design and construction management fees	\$0.2m
	Recreation and landscaping	\$0.1m

The following costs cover maintenance of the Darwin immigration contingency facility since its establishment.

2002-03	Maintenance and additional works	\$0.19m
2003-04	Maintenance	\$0.065m
2004-05	Maintenance	\$0.1m

7. The Darwin immigration contingency facility has not operated as an immigration detention facility to date.
8. (a) The Department's portion of the \$77.9 million funding provided over five years is \$45.5 million. This funding will be used to upgrade the DDF to enhance the amenity and improve the security of the facility, and to operate it under contract with the detention services provider. It will also be used to provide for detainee medical expenses, the transfer and removal of detainees by commercial or charter flight, and staff and administrative costs related to the rapid repatriation of detainees.

The final costs for the upgrade proposal will not be known until after it has been through the referral processes of the Parliamentary Standing Committee on Public Works and contracts have been entered into for the works being proposed. Contract arrangements between the Department and the detention services provider will be agreed at that time.

The remaining \$32.5 million has been allocated to the Department of Agriculture, Fisheries and Forestry (DAFF). Any information regarding the details of this funding is best sought from DAFF.

- (b) The estimated cost of the operational upgrade of the DDF is \$8.215 million (exclusive of GST).
- (c) A holder of an enforcement visa is a lawful non-citizen and, under current legislation, cannot lawfully be held in an immigration detention facility.

A joint fisheries/immigration detention facility is a facility where persons in fisheries detention who are holders of an enforcement visa – and, therefore, lawful non-citizens – can be accommodated in an immigration detention facility together with persons who are in immigration detention and who are unlawful non-citizens. (Refer to Question 1 above.)

(d) The funding allocation for the upgrade of the DDF includes funding for a kitchen.

(e) The upgrade project for the DDF includes one kitchen. The cost has not yet been established because the Department is unable to approach the market until the upgrade proposal has been through the referral process of the Parliamentary Standing Committee on Public Works.

(f) The original intent in establishing the facility was as an immigration contingency facility for the reception and short-term accommodation of unauthorised boat arrivals. As part of the contingency arrangements, meals were to be out-sourced and brought in to the facility as required.

(g) As advised above in 8(f), meals were to be out-sourced and brought in to the facility as required.

9. The Department does not have a contract with AFMA for the detention of illegal foreign fishers.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(169) Output 1.3: Enforcement of Immigration Law

Senator Carr asked:

DIMIA QoN 73 of May 2004

What are DIMIA's policies regarding the detention of international students for visa breaches?

Answer:

DIMIA does not have distinct policies regarding the detention of international students. Student visa holders who breach their visa conditions or overstay their visas are managed, from a detention perspective, in the same way as other non-citizens. Most locations of over stayers or persons who have breached their visa conditions result in the grant of a Bridging visa that allows the holder to remain in the community pending their departure from Australia, consideration of substantive visa application or to allow completion of merits or judicial review.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(170) Output 1.3: Enforcement of Immigration Law

Senator Carr asked:

1. Can you provide details of raids carried out by DIMIA jointly with the Victorian Police on a series of illegal brothels in Brunswick, Melbourne in early March?
2. Can you confirm newspaper reports, quoting an unnamed DIMIA officer, that some of the workers found at those premises were holders of student visas?
3. Can you inform the Committee which education provider or providers these students held visas for?
4. Where student visa holders are apprehended working illegally does DIMIA inform DEST of the circumstances, the names of the students and their education providers?
5. Wouldn't this facilitate the investigation of those providers by DEST to find out whether they might be in breach of the ESOS Act?
6. Can you detail for the Committee the extent and nature of your cooperation with (1) DEST and (2) state/territory authorities in this area?

Answer:

1. In early March 2005 DIMIA participated in two joint operations with Victorian Police targeting illegal brothels in Brunswick, Melbourne. These operations were lead by the Victorian Police who executed 3E Crimes Act 1914 warrants.
2. Yes. During the execution of 3E Crimes Act 1914 warrants on illegal brothels, four student visa holders were encountered working.
3. The students encountered working attended the Victorian University of Technology, the Royal Melbourne Institute of Technology and the Cambridge International College.
4. & 5. Cancellation of a student visa on DIMIA systems flows through to DEST's Provider Registration and International Students Management System (PRISMS). The PRISM system contains details of overseas students including their names, education provider and course details. The cancellation notification updates the student's visa status and enrolments on PRISMS causing the student's certificate of enrolment to be cancelled.

Although details of students located working illegally and the circumstances involved are not automatically passed to DEST, information is regularly exchanged between DEST and DIMIA to facilitate the monitoring of providers that might be in breach of the ESOS Act.

6. DIMIA and DEST are parties to a Memorandum of Understanding (MoU) developed in recognition of the Government's intention to strengthen Australia's engagement in international education and training. Under the MoU DIMIA, DEST and other stakeholder agencies have identified and agreed roles and responsibilities, shared priorities and co-operative arrangements.

DIMIA Central Office staff attend regular inter-departmental meetings to discuss and progress issues relating to international education. Our State offices also conduct regular meetings with DEST and State authorities and undertake joint educational and monitoring visits to providers. Where DIMIA obtains evidence to suggest that an education provider is not or has not complied with the requirements of the ESOS Act or the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (The National Code), that information is referred to DEST and/or the State authority for investigation.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(171) Output 1.3: Enforcement of Immigration Law

Senator Bartlett asked:

1. The Villawood detention centre figure of 26 kids. Sources have informed me that there are 27 (not 26) kids aged 2 months to 16. Can this please be verified?
2. Other places of detention figure of 6 kids. Our sources have counted 7 = 4 Vietnamese kids in motel/house + 2 Palestinian kids in house + newborn Vietnamese baby that I think they have forgotten, who was in hospital but now in house (not yet on a visa = still in detention, and certainly as at 1 June). Can this please be verified?
3. There are reports of 2 others kids in Baxter who are Russian? Can this please be verified?

Answer:

As at 3 August 2005, there are no children in immigration detention facilities.

There were 41 children (comprised of 19 families) in immigration detention in the community under residence determination arrangements. Of these:

- 27 children (13 families) are residing in residence determination arrangements in New South Wales;
- 7 children (2 families) are residing in residence determination arrangements in South Australia;
- 2 children (1 family) are residing in residence determination arrangements in Western Australia; and
- 5 children (3 families) are residing in residence determination arrangements in Victoria.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(172) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. Is the Department aware of any entrants to Australia who are persons of interest in relation to war crimes in the Former Yugoslavia, including Bosnia, Croatia, Macedonia, Slovenia, Serbia, Montenegro, FYRO Macedonia and the autonomous Kosovo regions?
2. Is the Department aware of any deportees from Australia who are persons of interest in relation to war crimes in the Former Yugoslavia, including Bosnia, Croatia, Macedonia, Slovenia, Serbia, Montenegro, FYRO Macedonia and the autonomous Kosovo regions?

Answer:

1. There are currently 8 entrants to Australia who are persons of interest in relation to war crimes in the Former Yugoslavia. There are 5 Croatian nationals and one Bosnian national who are subject to Interpol Notices and investigations into these cases are ongoing. A Serbian national has had their visa cancelled under s 109 of the Migration Act 1958 (this person currently holds a bridging visa). The remaining Bosnian national has applied for Australian citizenship and will now be assessed as a person of interest in relation to war crimes to determine whether citizenship will be granted (screening procedures were not in place at the time of their arrival).

Cases such as these can come to the attention of the Department in various ways including Interpol and other policing agencies as well as the International Crimes Tribunal for the Former Yugoslavia (ICTY) or at the time a person lodges an application for a visa or Australian citizenship. A person can become the subject of an assessment by the Department at any point during their dealings with the Department. The grant of a visa does not preclude an applicant being further investigated should adverse information come to light regarding their past or present conduct. The thorough assessment of an applicant's claims and counter-claims may take some time and a decision to cancel a visa is made when the Department is certain that reasonable grounds for such action exist.

2. No.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(173) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. What was DIMIA's advice when it was consulted about whether to appear before the Ruhani case?
2. What format was the advice provided in?
3. What was the form of the consultation?
4. On what date was the advice sought?
5. On what date was the advice provided?

Answer:

1. DIMIA expressed concerns about intervening in support of the Nauru (High Court Appeals) Act 1976.
2. DIMIA officials attended a meeting with officials from other Commonwealth agencies and expressed DIMIA's views to those officials. DIMIA subsequently provided comments to the Attorney-General's Department in respect of a submission to the Attorney-General on the issue.
3. See our answer to 2.
4. The meeting took place on 22 September 2004.
5. The meeting took place on 22 September 2004, and DIMIA's comments on the draft Submission were provided on 29 September 2004.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(174) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. How many matters of trafficking have been referred to the AFP that have resulted from detections from compliance staff at Immigration Detention Centres?
2. How many compliance staff are trained to detect signs of trafficking?
 - (a) Who provides the training? Is it PSS or IHMS?
 - (b) Where are the compliance staff located? Which detention centres?
 - (c) Are they at the centre on a day-by-day basis, or do they only attend the centre on certain occasions? How often do compliance staff see detainees?
 - (d) What are the signs of trafficking that compliance staff are trained to detect?
 - (e) What is the reporting procedure after a compliance staff member has detected some signs of trafficking?

Answer:

- 1) Between 1999 and 16 June 2005, 159 people have been referred to the AFP where DIMIA has identified an indicator of trafficking. A small number of cases have been detected within detention centres but they cannot be readily quantified.
- 2) People Trafficking General Awareness training has been delivered to over 370 DIMIA and law enforcement officers nationally. The training focuses on a range of topics, including the trafficking phenomenon, economic, social and cultural factors, identification of trafficking indicators, referral procedures and the trafficking visa arrangements.
 - a) The training has generally been provided by staff from DIMIA Central Office.
 - b) Compliance staff are located in DIMIA offices in each State and Territory. In NSW, Compliance staff are also located at the Villawood Immigration Detention Centre to enable easier access by detainees to their case officers.

- c) DIMIA staff, who are not compliance officers, are located at each Immigration Detention Facility to manage the day-to-day running of the facility, including overseeing on-site contract compliance and monitoring of detention services provider performance. Some of these officers undertake case management roles. Compliance staff will also visit detention facilities, for example, to conduct post location interviews.
- d) Compliance staff are trained to identify a range of indicators of trafficking relating to coercion, deception, exploitation. This includes physical signs that would restrict movement like locks on doors, or a person not being in possession of their passport. For operational reasons, details are not provided.
- e) Where DIMIA identifies any indicator of trafficking the person or information is referred to the AFP for assessment. DIMIA has a very low threshold for referral, and the AFP response is rapid. These procedures are well established. The system is premised on existing strong inter-agency cooperation. Central Office is advised of all referrals to the AFP.

Following referral DIMIA then stands ready to issue a Bridging F Visa if so requested by law enforcement agencies. The Bridging F Visa allows up to 30 days for law enforcement agencies to assess whether or not a person is able to assist in an investigation or prosecution of a people trafficking matter.

If the relevant law enforcement agency issues a Criminal Justice Stay Certificate, a Criminal Justice Visa would normally be granted.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(175) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

- (1) How many foreign crew went missing from their vessels in the last ten years?
- (2) How many were apprehended?
- (3) How many remain at large?
- (4) What is the reporting procedure when a crew deserts a vessel?
 - (a) What mechanisms are in place to ensure that these procedures are adhered to?
 - (b) What penalties are in place for non-reporting of these incidents?
 - (c) How many times have these penalties been imposed, and against whom?
- (5) When did these mechanisms come into place?
- (6) From which ports did they go missing?

Answer:

- (1) The following table identifies the number of crew deserters between 1999 and 2005. DIMIA has recorded this information electronically since 1999-00. Data recorded prior to 1999-00 is not able to be readily extracted.

Financial Year	Number of Deserters
1999-00	65
2000-01	69
2001-02	44
2002-03	36
2003-04	41
2004-05 (to 31 Mar 05)	28
Total	283

- (2) and (3) The following table identifies the outcome of crew desertions between 2001 and 2005. DIMIA has recorded this information in a manner that allows the ready extraction of information on individual deserters from 2001-02. Data recorded prior to 2001-02 is not able to be readily extracted.

Financial Year	Number of Deserters	Current status	Number
2001-02	44	Departed Australia	17
		Have been granted visas to remain in Australia or have un-finalised visa applications	25
		Remain unlawfully in the Australian community with no visa applications pending	2
2002-03	36	Departed Australia	18
		Have been granted visas to remain in Australia or have un-finalised visa applications	16
		Remain unlawfully in the Australian community with no visa applications pending	2
2003-04	41	Departed Australia	21
		Have been granted visas to remain in Australia or have un-finalised visa applications	11
		Remain unlawfully in the Australian community with no visa applications pending	8
		Remain unlawful in Immigration Detention	1
2004-05 (to 31 Mar 05)	28	Departed Australia	11
		Have been granted visas to remain in Australia or have un-finalised visa applications	4
		Remain unlawfully in the Australian community with no visa applications pending	12
		Remain unlawful in Immigration Detention	1

(4) The master of a vessel, or the ship's agent on their behalf, is required to report absent members of crew to Australian Customs Service officers, who will inform DIMIA.

(a) Section 228 of *the Migration Act 1958* requires the master of a vessel to report absent members of crew at the time of the vessel's departure from the port. The master must deliver to an officer a written report specifying the name of the crew member and stating that they were a member of crew when the vessel arrived and whether the crewmember left the vessel at that port with or without the master's permission.

(b) Under Section 228, a penalty of \$4 000 upon prosecution is in place for the non-reporting of an absent member of crew.

(c) The Department has not prosecuted any parties under this section of the Act in the last ten years.

(5) This provision has been in force since at least 1958.

(6) The following table identifies the port from which crew desertions occurred between 2001 and 2005. DIMIA has recorded this information in a manner that allows the ready extraction of statistics from 2001-02. Data recorded prior to 2001-02 is not able to be readily extracted.

Deserters by Port					
	Year				
Port	01/02	02/03	03/04	04/05	Total
Fremantle	8	7	6	6	27
Newcastle	4	7	7	5	23
Sydney	4	3	6	1	14
Port Adelaide	3	2	5	1	11
Brisbane	4	3	1	3	11
Bunbury		1			1
Cairns			4	1	5
Dampier		1			1
East Swanston		2			2
Esperance	1			1	2
Geelong	4			3	7
Gladstone	1	1	1	1	4
Gove			2		2
Hay Point		1	2		3
Mackay	5				5
Melbourne		2	5	1	8
Port Botany			1		1
Port Hedland		2		1	3
Port Kembla	2		1	1	4
Port Lincoln	2				2
Port Walcott		1			1
Portland	1				1
Townsville	2			1	3
Weipa		3			3
Wollongong	3				3
Yamba				2	2
Total	44	36	41	28	149