

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 21 May 2007

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(78) Output 1.2: Refugee and Humanitarian Entry and Stay

Senator Nettle (L&CA 102-103) asked:

If you are able to provide any more information about how the existing protection status of somebody with a protection claim—where they do not have character issues associated with that protection claim and they are not excluded through 1F—would intersect with terrorism legislation, that would be really helpful. I am trying not to do it as a hypothetical, because it is about understanding the intersection between those two pieces of legislation that we have.

Answer:

While the *Criminal Code Act 1995*, the *Charter of the United Nations Act 1945* and the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002* provide for various offences related to terrorism and terrorist organisations, neither of these Acts directly prescribes any particular approach to the grant or cancellation of Protection visas or Refugee and Humanitarian visas. However, crimes committed under these Acts may be relevant to an assessment of whether a person falls within the scope of the visa cancellation or refusal powers under section 501 of the *Migration Act 1958* (the Migration Act).

Section 501 of the Migration Act provides the Minister for Immigration and Citizenship, or a delegate of the Minister, with the discretion to refuse to grant or to cancel a visa to a person who does not pass the 'character test'. The grounds upon which a person may fail the character test are broader than those contemplated by the exclusion, expulsion and non-*refoulement* provisions of the *1951 Convention Relating to the Status of Refugees* as amended by the *1967 Protocol* (the Refugees Convention). For example, a minor or passive association with a terrorist organisation may not be sufficient to exclude a person from refugee status, but it may be sufficient for a person to fail the character test and therefore be liable for visa cancellation or refusal under section 501.

If a person is refused refugee protection, Australia may still owe him/her non-*refoulement* obligations under the *1984 Convention Against Torture and Other Cruel, Degrading and Inhuman Treatment or Punishment* or the *1966 International Covenant on Civil and Political Rights*, as there are no character exclusion grounds in these instruments. Non-*refoulement* obligations are taken into account when considering whether to refuse to grant or to cancel a visa under section 501. Any potential violation of these instruments is an important consideration in the exercise of this power.