QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES HEARING: 19 OCTOBER 2010

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(341) Program 1.1: Visa and Migration

Senator Cash asked:

I refer to the Answer to QON 32 in which it was stated "where no documentation is available and depending on the consistency of responses at interview, DNA testing may be requested as a last resort to verify the claimed parent child relationship".

(a) Since November 2007, how many requests have been made [by] the Department for DNA testing?

(b) What has been the result of those tests?

(c) In the event that the DNA test does not confirm a parent child relationship exists, what action is taken by the Department in relation to the alleged parent and the alleged child?

(d) Is this a criminal offence? If not why not? It so, what is the penalty?

(e) Please outline the process undertaken by the Department when interviewing a child to determine if a parent child relationship exists.

Answer:

(a) Since November 2007, how many requests have been made [by] the Department for DNA testing?

The Department's systems are not able to report on the number of requests for DNA testing made by departmental officers either outside or inside Australia. However, Departmental policy is that DNA testing is a last resort strategy and is used only where claims are doubtful or if credible documentation cannot be provided to substantiate claimed familial relationships.

(b) What has been the result of those tests?

For the reasons above in paragraph (a), the Department is unable to advise the results of DNA tests conducted for visa applications since November 2007.

However, anecdotal evidence from departmental officers has shown that where DNA testing is undertaken by applicants the results tend to substantiate claims rather than disprove them. This reflects the "self-selection" aspect of DNA testing rather than overuse of the procedure, that is, applicants who accept an offer to undergo DNA testing are usually those who are certain that their claim is genuine.

(c) In the event that the DNA test does not confirm a parent child relationship exists, what action is taken by the Department in relation to the alleged parent and the alleged child?

In recognition of the potential implications of DNA testing, the Department's DNA testing offer letters alert applicants to the availability of counselling before and/or after DNA sample collection is undertaken. It is up to applicants whether or not they access counselling services.

If the Department is advised by the DNA testing laboratory that a DNA test result does not support a claimed parent-child relationship, the Department follows the principles of natural justice. This means that the applicant is provided with an opportunity to comment on these findings before a decision is made on the application. Following this process, the Department may make a decision to refuse a visa application based on all the evidence available, including the DNA test results.

(d) Is this a criminal offence? If not, why not? If so, what is the penalty?

The Department is not in a position to advise on the domestic laws of other countries and whether or not misrepresentation of a parent-child relationship may be a criminal offence.

It is an offence under the Criminal Code for a person to provide information which is misleading in a material particular to the Department; an officer of the Department exercising powers or performing functions under or in connection with the Migration Act or the Citizenship Act; or, where the information is given in compliance or purported compliance with either of those Acts.

Further, where a person makes such a representation and the person does so knowing that the representation is misleading in a material particular; and, the representation is made for a purpose or in relation to the Citizenship Act, then an offence is committed under section 50 of that Act.

The offences identified under both the Criminal Code and the Citizenship Act carry a maximum penalty of imprisonment for 12 months. That penalty may be converted to a pecuniary penalty, in which case the maximum penalty payable would be $6,600.

The question of whether or not the misrepresentation of a parent-child relationship would constitute an offence under these provisions would turn on the circumstances of the individual case.

If a parent-child relationship is a requirement for the grant of a visa and the delegate is not satisfied the applicant meets that criterion because, for example, a DNA test shows that a claimed relationship is not genuine, under s65 of the Migration Act that application must be refused. In addition, a visa may be cancelled under s109 of the Migration Act if it is established that it was granted on the basis of incorrect information provided by the applicant or a person on their behalf.

As a general rule, it is these administrative actions which are most often used to address the provision of misleading information.

(e) Please outline the process undertaken by the Department when interviewing a child to determine if a parent child relationship exists.

The Department considers that interviews with minors (persons under 18 years of age) require particular sensitivity and must be conducted in an appropriate and child-friendly manner.

Departmental policy requires a trusted adult to be present during an interview with a minor. This adult would usually be the minor's parent or carer as a logical and appropriate support person. If the parent or usual carer is not available, another adult who is trusted by the minor would be permitted to be present.

As for the interview itself, the interviewer seeks to assess whether or not the responses are consistent with other information provided in the application, as well as with reliable external information (such as country information). This may include questions on the minor's description of and familiarity with persons resident in their household, the relationships between these people and their account of key events.