

Chapter 4

The government's response to Mr Chen's request for political asylum

4.1 The chapter examines the actions of DFAT and DIMIA during the period 27 May 2005 until he lodged an application for a protection visa on 3 June 2005. This chapter also highlights discrepancies in various accounts of events over this period and seeks to answer the broader questions of whether the government's response to Mr Chen's requests for asylum and protection was fair and appropriate.

DFAT's response after the Minister declines Mr Chen's request

4.2 Recognising that this was a complex issue involving a number of portfolios, DFAT convened an Interdepartmental Committee meeting (IDC) on the morning of 27 May at around 10:30am. It was attended by officers from Prime Minister and Cabinet, DIMIA, Australian Security Intelligence Organisation and the Australian Federal Police (AFP). Mr Hughes, DIMIA, told the committee that the first part of the meeting was to 'provide feedback on the issue of territorial asylum and then to discuss where things went from there'.¹ Ms Morton, First Assistant Secretary, North Asia Division, DFAT, told the committee that she had informed the IDC of Mr Downer's decision not to grant Mr Chen's request for political asylum.²

4.3 Mr Jeff Robinson, Assistant Secretary, East Asia Branch, DFAT, explained that 'Mr Downer advised the department that he would not sign an instrument to allow Mr Chen to apply to DIMIA for a territorial asylum visa. Mr Downer said that if Mr Chen wished to stay in Australia he could apply for another sort of visa and that it was appropriate that Mr Chen's claim for such a visa be considered by DIMIA on its merits as part of a normal process'.³

DIMIA's response after the Minister declines Mr Chen's request

4.4 Mr Illingworth, DIMIA, informed the committee that he was made aware of the Foreign Minister's decision not to grant political asylum at around 10:30am or 11:00am on 27 May 2005 by DFAT officers.⁴ He further stated 'I do not know if the language was as clear as 'reject', but it was a very strong indication that the request would not be successful'.⁵

1 *Committee Hansard*, 25 July 2005, p. 82.

2 *Committee Hansard*, 26 July 2005, p. 79.

3 *Committee Hansard*, 26 July 2005, p. 77.

4 *Committee Hansard*, 25 July 2005, p. 75.

5 *Committee Hansard*, 25 July 2005, p. 77.

4.5 The decision to reject his application for political asylum was conveyed to Mr Chen by Ms Lindsay by phone on 27 May 2005.⁶

4.6 Mr Hughes told the committee that DIMIA was prepared 'should political asylum not be on offer, for the matter to default to a request for a protection visa or to stay in Australia on migration grounds or some other option'.⁷ To prepare for this, Mr Hughes advised that some work was undertaken in Canberra in conjunction with the NSW office 'to develop talking points to use in conversation with him to try to tease out for him the options that might be available to him'.⁸ DIMIA stated that they wanted to ensure Mr Chen was provided with advice that would offer the full range of possibilities to him.

4.7 Mr O'Callaghan told the committee that a meeting originally scheduled with Mr Chen on 27 May 2005 did not proceed as Mr Chen called at about lunchtime on that day to cancel the meeting.⁹

4.8 Ms Lindsay advised that Mr Chen called back the next day and said 'he was unhappy about coming into the office'.¹⁰ She stated:

He said that he wanted to withdraw from the meeting that we had proposed at Parramatta and that he would prefer to have a meeting at a safe place. He did not think that the DIMIA office would be a safe place...He basically indicated that he thought they would be watching him. He did not say who 'they' were'.¹¹

4.9 Mr Chen told the committee that when he contacted Ms Lindsay, he asked for 'safe transportation arrangements to the DIMIA office or a police station so that I may feel safer, but it was not considered'.¹²

4.10 Mr Chen's submission notes that 'although the Australian government had rejected Mr Chen's bid for territorial asylum, nevertheless the Government should have had some concern for his safety. The Government must have realised that the act of seeking political asylum placed Mr Chen at grave risk of being prosecuted under the PRC's criminal law or laws on state security'.¹³

4.11 Senator Brown told the committee that he made a verbal request to staff in both the office of the Minister for Immigration and the office of the Minister for

6 DIMIA talking points for 27 May conversation with Mr Chen.

7 *Committee Hansard*, 25 July 2005, p. 80.

8 *Committee Hansard*, 25 July 2005, p. 80.

9 *Committee Hansard*, 25 July 2005, pp. 60-61.

10 *Committee Hansard*, 25 July 2005, p. 86.

11 *Committee Hansard*, 25 July 2005, p. 87.

12 *Committee Hansard*, 26 July 2005, p. 52.

13 *Submission 7 (RACS)*, p. 14.

Foreign Affairs on 6 June 2005 for Mr Chen to be protected. Ms Russ from the AFP told the committee that the issue of Mr Chen's safety was not raised with the AFP.¹⁴ Senator Brown also told the committee that subsequent to that request, he wrote to the New South Wales Police to see if they would provide a measure of protection for Mr Chen. Ms Russ again replied that she was not aware of the request.¹⁵

4.12 In additional information provided to the committee by the AFP on 16 August 2005, in relation to Senator Brown's written request to the NSW Police, they indicated 'The AFP has been contacted by the NSW Police in relation to this matter. As this is a NSW Police operational matter, it would be inappropriate to comment further'.¹⁶

4.13 All protection requests must be dealt with in accordance with the *Migration Act 1958* (Section 36 creates a class of protection visas, the criterion for a protection visa and protection obligations.), the associated regulations, and, to the extent to which there is no express inconsistency with Australian domestic laws, international law (Article 14 of the Universal Declaration of Human Rights says, inter alia, everyone has the right to seek asylum).

Summary

4.14 There can be no doubt that Mr Chen expressed fears for his safety. His initial letter requesting asylum clearly conveyed these apprehensions. The next day he cancelled an arranged meeting, again stating concerns for his safety. He requested safe transportation arrangements to the DIMIA office or a police station so that he could feel safe. DIMIA agrees with this version.

4.15 It is clear that DIMIA, DFAT and the offices of both the Immigration Minister and the Foreign Minister were aware of Mr Chen's concerns. Furthermore, it is clear that neither DIMIA, DFAT or either Ministerial office offered any assistance to address his concerns or allay his fears.

4.16 The committee is of the view that the failure of DIMIA, DFAT and the Ministers' to take any action in response to Mr Chen's clearly expressed concerns for his personal safety at the very least breached the spirit of the Australian Government's obligations under international law to afford protection to those seeking asylum.

31 May 2005 meeting

4.17 On 31 May 2005, Mr Chen was interviewed by a Senior Protocol Officer from DFAT, Canberra, the DIMIA NSW Deputy State Director and Ms Lindsay.

14 *Committee Hansard*, 26 July 2005, p. 7.

15 *Committee Hansard*, 26 July 2005, p. 8.

16 Additional information received from AFP on 16 August 2005.

Did DFAT encourage Mr Chen to return to and contact the consulate?

4.18 According to Mr Chen's submission, the DFAT Protocol Officer:

Indicated to Mr Chen that his application for political asylum was rejected for foreign affairs reasons. She repeatedly stated that a diplomat at the end of his term should return home to their country. She repeatedly invited Mr Chen to reconsider his defection from the Chinese Consulate, informing him that the Consul-General and Mr Zhou, the Consulate's Protocol Officer were very worried about him. She told Mr Chen that he had a successful diplomatic career. She implied that a few days away from the Consulate amounted to nothing. Three times she asked Mr Chen to allow himself to be persuaded and to consider what she had said. Mr Chen again indicated that he wanted to apply for a protection visa.

Mr Chen explained how he was persecuted and why he left the Consulate. He explained the persecution to death of his father in the PRC when Mr Chen was aged three. He stated he believed the reason for his father's death was the 'evil political system'. He explained that he had witnessed and participated in the pro-democracy movement in 1989. He helped Falun Gong practitioners during his posting to Sydney and was afraid, should he be returned to China that he would be persecuted. He stated that the Chinese Government would not believe that he had not leaked confidential information. Mr Chen discussed the Lan kidnapping incident in some detail. Mr Chen stated that he was worried about his life...

Mr Chen was encouraged to consider applying for a tourist visa. Mr Chen took the requisite form, but indicated that he would not consider a tourist visa. The DFAT Protocol Officer told Mr Chen that a protection visa was extremely impossible. There was a limited number of successful cases. At the end of the interview Mr Chen was also given the Protection Visa application forms.¹⁷

4.19 Mr Chen's submission further asserts that:

On 31 May, DFAT and DIMIA officials attempted to persuade Mr Chen to return to the PRC consulate (avail himself of the protection of that country) and in so doing, we submit, increased Mr Chen's fears that he would be refouled. The depth of this fear is evidenced by the fact that on 4 June he wrote to the USA Embassy in Australia outlining his predicament and expressing his fear that the Australia government would probably refuse to offer him protection.¹⁸

4.20 Mr Chen told the committee:

Then I was forced to choose to apply for an onshore protection visa. The protocol officer actually persuaded me to consider it just a little bit. She repeatedly asked me to return to the Chinese Consulate and she told me that

17 *Submission 7 (RACS)*, p. 7.

18 *Submission 7 (RACS)*, p. 14.

the Consul-General and Mr Zhou, who is known as the protocol officer in the Chinese consulate in Sydney, were very worried about my family and wanted to contact me and asked me to contact them. I said, 'No, I don't want to contact them.'

Even when the interview finished the senior protocol officer said, 'Please contact them'. She said they were worried about me and asked if she could transfer a message to the Chinese consulate in Sydney. I said, 'No'. At first I said, 'as you like,' but then she asked again and I said I would prefer it if she did not. She asked how many days I had left at the Chinese consulate and said it was quite normal for a consul who was not working to just return to the consulate, indicating it seemed that nothing had happened and that it was just as if I had gone for a holiday. She said: 'you have a successful career and you have been promoted to first secretary. At the end of your term you should return to your home country'. I said, 'No, you cannot understand it.'¹⁹

4.21 Mr Chen further told the committee:

In the middle of that interview I told the senior protocol officer: 'Madam, you have repeatedly talked about your view and it seems that you are not helping me. It seems that you are repeatedly asking me to return to the consulate.'²⁰

4.22 Mr Green summarised his concerns regarding the meeting:

At that meeting, the senior protocol officer from DFAT attempted to persuade Mr Chen to return to the Consulate-General of the People's Republic of China. By that action, we would submit, the officer did two things: (1) increased Mr Chen's fears that he was in danger of being refouled; (2) indicated to him that members of the consulate-general's staff were aware and concerned for him. That raises questions for us as to whether on 31 May 2005 communications had already taken place between the government of Australia and the government of the People's Republic of China as to Mr Chen's request for territorial asylum.²¹

4.23 DFAT provided a different interpretation of the meeting:

An officer from DFAT Protocol Branch attended this meeting to outline to Mr Chen the normal processes on the completion of an officer's posting. As I noted earlier, Mr Chen was advised of the various options available to him and to consider them carefully – these are the visa options. He was told that there was no guarantee that he would receive a protection visa. Mr Chen was adamant that he would seek a protection visa and was not interested in any other option. So relevant forms were provided to him at that meeting.²²

19 *Committee Hansard*, 26 July 2005, pp. 48-49.

20 *Committee Hansard*, 26 July 2005, p. 54.

21 *Committee Hansard*, 26 July 2005, p. 45.

22 *Committee Hansard*, 26 July 2005, p. 80.

However, Mr Chen was subsequently granted a protection visa on 8 July 2005.

4.24 Ms Morton, DFAT, told the committee that:

If a foreign mission has a concern about one of their officials – for example, if he has not turned up for work – they are in fact expected to advise the protocol area of the department. That is usual practice. This had happened in this case. There had been two phone calls about him. She passed this on to Mr Chen and said 'It would be better if you could contact your consulate and tell them that things are all right; you are not having a problem'.²³

4.25 In response to further questions regarding whether it was appropriate to ask Mr Chen to contact the Chinese consulate Ms Morton advised:

It is perfectly explicable that he would contact his embassy and say: 'I am not in any trouble. I am going through some process to stay in Australia.' I do not find that at all reprehensible. I find it absolutely normal that this is what we would encourage a Chinese consular official to do: to stay in touch with his government and advise them that he and his family were fine.²⁴

4.26 The committee once again is unable to reconcile the differing accounts of the meeting on 31 May 2005. The committee is not convinced by Ms Morton's claim that it was absolutely normal for DFAT to encourage a Chinese official attempting to defect to stay in touch with his Government. In light of the fact that Mr Chen had made clear his concerns for his safety, the sensitive nature of his request for political asylum and the fact that in his letter he had indicated that he had access to top confidential information about the Chinese Government, DFAT's efforts to encourage Mr Chen to return to the consulate in the circumstances demonstrated an extraordinary failure to comprehend the seriousness of Mr Chen's predicament or a lack of concern about his welfare.

Further contact with Chinese consulate

4.27 DIMIA and DFAT told the committee of further contact with the Chinese consulate.

DIMIA

4.28 Mr O'Callaghan told the committee that the NSW office received two follow-up calls from the Chinese consulate on 27 May 2005, one in the morning to Mr O'Callaghan's executive assistant. This was the same person that she had called the day before and the executive assistant provided no information. The second call was early evening of 27 May 2005 from a different person in the Chinese consulate to Ms June Lee, manager of the detention and removals function in NSW which is someone with whom they have regular contact. Ms Lee then called Mr O'Callaghan who

23 *Committee Hansard*, 26 July 2005, pp. 82-83.

24 *Committee Hansard*, 26 July 2005, p. 83.

consulted Canberra and passed a message back to Ms Lee which she passed on to the inquirer that they should speak to DFAT.²⁵

DFAT

4.29 Mr Chen told the committee that during the meeting on 31 May 2005, the DFAT officer:

...gave a kind offer that, because under my current status my visa might be cancelled if requested by the Chinese consulate, she would suggest to the Chinese consulate not to cease my function as consul and maybe give me more time to consider the option of returning of the consulate...She said she would ask the Chinese consulate to consider not to give the note to the Australian government so that the consul status would not be cancelled, because she said that, if my visa status changed, according to Australian law I would be detained in the detention centre because I had no visa status.²⁶

The committee was not advised whether this occurred but at no time does it appear that Mr Chen was ever declared an unlawful non-citizen.

4.30 Mr Chen further stated that the DFAT officer told him that she had received a call from Mr Zhou from the Chinese consulate who was worried about him and she asked him to contact the consulate to allay their concerns.²⁷

4.31 Mr Robinson outlined the DFAT contact with the Chinese consulate:

...on the evening of Friday 27 May, the Chinese consulate general in Sydney, Mr Zhou Yujiang, telephoned the DFAT office in Sydney to advise of their concern that Mr Chen and his family had disappeared and had not been seen or heard from since the day before and to express concern for Mr Chen and his family's welfare. Our Sydney officer advised Mr Zhou on that Friday evening that if he was concerned for Mr Chen's safety he should phone the police or local hospitals. Mr Zhou asked our officer if she would call the police and hospitals for him, to which she replied that the consulate-general should do this in the first instance. This is normal procedure in such cases. Mr Zhou was advised that, if he had any further concerns he should telephone the officer again over the weekend. If not, she suggested that they speak again the following Monday.

On Monday, 30 May at about 10:30am, Mr Zhou telephoned the office in our Sydney office again. He advised that Mr Chen was not in hospital and had not reported for work and asked for advice about what to do next. Our officer in Sydney declined to provide any further information and suggested he call DFAT's protocol branch in Canberra. Our protocol branch had earlier told the Sydney office that any matters relating to Mr Chen should

25 *Committee Hansard*, 25 July 2005, p. 84.

26 *Committee Hansard*, 26 July 2005, p. 55.

27 *Committee Hansard*, 26 July 2005, pp. 55-56.

be referred to protocol and that no information concerning him was to be discussed with anybody else.

DFAT's Protocol Branch later the same day returned a call from the Chinese consulate-general. The consulate advised that they had subsequently found a letter left by Mr Chen in his apartment. According to Mr Zhou, Mr Chen had written that he was not very satisfied with his job and was not going back to China. Mr Zhou said that, on the basis of Mr Chen's letter, it was clear to the consulate that Mr Chen did not intend to return to his job at the consulate, but the consulate no longer held concerns for the physical welfare of Mr Chen and his family. Protocol noted the information provided by the consulate but declined to provide any further information about Mr Chen.²⁸

4.32 Mr Robinson also told the committee:

In the normal course of Protocol's work, there was further contact between Protocol Branch and the Chinese consulate-general on Wednesday 1 June. Protocol reassured the consulate-general about Mr Chen's physical welfare, but no other information concerning him was provided to the consulate-general, including his intentions regarding applying for any visa to stay in Australia. Later that same day – 1 June – an officer from the Chinese embassy in Canberra called on Protocol to inquire about Mr Chen's case. Protocol confirmed that there had been contact with Mr Chen but declined to provide any information about him, including in regard to his intentions or whereabouts.

The next day – Thursday 2 June – Chinese Ambassador Fu Ying approached Mr Downer following a formal meeting in his office with a senior Chinese visitor and asked to speak to Mr Downer about Mr Chen. Mr Downer is already on the public record concerning this meeting. He said that at no time did he or any other DFAT official improperly convey information about Mr Chen.

On 14 June the department received a formal note from the Chinese consulate-general advising it of the cancellation of the diplomatic passports of Mr Chen and his family. DFAT Protocol advised DIMIA that the Chen family diplomatic visas should be cancelled subject to the granting of bridging visas coming into effect at the same time.²⁹

4.33 Mr Green expressed the following concerns regarding further contact with the Chinese consulate:

Given that on 27 May, in a conversation with Ms Louise Lindsay, Mr Chen indicated that he wanted to make an application for protection and given that on 31 May in conversations with a deputy state director of that department, Louise Lindsay and the DFAT official, Mr Chen again clearly indicated that he was seeking asylum, I find the fact that there has been

28 *Committee Hansard*, 26 July 2005, p. .80.

29 *Committee Hansard*, 26 July 2005, pp. .80-81.

contact between Australian government officials and Chinese government officials extraordinary.³⁰

Did a DFAT officer provide DIMIA advice?

4.34 Mr Green told the committee that in the meeting which took place on 31 May 2005:

the senior DFAT protocol officer put to Mr Chen that a protection visa was 'extremely impossible', or that an application would be 'very unlikely' to succeed. We would submit that it is not the role of protocol officers from DFAT to be giving immigration advice.³¹

4.35 Mr Chen confirmed to the committee that it was the DFAT officer who had told him that the protection visa was extremely impossible.³²

4.36 Ms Morton from DFAT told the committee that she had spoken with the DFAT Protocol officer, Ms Anne Plunkett, about the meeting on 31 May 2005 and explained to the committee that she attended the meeting because 'part of Protocol's role is managing the operational aspects associated with diplomatic and consular corps officials arriving in and departing Australia. That is part of her usual job'.³³

4.37 Ms Morton further stated:

It is not something that happens every day. We and Protocol were very concerned that Mr Chen understood what he was seeking and the fact that there were other avenues for him to apply to stay in Australia should that be his wish. There is a lot of use of the word 'asylum' in a lot of contexts. He had applied in his letter to be given an instrument to allow him to apply for territorial asylum. Ms Plunkett explained to him that this was not going to be given to him and at that interview there was a range of options presented to him in relation to staying in Australia should he wish to do so.³⁴

4.38 Ms Morton clarified that the visa options were put to Mr Chen by a DIMIA officer and told the committee:

I do know and I can say that Ms Plunkett has said that during the interview she certainly did not make any statement that a protection visa was extremely impossible. She pointed out to Mr Chen that she could not guarantee that an application for a visa – for a protection visa or for any other visa – would be successful. She also pointed out, which we felt was the right thing to do, that under the legislation a protection visa can be

30 *Committee Hansard*, 26 July 2005, p. 60.

31 *Committee Hansard*, 26 July 2005, p. 45.

32 *Committee Hansard*, 26 July 2005, p. 50.

33 *Committee Hansard*, 26 July 2005, p. 82.

34 *Committee Hansard*, 26 July 2005, p. 82.

refused on foreign policy grounds. That was pointed out to Mr Chen as a relevant matter that he should take into consideration.

...I think Ms Plunkett's advice to Mr Chen was very sensible advice. The advice was: the Australian government expect diplomats and consular officials to return to their country at the end of their posting; that is our expectation.

...It was explained to Mr Chen that this was unusual, that normally at the end of a posting a diplomatic or consular official would return to their country. If they wish to stay in Australia there were various options that they could pursue and these options were open to Mr Chen. Those options were explained to him by a DIMIA official who is conversant with the Migration Act and the various categories of visa available onshore in Australia or offshore. It was explained to him also by Ms Plunkett that his consulate had rung to inquire whether we had any information about him because he had not turned up for work. This is something that happens in the course of Protocol's work.³⁵

4.39 Ms Morton summed up for the committee that the 'information was provided to him by the DIMIA officers there at the time and not by the DFAT officers – we are not experts in that'.³⁶

Summary

4.40 The committee is unable to make a judgement on the discrepancies in the accounts of the 31 May 2005 meeting. However, the committee was concerned that Mr Chen's safety concerns appear to have been disregarded by DIMIA and DFAT and that their responses did not display an appreciation of his situation and environment.

Government response to protection visa application

4.41 On 3 June 2005, Mr Chen presented a Protection Visa application to Ms Lindsay.³⁷ On 8 July 2005, Mr Chen and his family were granted Class XA Subclass 866 protection visas.³⁸

Further possible breaches - Foreign Minister and DFAT

4.42 The press suggested that Mr Downer may have breached the *Migration Act 1958* when he discussed Mr Chen's case with the Chinese Ambassador. Shadow Foreign Affairs Minister, Mr Rudd said that Mr Downer needed to provide the public with the assurance there had been no breach of the law.³⁹

35 *Committee Hansard*, 26 July 2005, pp. 82-83.

36 *Committee Hansard*, 26 July 2005, p. 87.

37 *Submission 7* (RACS), p. 7.

38 *Submission 7* (RACS), p. 11.

39 *The Australian*, 13 June 2005, p. 5.

4.43 On 15 June 2005, the press reported that the Foreign Affairs Minister, Mr Downer had spoken to Madam Fu Ying about the Chen case during a meeting on 2 June 2005. It asserted that 'His department has also spoken to Chinese officials in Sydney about the matter, but he denied any improper information was exchanged – saying the Chinese had initiated all the contact on the Chen issue'.⁴⁰

4.44 Further, it was reported that Mr Downer said that he could provide 'an absolute assurance that he had not breached the section of the Migration Act that prohibits the unauthorised disclosure of information identifying an applicant for a protection visa to the government from which protection is sought. Mr Downer said the ambassador raised Mr Chen's case with him briefly after a meeting in his office as she was walking to the door'.⁴¹

4.45 The committee notes that in explaining his meeting with Madam Fu, the Minister stated that 'as the Chinese Ambassador left my office, she raised the Chen case, so we had a brief discussion about that'. Some members of the committee are in no doubt that such a discussion, no matter how brief, was highly inappropriate. The minister should have immediately indicated to the Ambassador that he could not discuss the matter. In answer to the question about his meeting with the Chinese Ambassador, he could then have unequivocally assured the Australian people that he had no discussion with the Ambassador about Mr Chen and his actions in declining to talk about Mr Chen were proper and beyond reproach. He could not do so.

4.46 Another possible breach was raised in the press by Mr Rudd who said protocols may also have been breached if Chinese Ambassador Fu Ying was correct when she said in the week starting 6 June 2005 that the embassy was contacted to inquire what would happen to Mr Chen if he was returned to China.⁴² In an interview with Lateline, Madame Fu said she had been asked by the Australian government about whether Mr Chen would face prosecution if he returns to China.⁴³ When asked about this contact, DFAT said they could not explain the press reports but they certainly did not make that request⁴⁴

4.47 In the committee's view, Madam Fu Ying's comments on the Lateline program, when read together with DFAT's evidence that it had not made such a request of the Chinese Embassy and the fact that the Minister has declined to provide any details of his discussion with the Ambassador, leave open the question of whether this was a matter that was discussed between the Minister and the Ambassador at their

40 The *Canberra Times*, 15 June 2005, p. 3.

41 *Australian Financial Review*, 15 June 2005, p. 4.

42 *West Australian*, 13 June 2005, p. 4.

43 Transcript, Lateline, 6 June 2005, accessed at <http://www.abc.net.au/lateline/content/2005/s1385925.htm> on 4.8.05.

44 *Committee Hansard*, 8 August, p. 65.

meeting on 2 June 2005. If this were in fact the case, such discussions on the part of the Minister would amount to a clear breach of Section 336E of the Migration Act.

4.48 Mr Downer has refused to provide any details of his discussion with Madam Fu Ying on 2 June 2005 other than to assert that neither he nor his department disclosed improper or sensitive information to Chinese officials in Australia about Mr Chen Yonglin.⁴⁵ The Committee is not satisfied with the lack of information provided by the Minister about his discussions with Madam Fu Ying and is therefore unable to assess his claim that he did not disclose any improper information.

4.49 The committee notes, however, that the Minister does not deny that he may have disclosed information to the Chinese Ambassador about Mr Chen Yonglin. In the committee's view, a discussion which disclosed any information about Mr Chen, including his name or the fact that he was a Chinese consular official, would amount to an offence under the Migration Act. In the committee's view, such a discussion would also be a breach of the Privacy Act and the Australian Government's obligations under the Refugee Convention.

4.50 At the very least the decision to discuss Mr Chen's case with the Chinese Ambassador was a gross error of judgement on the part of the Minister.

Conclusion

4.51 This chapter covers events which occurred on 27 May to 3 June 2005 when Mr Chen lodged an application for a protection visa. The discrepancies in accounts of the meeting on 31 May have been outlined but, as in previous chapters, the committee is unable to make a judgement on which account is correct.

4.52 This chapter provided examples of Mr Chen expressing concerns for his safety – claims not denied by DIMIA or DFAT. There can be no doubt that they were made aware of Mr Chen's concerns on more than one occasion. However, there is certainly no evidence to suggest that DIMIA or DFAT officials offered any advice or assistance on how his concerns could be allayed.

4.53 At the meeting on 31 May 2005, government officials also appear to show a lack of appreciation of Mr Chen's situation, urging him to return to the Chinese consulate when this was clearly no longer a viable option.

4.54 The committee is disappointed that both DIMIA and DFAT, in focussing on the wider political implications of Mr Chen's actions, failed to give adequate consideration to his and his family's personal situation.

4.55 The further contact with the Chinese consulate by both DIMIA and DFAT has been outlined and addressed by both departments and their ministers.

45 See *The Age*, 15 June 2005, p. 4; the *Australian Financial Review*, 15 June 2005, p. 4.

4.56 Chapter five will address Mr Chen's claims involving the treatment of Falun Gong practitioners, kidnapping allegations, an extensive spy network operating in Australia and the harassment and monitoring of Australian citizens, and detail the support for them provided by witnesses.

