

The Senate

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Foreign Affairs, Defence and  
Trade References Committee

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Mr Chen Yonglin's request for  
political asylum

September 2005

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## **Recommendations**

### **Recommendation 1**

2.32 The committee recommends the department formulate a protocol requiring that people claiming to be diplomats, employees or officials of foreign governments or people who possess knowledge or understanding of the foreign government in question, be dealt with by senior officers.

### **Recommendation 2**

2.75 The committee recommends that DIMIA take immediate steps to ensure that all officers are made aware of their confidentiality obligations under relevant legislation and conventions. Furthermore, that they are made aware of the need to exercise care when dealing with a foreign diplomat and that such important matters are dealt with expeditiously by a senior officer.





# Chapter 1

## Introduction

### Background to the inquiry

1.1 Recently, a number of high profile cases have raised questions about the response and responsiveness of the government to vulnerable people either asking for or relying on the Australian government to provide protection and/or assistance. This report examines two such cases.

1.2 First, Mr Chen Yonglin, a Chinese diplomat working at the Chinese Consulate in Sydney who approached the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) on 26 May 2005 to request political asylum for himself and his wife and daughter. Questions soon arose over whether contact with the Chinese consulate by DIMIA to confirm Mr Chen's identity on 26 May was appropriate and this is examined in chapter two. The decision of the Minister for Foreign Affairs to reject Mr Chen's request for political asylum and his role in such requests are considered in chapter three. Chapter four details the actions of and meetings with DIMIA and the Department of Foreign Affairs and Trade (DFAT) which took place from 27 May to 3 June 2005. Mr Chen's claims regarding the persecution of Falun Gong, an extensive spy network in Australia, kidnapping allegations and the monitoring and harassment of Australian citizens are discussed in chapter five.

1.3 The second case involved Ms Vivian Solon who, although an Australian citizen, was deported to the Philippines in July 2001.

### Establishment of the inquiry

#### Terms of reference

1.4 On 16 June 2005, the Senate, on the motion of Senator Bob Brown, referred the following matters to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 9 August 2005:

- (a) The response of Department of Immigration Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade, Attorney-General's Department and their respective Ministers to Mr Chen Yonglin's approaches or requests to the Australian Government for asylum and/or a protection visa;
- (b) The application of the *Migration Act 1958*, its regulations and guidelines concerning the maintenance of confidentiality for any consular officials or staff (including Mr Chen Yonglin, and any other former consular officials or staff) who were applicants for territorial asylum and/or protection visas by Department of Immigration Multicultural and

Indigenous Affairs, Department of Foreign Affairs and Trade and their respective Ministers;

- (c) The involvement of the Department of Foreign Affairs and Trade and the Minister in the deportation, search and discovery of Vivian Solon, and;
- (d) any related matters.

### **Conduct of the inquiry**

1.5 The committee advertised the inquiry in *The Australian* on 22 June 2005 and on its website. The Committee wrote to relevant Ministers and departments, interested individuals and groups inviting submissions. The Committee received 9 public submissions and 1 confidential submission from a range of organisations and individuals. A list of individuals and organisations who made a public submission or provided other information that was authorised for publication by the Committee is an Appendix 1.

1.6 The Committee held a public hearing in Sydney and two public hearings in Canberra. A list of witnesses who gave evidence at the public hearings is at Appendix 2.

1.7 On 5 August 2005, at 4:45pm, over 2600 folios regarding Ms Solon were received by the secretariat from DIMIA. It was not possible for committee members to review the documentation prior to the scheduled hearing on 8 August 2005. The committee is disappointed that the department was not able to more promptly assist the committee process. It placed committee members in a situation where it was not possible for them to be fully prepared to examine the department on some matters central to the inquiry. The committee is concerned over the department's conduct in this matter and this will be discussed more fully in a second report on Ms Solon. Due to this late and voluminous production of documents, the committee decided that it required more time to examine the documentation and this resulted in the committee requesting three extensions to the reporting date. On 9 August 2005, the Senate granted an extension to its reporting date to 18 August 2005. On 18 August 2005, the committee was granted an extension until 8 September 2005. On 8 September 2005, the committee was granted an extension until 12 September 2005.

1.8 The committee further decided to produce two separate reports—one dealing specifically with the terms of reference addressing Mr Chen's case and a second report covering Ms Solon which is due to be tabled on 15 September 2005.

### ***Structure of the report***

1.9 This report comprises five chapters—an introduction and four chapters that address directly the terms of reference relevant to Mr Chen.

## **Acknowledgment**

1.10 The committee is grateful to, and wishes to thank, all those who assisted with its inquiry. In particular, the committee would like to acknowledge the work of Hansard who had to deal with a complex matter, in camera evidence and English translations.



## Chapter 2

### Mr Chen Yonglin's request for political asylum

2.1 This chapter examines the request by Mr Chen Yonglin on 26 May 2005 for political asylum and the initial responses and activities of the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) and the Department of Foreign Affairs and Trade (DFAT) on that day. The sequence of events are presented chronologically with events from 27 May 2005 onwards dealt with in chapter four. The committee heard two different accounts of events on 26 May 2005 which cannot be reconciled. Rather than determine which version is correct, the committee seeks to answer the broader questions of whether the response of the government to Mr Chen's requests for asylum and protection was fair and appropriate.

#### Background

2.2 Mr Chen Yonglin arrived in Australia in August 2001 and assumed the role of Consul for political affairs at the Chinese Consulate in Sydney. He was 'in charge of implementing the PRC Central Government policy in relation to the Five Poisonous Groups (Falun Gong, pro-democracy movement activists, pro-Taiwan independence force, pro-Tibet separation force and Eastern Turkistan force)'.<sup>1</sup> In particular, he noted he was required to persecute Falun Gong practitioners overseas. Mr Chen stated it distressed him to work for an authority which he deemed unjustifiably placed Falun Gong practitioners in labour camps, jails, forced re-education courses and put uncooperative practitioners to death.<sup>2</sup> He said he grew to hate his work because he supports democracy and the information he collected on these groups could be used against the individuals and their families.<sup>3</sup>

#### Initial contact with DIMIA

2.3 On 26 May 2005, Mr Chen Yonglin approached the Australian Government to seek political asylum. According to Mr Chen:

I approached DIMIA on the morning of 26 May to ask for an appointment with the state director of DIMIA. I stood in the public space outside the entrance to the department's inquiry office and I used my mobile phone to call the department. I said I wished to speak to Mr Nick Nicholls. A male official indicated that Mr Nicholls was no longer the director and that the new director was Mr O'Callaghan. The male official transferred the call to the state director's office, but the phone line to the state director's office was busy. A few minutes later I called the director's office directly. I introduced myself and identified myself. I said that I was the consul for political affairs

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1 *Submission 7* (Refugee Advice and Casework Service), pp. 11-12.

2 *Submission 7* (RACS), pp. 11-12.

3 *The Weekend Australian*, 11 June 2005, p. 19.

in the Chinese consulate in Sydney and requested an urgent meeting. The female official asked whether I had made a prior appointment and I said 'no'. The female official then asked for the phone number of the Chinese consulate. I said, 'I would prefer not to give you the phone number but if you insist I can give it to you', and later I gave the phone number to the female official. I said: 'Please don't call them. It is an unusual meeting request. I have a very important matter to talk to the state director about and I can prove myself with my ID issued by DFAT and my passport'. The official later indicated that the state director was in a meeting and asked if it was an urgent matter. I said 'Yes'. She later talked to the director and asked me to leave my mobile phone number and said that she would call me back.

I waited and about 10 minutes later I called again. The first official responded that the director already knew of my request but that he was in a meeting. She asked if it was necessary to interrupt the meeting. I said 'yes'. She went to talk to the state director and I approached the reception desk and showed my ID to the security guard and the security guard called the state director's office to prove that I held the ID card issued by DFAT.

At that time I called the state director's office again. The phone was answered by another female secretary and she said that the first official was connecting to the Chinese consulate to check my ID. I said that would not be necessary, that I had shown my ID to the security guard, and said that I would be in danger – my life would be in danger – if they contacted the Chinese consulate and I feared that. The second female official said that the first one was connecting. I was very shocked to learn that. She said that the first one was transferring the call to my mobile, so that I was frightened and hurried to say, 'No, I have to go; I can't stay here any more'. I left two letters. One was addressed to the state director and I changed the name to Mr O'Callaghan. The other letter was addressed to Mr Illingworth. Then I left the immigration building. At that time, because I was frightened that the immigration office was too close to the Chinese consulate – it is about 10 minutes drive by car – I hurried to take a taxi and go to Chatswood railway station and go away to my hiding place.<sup>4</sup>

#### 2.4 The submission from Mr Chen and his lawyer describes his concerns regarding contact with the Chinese embassy:

A DIMIA official informed the Chinese consulate that Mr Chen was present in the Department on 26 May despite Mr Chen's protestations that such action may endanger his life. This action, we submit, may reasonably be construed as an attempt to refole Mr Chen. We submit that the Department, by failing to keep Mr Chen's visit confidential, made it impossible for Mr Chen to re-avail himself of the protection of the PRC [People's Republic of China] government and in fact enhanced his chances of being persecuted. In this regard we submit that the mere act of seeking

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4 *Committee Hansard*, 26 July 2005, pp. 45-46.

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political asylum could be seen by the PRC as an act of treason or an act endangering state security.<sup>5</sup>

2.5 DFAT told the committee the consulate advised them that Mr Chen also left a letter in his apartment which stated he was not happy in his job and was not going back to China.<sup>6</sup> The committee failed to question Mr Chen about the alleged letter as it had no knowledge of it at the time they spoke to Mr Chen.

### **DIMIA's version**

2.6 According to Mr Jim O'Callaghan, the current State Director, New South Wales, Mr Chen's calls on 26 May 2005 did not come to him personally but were handled by executive assistants as he was in a meeting in another part of the building at the time of the calls. Mr Chen was told that Mr O'Callaghan was unavailable. Mr O'Callaghan stated 'at one point the executive assistants sought to confirm he (Mr Chen) was who he said he was. He provided some telephone numbers for us to confirm that with the Chinese consulate'.<sup>7</sup> Mr O'Callaghan said that Mr Chen did not offer to wait when told he was unavailable but called back three or four times. When he could not meet the State Director or get past the security guards he left two identical letters addressed to two people with the security guards at the front desk.

2.7 Mr O'Callaghan indicated one of the executive assistants called the Chinese consulate mid morning. He said he did not ask for the call to be made but that it had occurred by the time he returned to his office. Mr O'Callaghan stated:

I recall coming back into the office and saying, 'There is someone from the Chinese consulate seeking to talk to me. Where is the number?' and so on, I had returned, I had undertaken to follow up, and at that stage I was advised that one of the executive assistants had made contact with the Chinese consulate. That was done on the basis that Mr Chen was advised by the executive assistant that we wanted to confirm his identity as part of the process of determining whether he should be having an appointment with the state director. Mr Chen was asked to provide some telephone numbers. He provided two telephone numbers at the Chinese consulate. At no time did Mr Chen indicate any difficulty about following up his identity with the Chinese consulate.<sup>8</sup>

2.8 Mr O'Callaghan emphasised that until he read Mr Chen's letter there had been 'no information about what Mr Chen's interest in calling the immigration office was'.<sup>9</sup> He further stated, 'I asked what were the circumstances of the contact with the Chinese consulate and I was advised – and I did double check this on more than one occasion –

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5 *Submission 7 (RACS)*, pp. 12-13.

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

7 *Committee Hansard*, 25 July 2001, p. 56.

8 *Committee Hansard*, 25 July 2005, p. 66.

9 *Committee Hansard*, 25 July 2005, p. 66.

that Mr Chen provided two numbers and consented to his identity being checked at the Chinese consulate'.<sup>10</sup> Mr O'Callaghan told the committee that after he read Mr Chen's letter he asked the two executive assistants to prepare an account of what occurred that morning before he returned to the office.<sup>11</sup> This account was provided to the committee and is consistent with Mr O'Callaghan's evidence. It is attached at Appendix 4.

### ***Identity check***

2.9 During a phone call with Mr Chen, the executive assistant heard laughing in the background and became concerned that the call may not be genuine. She then asked for his number at the consulate to confirm his identity and Mr Chen said that he had no problem with them being contacted.<sup>12</sup>

2.10 Mr O'Callaghan further explained to the committee:

In this case Mr Chen provided numbers to the executive assistant and indicated no difficulty about that contact being made and that is why the contact was made. I think what that indicates is a responsiveness on behalf of this junior officer to Mr Chen's request to escalate his situation to see a senior officer. She was doing her job to test the appropriateness of him being able to see a senior officer.<sup>13</sup>

2.11 It would seem that Mr Chen and DIMIA had a different understanding of the reason for providing the number of the Chinese consulate. Mr Chen told the committee 'I just wanted to ensure that giving the consulate phone number should be enough'.<sup>14</sup> Mr O'Callaghan, however, took the view that Mr Chen was clearly being asked to provide assistance to confirm his identity and gave no indication that he had any difficulty with his identity being checked at the consulate.<sup>15</sup>

2.12 Mr Hughes, First Assistant Secretary, Refugee, Humanitarian and International Division in DIMIA, reiterated that Mr Chen did not indicate a problem with his identity being confirmed with the consulate and indicated to the committee that Mr Chen was not known to be an applicant for political asylum or a protection visa at the time DIMIA spoke to the consulate and no information was provided to them.<sup>16</sup>

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10 *Committee Hansard*, 25 July 2005, p. 67.

11 *Committee Hansard*, 25 July 2005, p. 68.

12 Statement of events on 26 May 2005 by the Executive Assistants to State Director, DIMIA, NSW Office.

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

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

15 *Committee Hansard*, 25 July 2005, p. 71.

16 *Committee Hansard*, 25 July 2005, p. 50.



2.13 DIMIA stated its position regarding contact with the consulate in a media release dated 8 June 2005. It emphasised that Mr Chen had not indicated any problem with his identity being confirmed with the consulate, DIMIA did not provide any information to the consulate and at the time of the call, DIMIA had no knowledge of the matter Mr Chen wanted to discuss.<sup>17</sup>

2.14 Mr Manne, Coordinator, Refugee and Immigration Legal Centre, told the committee that there were many other ways the official could have tested Mr Chen's identity if there were any doubts. He stated:

It seems incredible to us that it would be seen as necessary to contact Chinese officials to clarify the identity of a Chinese diplomat. It is clear that there are many ways available to the Australian government to check identity. Instead, what happened was that one of the cardinal sins in considering a request for asylum was committed. That was to contact the very authorities from whom he said he would face fundamental human rights abuse.<sup>18</sup>

### ***Discrepancies between Mr Chen and DIMIA's accounts of 26 May***

2.15 DIMIA's account of this period contradicts evidence provided by Mr Chen on the following points:

- Mr Chen claimed that he asked the executive assistant not to call the Chinese consulate. DIMIA officials stated to the committee and released a media release saying that Mr Chen did not indicate any difficulty with the Chinese consulate being contacted;
- Mr O'Callaghan's evidence and the media release indicate Mr Chen provided more than one telephone number for the Chinese consulate. According to Mr Chen, he provided only one;
- Mr O'Callaghan indicated that the phone call with the Chinese consulate was only to check identity. Mr Chen's evidence seems to indicate that they were trying to transfer the Chinese consulate to his mobile;
- importantly, DIMIA's version does not mention that Mr Chen expressed concerns for his safety. Mr Chen told the committee that he tried to persuade the executive assistant not to call as he feared for his life if the Chinese consulate was contacted;
- DIMIA asserted that the call to the consulate was made without further information being provided. Mr Chen's submission notes that a DIMIA official informed the Chinese consulate that Mr Chen was present in the department on 26 May 2005; and

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17 8 June 2005 Department of Immigration and Multicultural and Indigenous Affairs Media Release titled Setting the Record Straight – Contact with the PRC Consulate accessed at [http://www.immi.gov.au/media\\_releases/media05/d05018.htm](http://www.immi.gov.au/media_releases/media05/d05018.htm) on 5.7.05.

18 *Committee Hansard*, 26 July 2005, p. 29.

- there may also be an additional discrepancy as the DIMIA media release seems to suggest that Mr Chen offered the phone number of the Chinese consulate without being asked whereas Mr O'Callaghan told the committee that Mr Chen was asked to provide the number for the Chinese consulate.

2.16 The committee reminded Mr O'Callaghan that Mr Chen was on the public record saying he asked the consulate not to be called, that he had an unusual request and it was a serious matter. Mr O'Callaghan replied 'that is inconsistent with the advice my officers have given me'.<sup>19</sup> He further stated 'all I can say is what I have been factually advised, and that is that Mr Chen provided phone numbers for the consulate to be contacted and gave no indication that he had any difficulty with his identity being checked at the consulate'.<sup>20</sup>

2.17 When asked about DIMIA's account, Mr Chen reiterated and confirmed his account for the committee.

2.18 The committee is unable to determine which version of events regarding the contact with the Chinese embassy is correct. It is clear, however, that DIMIA did contact the Chinese consulate about Mr Chen. The committee now considers whether this action was necessary and appropriate.

### ***Procedures for confirming identity***

2.19 Mr Mark Green, Coordinator of the Refugee Advice and Casework Service (RACS) and Mr Chen's lawyer, questioned the appropriateness of the call to the Chinese consulate:

Contrary to the department's version of events as set out in the press release dated 8 June 2005, Mr Chen did indicate that he had a problem with his identity being confirmed via telephone call to the consulate...With respect, telephoning Mr Chen's Consulate was neither intelligent nor politically astute.<sup>21</sup>

2.20 The committee sought further explanation from DIMIA regarding why the phone call to the Chinese consulate was made. Mr Chen was offering his ID card and, according to Mr Chen, also his passport. Mr O'Callaghan stated several times that the call was made to confirm Mr Chen's identity and he indicated he had answered this question previously and had nothing to add.<sup>22</sup>

2.21 The committee understands there were other options available to the executive assistant to confirm Mr Chen's identity such as his identity card (and possibly his passport), checking the department's database (as Mr Chen had a valid subclass 995

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19 *Committee Hansard*, 25 July 2005, p. 70.

20 *Committee Hansard*, 25 July 2005, p. 71.

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

22 *Committee Hansard*, 25 July 2005, p. 67.

visa) or approaching DFAT.<sup>23</sup> The committee believes that later events would show DIMIA's contact with the Chinese consulate was unwise.

### ***Safety concerns***

2.22 The circumstances surrounding Mr Chen's visit to DIMIA were highly unusual and raised the question of whether DIMIA should have been more sensitive to his circumstances. Mr Green asserted that:

Mr Chen, who was then an accredited diplomatic representative of the People's Republic of China made a very serious attempt to communicate his fear of persecution and the reasons for that fear to the Australian government. In taking that step Mr Chen and indeed his family clearly indicated that they no longer wished to avail themselves of the protection of the People's Republic of China.<sup>24</sup>

2.23 Mr Green told the committee that 'Mr Chen made several protestations on that day to department of immigration officials that, were they to take certain courses of action, his life would be in danger. These are not mere words; these are things which, when said, need to be taken very seriously'.<sup>25</sup> He further stated:

The department and the government of Australia throughout this case should have been aware, we would submit, that the mere act of seeking political asylum in Australia could always be seen by the government of the People's Republic of China as an act of treason and an act that endangered state security.<sup>26</sup>

2.24 The letter from Mr Chen dated 25 May seeking political asylum clearly stated that he believed his life was at risk.<sup>27</sup> Mr Chen informed the committee that if he returned to China 'I definitely would have been persecuted. My life and my career would all be finished. Even my family would also be facing certain persecution. Freedom would be limited'.<sup>28</sup>

2.25 Mr Chen was certain in retelling his account:

I said I would give the phone number, but please do not call the Chinese consulate. I just wanted to ensure that giving the consulate phone number should be enough. I persuaded her not to call the consulate, because, once she called, the consulate would definitely know that I was there to make some unusual, special meeting and that would definitely alert them.<sup>29</sup>

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

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

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

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

27 Letter from Mr Chen to Mr O'Callaghan seeking political asylum dated 25 May 2005.

28 *Committee Hansard*, 26 July 2005, p. 57.

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

2.26 Evidence provided to the committee is consistent with Mr Chen's claims regarding likely persecution. The Federation for a Democratic China stated that as a senior diplomat, Chen Yonglin would certainly face persecution if he were sent back to China and further that the government's handling of his case has placed Mr Chen's life in danger.<sup>30</sup>

2.27 The Falun Dafa Association of NSW were of the view that the contact with the Chinese officials would have been an obvious cause for consternation which could have resulted in serious harm for Mr Chen. The association further notes there was no provision of immediate physical protection for Mr Chen once his application for asylum and/or protection was made.<sup>31</sup>

2.28 DIMIA's account of the telephone call to the Chinese consulate does not mention that Mr Chen expressed fears for his safety.

2.29 The Committee has been presented with two conflicting accounts regarding whether Mr Chen made concerns for his safety known to DIMIA before it made contact with the Chinese consulate. Clearly, if Mr Chen expressed fear for his safety, this should have been of paramount importance to DIMIA.

2.30 The United Nations High Commissioner for Refugees notes that Australia is a State-Party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, under which concomitant international obligations arise. They stated 'the primary consideration should be the physical safety and protection of asylum seekers and refugees as well as that of their family members or persons with whom they are associated'.<sup>32</sup>

2.31 The contact with the Chinese consulate by a junior departmental official or others, albeit with innocent intentions, also raised concerns about the maintenance of confidentiality and protocols.

### **Recommendation 1**

**2.32 The committee recommends the department formulate a protocol requiring that people claiming to be diplomats, employees or officials of foreign governments or people who possess knowledge or understanding of the foreign government in question, be dealt with by senior officers.**

### **Maintenance of confidentiality for applicants of territorial asylum and/or protection visas**

2.33 The Federation for a Democratic China stated that the contact made with the Chinese consulate by a DIMIA official was done without regard for the regulations

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30 *Submission 1* (Federation For a Democratic China), pp. 2 and 5.

31 *Submission 4* (Falun Dafa Association of NSW Inc), p .2.

32 *Submission 2* (UNHCR), p. 2.

and guidelines concerning the maintenance of confidentiality for consular officials or staff.<sup>33</sup> The Falun Dafa Association of NSW also noted their concerns that the contact with the Chinese consulate seemed to be a breach of confidentiality.<sup>34</sup>

2.34 Questions regarding the maintenance of confidentiality have been raised in relation to human rights law, the *Migration Act 1958* and the *Privacy Act 1988*. The relevant areas are outlined below.

### ***Human Rights Law***

2.35 Without passing comment on this specific case, the United Nations High Commissioner for Refugees (UNHCR) noted the right to privacy of the individual outlined in human rights law:

International human rights law guarantees everyone the right to privacy and protects individuals from arbitrary or unlawful interference. It also requires that effective measures be taken to ensure that information concerning a person's private life does not reach the hands of third parties that might use such information for purposes incompatible with human rights law. The rights to privacy and confidentiality enshrined in these instruments clearly applies to asylum seekers and refugees. Respect for that right assists in creating the climate of trust and confidence that needs to exist between an asylum-seeker and the country of asylum.<sup>35</sup>

2.36 UNHCR further advised that 'Australia has assumed responsibility to extend protection to asylum seekers and refugees through accession to the 1951 Convention and the 1967 Protocol relating to the Status of refugees (the Refugee Convention)'.

2.37 Mr Manne, Coordinator, Refugee and Immigration Legal Centre, outlined his concerns regarding the maintenance of confidentiality for the committee:

Put simply, at the heart of a person being able to pursue what is a fundamental human right, as guaranteed under article 14 of the Universal Declaration of Human Rights – that is, that everyone has the right to seek and enjoy in other countries asylum from persecution – is protection from those they are seeking asylum from. In this area one of the cardinal sins, if I could say this, in relation to dealing with someone who is seeking asylum is to go to their authorities in any way or manner whatsoever. That that not occur is one of the fundamental safeguards afforded to anyone who wants to put a case for their need to be protected.<sup>36</sup>

2.38 UNHCR has also advised the following principles should inform the application of the *Migration Act 1958*, its regulations and guidelines concerning the

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33 *Submission 1*(Federation for a Democratic China), p. 5.

34 *Submission 4* (Falun Dafa Association of NSW), p. 2.

35 *Submission 2* (UNHCR), p. 2.

36 *Committee Hansard*, 26 July 2005, pp. 28-29.

maintenance of confidentiality, for any consular officials or staff who apply to DIMIA, DFAT, or their respective Ministers for territorial asylum and/or protection visas:

**Confidentiality in the context of Refugee Status of Determination**

The consent of the asylum seeker should be sought before individual case information about his or her claim for refugee status is shared with other parties. In addition, individual case information about asylum seekers should be kept strictly confidential because of the potential risk to the asylum seeker and others. Confidentiality in asylum procedures is particularly important because of the vulnerable situation in which refugees and asylum-seekers find themselves. As discussed during the Global Consultations in International Protection, 'the asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request' and highlighted that 'no information on the asylum application should be shared with the country of origin'. State practice also shows that the principle of confidentiality is paramount in asylum procedures.

The decision-making authority in the country of asylum should not share any individual case information about an asylum seeker with the authorities of the country of origin...A decision-making authority should not confirm to the authorities or other entities in the country of origin whether or not a particular individual is or has been in contact with the decision-making authority, regardless of whether the person concerned is an asylum-seeker, a refugee, a resettled refugee, or whether she or he has been denied refugee status or excluded.

The decision-making authority in the country of asylum should not communicate with entities within the country of origin, whether they are governmental or non-governmental, in order to verify or authenticate declarations or documents provided by an asylum seeker.<sup>37</sup>

***The Migration Act 1958***

2.39 DIMIA, DFAT and the Minister for Foreign Affairs were also criticised in the press with suggestions that the *Migration Act 1958* may have been breached by providing compromising information to the Chinese government about Mr Chen Yonglin's bid for political asylum.<sup>38</sup>

2.40 Part 4A of the Migration Act (obligations Relating to Identifying Information) contains the following provisions regarding the prohibitions on the authorisation to disclose and the disclosure of identifying information to foreign countries which are central to determining whether a breach occurred.

2.41 Section 336 E, Disclosing identifying information, states that:

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37 *Submission 2* (UNHCR), pp. 1-4.

38 *Sydney Morning Herald*, 11 June 2005, p. 6.

- (1) A person commits an offence if:
  - (a) the person's conduct causes disclosure of identifying information; and
  - (b) the disclosure is not a permitted disclosure...

2.42 Section 336 F (3), Authorising disclosure of identifying information to foreign countries etc, states:

- (3) A disclosure is taken not to be authorised under this section if:
  - (a) the person to whom the identifying information relates is:
    - (i) an applicant for a protection visa; or
    - (ii) an offshore entry person who makes a claim for protection under the Refugees Convention as amended by the Refugees Protocol; and
  - (b) the disclosure is to a foreign country in respect of which the application or claim is made, or a body of such a country.

2.43 Section 336 F also states:

However, if:

- (a) the person to whom the identifying information relates has requested or agreed to return to the foreign country in respect of which the application or claim is made; or
- (b) the person is an applicant for a protection visa, and the application has been refused and finally determined...

2.44 Regarding the sections of the Migration Act above, Mr Manne told the committee there is specific legislation which on its face precludes disclosure to a foreign country, including the home country of the applicant if they are an applicant for protection. 'It is only in circumstances where that matter has been finally determined – if you like, the claim for protection has been finally determined – that the nondisclosure requirement ceases to exist or does not apply.' He further stated '...the disclosure of identifying information in relation to the applicant Mr Chen, by any agency – whether by DFAT or whether by any particular public official, including in the department of immigration – could well have potentially constituted an offence under the acts, as referred to'.<sup>39</sup>

2.45 The definition of personal identifiers in the *Migration Act 1958*, Section 5A, does not specifically include names but it does include 'any other identifier prescribed

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39 Committee Hansard, 26 July 2005, p. 31.

in the regulations'.<sup>40</sup> In all of the circumstances of the facts before the committee, it is unable to conclude that there had been any breach of the Migration Act as at 26 May 2005 by either the DIMIA executive assistants in Sydney or any DIMIA or DFAT officers in Sydney or Canberra.

2.46 Even so, some members of the committee are concerned that a strict interpretation of this provision in the Act fails to take account of the circumstances of Mr Chen's case. A common sense approach dictates that disclosing the name of an individual seeking to remain anonymous because they fear that their life and that of their family may be in jeopardy is a serious breach of that individuals rights. Such rights should be protected under the law.

2.47 The committee recommends that the government review the provisions of the Migration Act to ensure that the rights of people in a situation similar to Mr Chen are afforded adequate protection. The law should, in such situations, prohibit the disclosure of names or any other information that would identify them.

### ***Privacy Act 1988.***

2.48 International obligations regarding an individual's right to privacy are implemented in domestic laws through the *Privacy Act 1988*. The protection of personal information is set out in the Information Privacy Principles (IPPs) which commonwealth departments must adhere to. Regarding the *Privacy Act 1988*, Ms Sheedy, Assistant Secretary, Information Law Branch, Attorney-General's Department, informed the committee that:

...the Privacy Act sets up a regime for protection of personal information. In relation to the public sector, there are a set of principles called the Information Privacy Principles, which agencies, such as DIMIA are bound by. Those IPPs set out a regime for the collection, storage, use and disclosure of personal information. The overarching principle is: only collect for a lawful purpose and only collect what is necessary for that purpose. In relation to disclosure: only disclosure for the purpose for which the information was collected. Then there are a series of exceptions to that disclosure rule, including where the individual has consented, where the information is necessarily disclosed to protect life and safety or for law enforcement purposes.<sup>41</sup>

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40 According to the Migration Act 1958, 5A personal identifier means any of the following (including any of the following in digital form): (a) fingerprints or handprints of a person (including those taken using paper and ink or digital livescanning technologies); (b) a measurement of a person's height and weight; (c) a photograph or other image of a person's face and shoulders; (d) an audio or a video recording of a person (other than a video recording under section 261AJ); (e) an iris scan; (f) a person's signature; (g) any other identifier prescribed by the regulation, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*, accessed at <http://www.comlaw.gov.au> on 2.8.05.

41 *Committee Hansard*, 26 July 2005, p. 17.



2.49 Information Privacy Principles (IPP) 10 and 11 may be relevant in relation to the maintenance of confidentiality for any consular officials or staff who are applicants for territorial asylum and/or protection visas by DIMIA, DFAT and their respective ministers.<sup>42</sup>

2.50 IPP 10 describes limits on the use of personal information. IPP 11 states that personal information cannot be disclosed to another agency except in certain circumstances, for example under law.

2.51 Ms Sheedy further explained to the committee that the provision in the *Migration Act 1958* (336E) is an offence provision but 'The IPP's under the Privacy Act give rise to a complaint mechanisms – you complain to the Privacy Commissioner about a breach of privacy'.<sup>43</sup>

2.52 Mr Green told the committee that 'the more important issue is whether there has been a breach of the refugees convention, the Universal Declaration of Human Rights – instruments which clearly state that asylum seekers, people who are afraid of being persecuted, should not be refouled and should not be identified to the government of the country which they fear persecution from. That principle, ethically and morally and as a matter of fundamental human rights, is the principle at stake'.<sup>44</sup>

2.53 In Mr Chen's case, if there had been a breach of the refugees convention by DIMIA, such a breach was clearly unintended. However, DIMIA's action in contacting the consulate was still unwise. This was a highly unusual set of circumstances, as DIMIA acknowledges, and the committee believes that DIMIA must take measures to ensure that in future, greater care will be taken in dealing with people claiming to be consular staff seeking, in unusual circumstances, to meet senior DIMIA officials.

### **Action taken on the morning of 26 May after Mr Chen delivered his request for political asylum**

2.54 Once DIMIA became aware that Mr Chen was seeking political asylum, the government and Mr Chen became engaged in a formal process arising from the government's obligations under the *Migration Act 1958*.

2.55 Mr O'Callaghan clarified for the committee that he became aware of Mr Chen's approach somewhere between 10:30am and 11:00am on 26 May. He said that while in a meeting he received a message that someone was seeking to talk to him but he did not know about what saying 'I had no information about that because our officers had no information and Mr Chen provided no information'.<sup>45</sup> Mr O'Callaghan

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42 *Submission 7* (RACS), pp. 16-17.

43 *Committee Hansard*, 26 July 2005, p. 19.

44 *Committee Hansard*, 26 July 2005, p. 61.

45 *Committee Hansard*, 25 July 2005, p. 61.

said the message he received indicated that the person wishing to speak with him claimed to be an official of the Chinese consulate. He said his response to the executive assistant providing the message to him in the meeting was that 'I would respond when I got back to my office'.<sup>46</sup>

2.56 Mr O'Callaghan explained why he did not respond immediately to a matter which seemed to be of sufficient importance to his executive assistant that she chose to interrupt his meeting:

It was suggested that someone claiming to be an official of the Chinese consulate was seeking to speak to me. Many people seek to speak to the state director of the immigration department. We have between 1,000 and 1,500 people come into that office alone each day. We have 80,000 calls come into the contact centre in the office each month. We have many calls come through to the executives' numbers on a daily basis, where people are seeking to speak to the state director or the deputy state directors. As you know, Immigration is an agency dealing with people. There are a lot of people in New South Wales and beyond who seek to speak to me.<sup>47</sup>

2.57 Mr O'Callaghan went on to explain that on occasions his executive assistant does interrupt meetings to bring him messages that people want to speak to him and on that occasion he expected to be back in the office in 30-40 minutes 'and there was no reason to think that it could not wait until then'.<sup>48</sup>

2.58 Mr O'Callaghan told the committee that the letters left at the security desk by Mr Chen were taken by the security guards to the mail opening area where they were opened and brought to his office.<sup>49</sup> He clarified that he returned to his office about 11:20am and the letter was delivered around 11:30am.<sup>50</sup>

2.59 These identical letters were Mr Chen's request for political asylum. One was addressed to the former state director and this had been crossed out and Mr O'Callaghan's name written in handwriting and the other was addressed to Mr Robert Illingworth, Assistant Secretary of the Onshore Protection Branch in the Refugee, Humanitarian and International Division, DIMIA.<sup>51</sup>

2.60 Mr O'Callaghan told the committee that upon reading the letter his first reaction was surprise and then he called the business manager of the onshore protection area, Ms Louise Lindsay, to his office and asked her to contact Mr Chen. He then put a phone call through to Canberra to speak to any of the senior executive

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46 *Committee Hansard*, 25 July 2005, p. 62.

47 *Committee Hansard*, 25 July 2005, p. 62.

48 *Committee Hansard*, 25 July 2005, p. 63.

49 *Committee Hansard*, 25 July 2005, p. 59.

50 *Committee Hansard*, 25 July 2005, p. 63.

51 *Committee Hansard*, 25 July 2005, p. 59.

officers in the Refugee, Humanitarian and International Branch but all those officers were before a Senate estimates hearing and were unavailable. He then spoke to a director in that division, Ms Kathleen Dunham.<sup>52</sup>

### ***Contact with senior executives in Canberra and DFAT***

2.61 Mr O'Callaghan told the committee that he understood that Ms Dunham sought to contact senior officers who were in Parliament House for Senate estimates hearings. She also spoke with some other senior officers in the Canberra office and contact was made with DFAT.<sup>53</sup> Mr Illingworth, DIMIA, clarified that Mr Chen's letter was faxed from the NSW office to Ms Dunham and she made a number of calls within the department and calls to contact him at Senate estimates hearings which she eventually did. According to Mr Illingworth, 'The upshot was that we received the letter around noon, DFAT was called, they were briefed on the content of the letter and the issue of territorial asylum visas orally over the phone and the letter was faxed to DFAT at 1.06pm'.<sup>54</sup> Mr Hughes, DIMIA, said that he was not aware of DIMIA contacting the office of the Minister for Foreign Affairs.<sup>55</sup>

2.62 Mr Illingworth told the committee that DIMIA's response was to see this as a request for political asylum and to deliver it to the appropriate portfolio to be actioned. He added that at a practical level they continued to be in contact with the NSW office regarding the efforts to contact Mr Chen. Mr Illingworth said that there was communication during the afternoon between officers of the division in Canberra and DFAT but 'there was no response in terms of the outcome of the request put in the letter'.<sup>56</sup>

2.63 DFAT officers told the committee that DFAT first became aware of this matter:

...when it received from DIMIA a copy of Mr Chen's letter addressed to DIMIA New South Wales office seeking political asylum. We received this letter by fax from DIMIA on the afternoon of Thursday 26 May. This letter was brought to the attention of Mr Downer's office later that evening...about 7pm.<sup>57</sup>

2.64 Mr O'Callaghan said that Ms Louise Lindsay tried to contact Mr Chen around 11:30am on 26 May but his mobile phone was switched off. She was able to contact Mr Chen mid afternoon on 26 May and they had a discussion regarding setting up a meeting for 27 May.

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52 *Committee Hansard*, 25 July 2005, p. 65.

53 *Committee Hansard*, 25 July 2005, p. 73.

54 *Committee Hansard*, 25 July 2005, p. 73.

55 *Committee Hansard*, 25 July 2005, p. 79.

56 *Committee Hansard*, 25 July 2005, p. 74.

57 *Committee Hansard*, 26 July 2005, p. 76.

2.65 Ms Lindsay explained:

I attempted to contact him at about 11:30am or 25 past 11 as I had been requested to by the state director. His mobile was turned off. I got the message about the phone being out of range or switched off. I rang back later that afternoon, just after 3pm. I spoke to him and invited him to come in to our office for a chat about his visa options. We had been conversing with Canberra, who in turn had been conversing with DFAT as they have explained. Following the claim for territorial asylum, we wanted to inform Mr Chen of the kinds of options that would be open to him if he did indeed want to remain in Australia.<sup>58</sup>

2.66 Ms Lindsay told the committee that they organised for Mr Chen to come to the Parramatta office on 27 May and she arranged for one of the other business managers to attend as they had a lot more information and knowledge of the visa classes.<sup>59</sup>

## Conclusion

2.67 This chapter has examined the events which took place on 26 May 2005 from the time Mr Chen called to make an appointment to see the state director until the appointment was made for a face to face meeting on 27 May 2005.

2.68 The committee examined in detail all accounts regarding the telephone contact made by DIMIA with the Chinese consulate on 26 May to verify Mr Chen's identity. The committee is unable to reconcile the conflicting accounts regarding the phone call to the Chinese consulate but it is the committee's view that the situation could have been handled better.

2.69 From the evidence provided by Mr Chen, he was clearly anxious to see the state director, calling several times in a short timeframe. Although not providing a reason for wanting to speak to Mr O'Callaghan, he stated the matter was urgent, important and unusual. Mr Chen's request seemed sufficiently urgent to the executive assistant that she had Mr O'Callaghan's meeting interrupted to pass on Mr Chen's message.

2.70 With the benefit of hindsight, it may appear that Mr O'Callaghan's failure to respond to the urgent note was inappropriate – having been informed that a Chinese diplomat was in the foyer seeking urgent attention, Mr O'Callaghan should have assumed personal and immediate charge of the situation.

2.71 Mr Chen said he offered his ID card and passport as proof of his identity and showed his ID card to the security guards at the front desk. At some point DIMIA took the step of asking for a number for the Chinese consulate to confirm Mr Chen's identity with his employer. It appears Mr Chen and DIMIA had a different

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<sup>58</sup> *Committee Hansard*, 25 July 2005, p. 85.

<sup>59</sup> *Committee Hansard*, 25 July 2005, p. 85.

understanding of how the number of the Chinese consulate would be used to confirm his identity.

2.72 The contact with the Chinese consulate, was, in the committee's view an error in judgement. Clearly, there were more appropriate avenues available to check Mr Chen's identity and these included his ID card, DIMIA's own database and contact with DFAT.

2.73 The committee is concerned that DIMIA's call to the Chinese consulate displayed a lack of awareness of the sensitivities required in dealing with a foreign diplomat seeking an urgent, private meeting with a senior DIMIA officer.

2.74 On the basis of evidence presented to it, the committee is not in a position to determine whether obligations regarding confidentiality were breached when DIMIA contacted the Chinese consulate to confirm Mr Chen's identity. It believes, however, that the incident is a timely reminder for DIMIA to ensure its officers are aware of their confidentiality obligations.

## **Recommendation 2**

**2.75 The committee recommends that DIMIA take immediate steps to ensure that all officers are made aware of their confidentiality obligations under relevant legislation and conventions. Furthermore, that they are made aware of the need to exercise care when dealing with a foreign diplomat and that such important matters are dealt with expeditiously by a senior officer.**



## Chapter 3

### The Minister's decision and ministerial responses

3.1 This chapter examines the role and response of the Minister for Foreign Affairs to Mr Chen's request for political asylum. Chapter four will consider the actions of DFAT and DIMIA following that decision. This chapter also details the public responses of the Minister for Foreign Affairs and the Minister for Immigration, Multicultural and Indigenous Affairs as reported in the press.

#### *Territorial asylum/subclass 800 Visa*

3.2 In his initial request, Mr Chen was seeking political asylum which DFAT treated as a request for territorial asylum.

3.3 The Procedures Advice Manual 3 – Schedule 2 – Territorial Asylum, states that:

...territorial asylum is commonly known as 'political asylum' and is granted by instrument by a Minister (usually the Foreign Minister). It should not be confused with refugee status. Persons who have been recognised as refugees have not been granted territorial asylum. Most requests for asylum have been found to be, more accurately, requests for refugee status. Therefore, if a person enquires about 'asylum', officers should seek to establish whether the enquiry is, in fact, about refugee status and, if so, explain the procedures for applying for a Protection Visa. Anyone who insists on pursuing a request for (territorial) asylum should be advised to contact the nearest office of DFAT.<sup>1</sup>

3.4 The Manual further notes:

There is no approved application form for this visa. Rather, Schedule 1 (item 1131(3) (a)) requires application for this visa to 'be made...in a manner approved by the Minister'. Officers may expect further procedures to be notified as need arises ie if a person is granted territorial asylum (by DFAT). Any purported visa 800 application is incapable of being a valid application for the purposes of s46 of the Act unless territorial asylum has been granted. Schedule 1 item 1131 (3) (aa) requires that 'when the application is made, there is lodged...documentation that ...evidences the grant...to the applicant of territorial asylum.'<sup>2</sup>

3.5 Regarding Subclass 800 – Territorial Asylum, the Migration Regulations notes one of the criteria to be satisfied at the time of application is that 'the applicant must have been granted territorial asylum in Australia by instrument of a Minister'.<sup>3</sup>

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1 DIMIA Procedures Advice Manual 3 – Schedule 2 Visa 800 – Territorial Asylum.

2 DIMIA Procedures Advice Manual 3 – Schedule 2 Visa 800 – Territorial Asylum.

3 Migration Regulations – Subclass 800 – Territorial Asylum.

Mr Hughes from DIMIA clarified that under the *Migration Act 1958* 'you cannot make an application for a territorial asylum visa until you have an instrument of grant of asylum issued by the Minister for Foreign Affairs. So there is a precondition for any application under the Migration Act. If there is no instrument issued then you cannot get to the stage of making an application'. He added that 'it is generally accepted that the Minister for Foreign Affairs would be the minister exercising that power'.<sup>4</sup>

3.6 In Mr Chen's case the Minister decided not to issue the instrument for territorial asylum which would have led to an application being considered.

3.7 Mr David Manne, questioned the response to Mr Chen's request for territorial asylum:

In our view, what ought to have occurred in accordance with the law was consideration of a visa which exists under the migration legislation – that is, territorial asylum visa subclass 800....Our concerns substantially related to whether or not those laws as they exist were applied appropriately and in accordance with the way in which a request for asylum ought to be considered...

My submission on these matters, put simply, is that while there is a very distinct lack of clarity as to exactly what are the criteria for the grant of political asylum, the procedures advice manual makes it clear that it is commonly known as 'political asylum' and is granted by an instrument of the minister and should not be confused with refugee status. It appears on the face of it that we are looking at a situation here where the request for asylum or protection in this situation is similar to, for instance, a politician's or indeed a diplomat's. While there are no particular criteria, it seems clear to me that Mr Chen, as a diplomat, ought to have been seriously considered for a grant of political asylum and then for the visa, given that we have a visa subclass which relates precisely to his situation.<sup>5</sup>

3.8 Mr Green agreed and told the committee that territorial asylum seemed to be the most appropriate visa for Mr Chen to apply for. 'For instance, how many times do diplomats seek protection visas in this country? It is an unusual circumstance and one that has to be handled sensitively and carefully; it is in the national interest that it is done so, so clearly a territorial asylum visa would be a more appropriate way to go'.<sup>6</sup>

3.9 Mr Green further told the committee that the procedures for dealing with territorial asylum applications are not clear.<sup>7</sup>

3.10 Mr Larsen, Legal Adviser, DFAT, advised the committee that 'the decision as to whether or not to grant territorial asylum is at the discretion, in our case of the

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4 *Committee Hansard*, 25 July 2005, p. 78.

5 *Committee Hansard*, 26 July 2005, pp. 23-24.

6 *Committee Hansard*, 26 July 2005, p. 58.

7 *Committee Hansard*, 26 July 2005, p. 58.



Minister for Foreign Affairs. It is an executive power and it is an executive discretion' and is non reviewable.<sup>8</sup> Regarding guidelines, Mr Larsen further advised there are no guidelines for the making of this decision, 'the minister would have various considerations in mind when he makes such a decision. No doubt, the national interest is a critical one of those, but there are no express criteria which limit how the minister exercises that discretion'.<sup>9</sup>

### ***Concerns regarding refusal of territorial asylum visa***

3.11 Dr Neumann told the committee that traditionally, government have let their decisions about asylum claims be influenced by a combination of four factors: national interest; legal obligations; humanitarian considerations and public opinion.<sup>10</sup> He explained that when cabinet agreed on Australia's first asylum seeker policy a few months before the Melbourne Olympics, it decided three agencies would be involved in decisions about requests for asylum: ASIO would advise the government whether the person was a security risk; immigration would advise whether the person was a suitable immigrant and external affairs was left to weigh up humanitarian considerations and the national interest. He explained that 'Once Australia's response to asylum seekers became guided in a large part by international refugee law and its interpretation in Australian legislation, the immigration department became the principle agency responsible for decisions about asylum requests. But foreign affairs apparently retained the right to grant territorial asylum in sensitive cases'.<sup>11</sup>

3.12 He noted that 'a close look at Australia's historical response to asylum seekers suggests that in the past, asylum requests of a sensitive nature – that is, cases where the national interest was potentially affected, such as those involving foreign diplomats or West Papuan nationalists – received close attention, often from the responsible minister and sometimes from cabinet'.<sup>12</sup>

3.13 Dr Neumann told the committee that the important issue is that historically people requesting asylum attend a meeting where issues are discussed. In Mr Chen's case when his request for political asylum was refused, he was not offered anything in return.<sup>13</sup>

3.14 Mr Collaery, legal representative, CC Law, also voiced concerns regarding the process for asylum seekers stating that 'a review of classified archival material embracing the years 1937-1982, revealed that the Australian Government never had a coordinated or humane mechanism for responding to 'sensitive' requests for asylum be

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

9 *Committee Hansard*, 26 July 2005, p. 88.

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

11 *Committee Hansard*, 26 July 2005, p. 35.

12 *Committee Hansard*, 26 July 2005, p. 35.

13 *Committee Hansard*, 26 July 2005, p. 37.

it from fleeing Jews or individual asylum seekers'.<sup>14</sup> Mr Collaery also raised concerns that 'foreign policy in relation to asylum and regime change is muddled by ad hoc assessments and is shrouded by secrecy...' He suggested that 'Ephemeral concerns in bilateral relations overshadow moral imperatives'.<sup>15</sup> This is in contrast to Dr Neumann's criteria of national interest; legal obligations; humanitarian considerations and public opinion.

3.15 The following concerns regarding the response of the Foreign Minister were voiced to the committee:

*No reasons provided*

3.16 Mr Chen told the committee that at the 31 May meeting, he asked why political asylum had been denied and:

The reason I was given by the senior protocol officer was that the decision had been made and the Australian government could deny my application for political asylum for reasons of foreign affairs.<sup>16</sup>

3.17 He told the committee that he attempted again at the meeting to clarify the reason:

At that time I asked why I was rejected for a political asylum visa because I could not understand why. They said the decision had already been made and that they had no choice.<sup>17</sup>

3.18 The committee asked DFAT whether the minister received advice from the department or experts to assist him make the decision to refuse territorial asylum. Ms Morton did not answer the question but replied 'I am sorry I am not able to tell you what was in the minister's mind at the time. You would need to ask that question of him'.<sup>18</sup> When asked again whether the minister gained information from experts in the field, she replied 'Mr Chen has either misunderstood what he was told during the meeting on 31 May or his recollection of it is inaccurate. He was told that his request for an instrument to give him the right to apply for territorial asylum would not be given. He was not given reasons for that. He was also told at that meeting, 'Here is the range of visas you can apply for'.<sup>19</sup>

3.19 Ms Morton told the committee 'The minister has said that he believed that it would not be appropriate to give a territorial asylum certificate in that case and that it

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14 *Submission 6* (Mr Collaery), p. 2.

15 *Submission 6* (Mr Collaery), p. 2.

16 *Committee Hansard*, 26 July 2005, p. 48.

17 *Committee Hansard*, 26 July 2005, p. 49.

18 *Committee Hansard*, 26 July 2005, p. 89.

19 *Committee Hansard*, 26 July 2005, p. 90.

was appropriate that, if Mr Chen wished to stay in Australia, he apply for a visa and that it be considered under the Migration Act in the normal way'.<sup>20</sup>

3.20 Mr Manne told the committee that there are detailed written reasons provided if a protection visa is refused and submitted to the committee that 'as a matter of natural justice and fairness...it would be appropriate to set out reasons, particularly if there is a refusal, so the applicant could understand why they had been refused and to at least assist them in pursuing further options'.<sup>21</sup>

#### *Time taken for the decision*

3.21 The committee heard that the Minister for Foreign Affairs became aware of Mr Chen's request around 7pm on 26 May 2005 and by 10:30am on 27 May 2005, when an Interdepartmental Committee meeting began, the attendees were advised of the Minister's decision. DFAT was not aware whether the Minister sought any advice or briefings to make this decision.

3.22 It should be noted that in subsequent correspondence with DFAT regarding another inquiry being undertaken by the committee, they were advised:

Also, Mr Downer has decided that he will not confirm to the Senate Enquiry when he became aware of the letter from Chen Yonglin delivered to DIMIA on 26 May 2005.<sup>22</sup>

3.23 Mr Green told the committee of his concerns regarding the timeline:

I would also have to submit that I find it extraordinary that a visa application of that nature from a senior diplomat in a consulate would be decided, if you like, without even an interview or a reference to the applicant. One of the things that in this case renders that extraordinary to me is that somewhere in his letter...Mr Chen indicates that he has confidential information about the way the system operates. Even that remark alone, I would have thought, prompted some kind of investigation.<sup>23</sup>

3.24 This view was supported by the Federation for a Democratic China which stated that the timeframe shows that there was a lack of consideration of the details of the case and a decision was made in haste.<sup>24</sup>

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20 *Committee Hansard*, 26 July 2005, p. 88.

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

22 Letter from Ms Morton, DFAT, to committee secretary regarding the committee's inquiry into Australia's relationship with China dated 18 July 2005.

23 *Committee Hansard*, 26 July 2005, p. 58.

24 *Submission 1*(Federation for a Democratic China), p. 4.

*Mr Chen not interviewed*

3.25 Mr Green also voiced concerns that DFAT officers or the minister had not spoken with Mr Chen before the decision was made:

...in the process of deciding whether or not Mr Chen should be granted territorial asylum, there was no interview conducted with him about what his claims might be and no testing of the validity of those claims, and the Procedures Advice Manual suggested that it was a matter for DFAT. At that stage, as I understand on instructions, DFAT did not approach Mr Chen.<sup>25</sup>

3.26 Mr Manne told the committee that Mr Chen's letter should have triggered 'a proper investigation and consideration of whether or not these circumstances attracted the grant of political asylum or territorial asylum under law'.<sup>26</sup> He further stated:

What we are looking at here, if I could put it as simply as this, is that either we have laws which contain a visa class or subclass or we do not. If we do have a visa, proper consideration would be given to granting it and to taking all necessary steps before the grant to properly consider, in this case at least, whether an instrument ought to be granted. In the circumstances we have concerns that there may not have been a full or proper investigation and/or consideration which would have led to at least a decision by the minister in relation to the matter.<sup>27</sup>

3.27 Mr Manne suggested to the committee that the following process should have been followed as a bare minimum:

...there ought to have been a proper preliminary interview at which the substance of his fears was heard. There ought to have been a reasonable degree of clarity as to what DFAT needed to know in relation to his claims and a proper process set out whereby he was able to put those claims in writing in detail and for those claims to have been considered. Following from that there ought to have been at least one confidential and lengthy interview to discuss and test the claims, and then both the written and oral testimonies should have been taken back for consideration by the Minister for Foreign Affairs....It would appear to provide a reasonable framework in order to afford the applicant both the proper safeguards and the procedural fairness which are critical in this process.<sup>28</sup>

3.28 When asked about recourse for an applicant Mr Manne told the committee that there would seem not to be a clear answer but if someone was not provided a proper opportunity to have their case heard, 'the normal legal principles would appear to open up the question of whether or not natural justice has been afforded'. He added that a possible action would be to obtain counsel's advice on 'whether or not a court

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25 *Committee Hansard*, 26 July 2005, p. 64.

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

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

28 *Committee Hansard*, 26 July 2005, pp. 29-30.

could consider compelling a proper consideration by the relevant decision maker in accordance with law'.<sup>29</sup>

*The refusal not provided to Mr Chen in writing*

3.29 Mr Chen told the committee that he was never given anything in writing as to the reasons for the rejection of his request for political asylum.<sup>30</sup> On 4 June 2005, he made known publicly that he was seeking political asylum.

3.30 Mr Green also noted the following concerns regarding the formal lack of advice in writing:

When we took instruction from Mr Chen on 6 June, one of the first things we had to establish was which visa application was on foot, and it became very apparent on 6 June that it was not clear that the application for territorial asylum had been definitively dealt with: there was nothing in writing. Our instructions were that an oral message was communicated on the evening of 27 May to say that the territorial asylum application had been refused. An oral message given through a DIMIA bureaucrat is a little unusual; given that the procedural advice manual suggests that it is the department of foreign affairs that handles territorial asylum applications, at least in the first instance. As one would do in the course of these things, we immediately wrote and sent a fax to Mr Downer's and Senator Vanstone's office, and copied it to the Prime Minister's office, seeking clarification as to exactly what the status of that application for territorial asylum was.<sup>31</sup>

3.31 Mr Manne commented that the lack of a formal response could provide 'further evidence of a failure to properly and fully consider the request for territorial asylum'.<sup>32</sup> He stressed that in doing so there was 'a failure to indicate it to someone – and this is the fundamental point – who was in fear of facing fundamental human rights abuses in the form of persecution in his home country and was no doubt in an extremely precarious and terrified situation. Also on the facts that I have been told today, he may well have felt that he had not been heard – that he was coming up against a brick wall – on matters which, at least as far as he was concerned, were of the utmost importance for his basic needs and protection'.<sup>33</sup>

3.32 Mr Collaery noted that the 'lack of accountability and review is the achilles heel of the process in Australia'.<sup>34</sup>

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29 *Committee Hansard*, 26 July 2005, p. 27.

30 *Committee Hansard*, 26 July 2005, p. 49.

31 *Committee Hansard*, 26 July 2005, p. 57.

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

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

34 *Submission 6* (Mr Collaery), p. 17.

## **Conclusion**

3.33 The committee has no concerns about the Foreign Minister having the discretion to grant instruments for territorial asylum. The committee notes, however, that while there is a Procedural Advice Manual for DIMIA, it contains no details on who is responsible for the proper investigation of the request for territorial asylum, how this should be conducted or how the matter should be resolved. The committee was told that there are no guidelines for the Foreign Minister to follow when making this decision save for the national interest as discussed by witnesses.

3.34 The committee is concerned at the apparent lack of investigation, including the lack of opportunity for Mr Chen to present and explain his claims. This, coupled with the short timeframe for making the decision suggests a lack of due consideration and seriousness afforded to Mr Chen's request by the relevant authorities.

3.35 The committee accepts that for reasons of natural justice and fairness, Mr Chen should have been provided with a reason for the rejection of his request for political asylum. This information could have assisted him to decide between the other visa options open to him. The lack of any justification for denying his request clearly concerned him as he stated he sought a reason at least twice during the meeting on 31 May 2005.

3.36 Furthermore, Mr Chen received no formal written advice regarding the refusal of territorial asylum. This meant that Mr Chen's lawyer had to seek clarification of the status of Mr Chen's request from Mr Downer. Mr Downer seems to have left the communication of this vital piece of information to oral advice, conveyed through his department to an officer of another department.

3.37 Some members of the committee found that important procedures were not adopted when considering Mr Chen's application for territorial asylum. The committee believes that at the very least he should have been interviewed about the circumstances surrounding his request and should have received written formal advice of the decision to reject his request. The committee considers that where such a decision has the ability to affect the rights of an individual that the decision should be as transparent as possible.

## **Ministerial responses to Mr Chen's initial approaches for asylum/protection**

### *Conflicting reports from Ministers*

3.38 The press reported that on 30 May 2005, Senator Vanstone, the Minister for Immigration, Multicultural and Indigenous Affairs said Mr Chen made a request for

territorial (political) asylum and has been refused, apparently by the Foreign Minister.<sup>35</sup>

3.39 On 6 June 2005, Senator Vanstone said that 'Mr Chen's request for territorial asylum had not been granted but that was a matter for the Minister for Foreign Affairs. She noted further that Mr Chen has applied for a normal protection visa. She explained that that visa is different from territorial asylum and that the claim may come to her.'<sup>36</sup>

3.40 On 7 June 2005, the Foreign Minister insisted that because Chen has already applied for a protection visa, his case is now being handled by DIMIA and not DFAT.<sup>37</sup> However he would not explain why Mr Chen's application for political asylum was rejected. In an interview Mr Downer said 'political asylum has only been granted in extremely rare cases...in the case of the Petrov Affairs and one other over the last 40 years or so...You can't have six different ministers considering his application. Chen has made his application through the Immigration Department and he has to follow due process'.<sup>38</sup>

3.41 On 8 June 2005, Mr Downer said Mr Chen did not lodge a formal application at all. He said Mr Chen applied for a protection visa and did not seek political asylum.<sup>39</sup> On 9 June 2005, Mr Downer confirmed that Mr Chen did make an application for political asylum, contradicting his earlier statements. He said he believed it would be better for Mr Chen to apply for a protection visa.<sup>40</sup> He said 'I still stick pretty solidly with my view that it's much more appropriate for the Department of Immigration, with all its experience, to make the appropriate determination on the basis of the acts presented to it'.<sup>41</sup>

3.42 At a press conference in India on 8 June 2005, the Foreign Minister stated:

First of all I don't think we should get bogged down in semantics here. I mean it's clear that Mr Chen applied on the, I think the 27<sup>th</sup> of May to stay in Australia. He didn't make a formal application to me for political asylum. He made and that letter illustrates an application to the Department of Immigration. And if you read the whole of the letter you would see that in that letter he asks the Department of Immigration if it would be prepared to vary his visa. Look this is quite a semantic point because he certainly applied to stay in Australia and the only semantic and minor point that I would make is that he didn't make a direct application to me as the Foreign

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35 *The Age*, 10 June 2005, p. 4.

36 Transcript PM, 6 June 2005.

37 Transcript PM, 7 June 2005.

38 *The Australian*, 8 June 2005, p. 3.

39 *The Age*, 10 June 2005, p. 4.

40 *West Australian*, 10 June 2005, p. 4.

41 *Canberra Times*, 10 June 2005, p. 4.

Minister for political asylum, that's the only point I am making. But he certainly made an application to stay in Australia. As time went on it became clear to us that the best way for him to apply would be through an application for a protection visa, so that the case that he wanted to put could be objectively considered. It doesn't make sense – and I've made this point before – it doesn't make sense for people to just apply for political asylum and expect the Foreign Minister to just make the decision with a stroke of a pen. It's much wiser to have a considered process which can be worked through by the Immigration Department, they're the experts in considering these cases.<sup>42</sup>

3.43 These statements made by the Foreign Minister on 8 June 2005 that Mr Chen did not lodge a formal application at all caused Mr Chen further unnecessary concern.

3.44 His lawyer, Mr Green, had already written to the Minister on 6 June 2005 to clarify the situation regarding the territorial asylum visa. In his response dated 14 June 2005, Mr Downer advised that Mr Chen's letter to DIMIA dated 25 May 2005:

...was taken as constituting a request for an instrument granting him territorial asylum (there is no official form or prescribed way of seeking such an instrument) as this is the necessary precursor to making a valid application for a Territorial Asylum (Subclass 800) visa...he had decided on 27 May not to grant an instrument. Mr Chen was therefore not able to make a valid application to DIMIA for a Territorial Asylum Visa. That letter was referred to me.

Having considered Mr Chen's request, I decided on 27 May not to grant an instrument to Mr Chen. In the absence of an instrument granting him territorial asylum in Australia, Mr Chen was not able to make a valid application to DIMIA for a Territorial Asylum Visa. Mr Chen was advised by the Department of Immigration and Multicultural and Indigenous Affairs on my portfolio's behalf later on 27 May that political asylum would not be granted.

Mr Chen was also advised at the same time that if he wished to stay in Australia there was a range of visa options he could pursue including a protection visa. It is now public knowledge that Mr Chen lodged an application for a protection visa on 3 June. That application will be considered on its merits by DIMIA, in accordance with normal processes. I do not intend to give further consideration to any request by Mr Chen for territorial asylum.<sup>43</sup>

3.45 The committee understands that the Minister for Foreign Affairs is the minister responsible for determining whether to grant an instrument granting territorial asylum. Once this request was rejected, the matter for granting a protection visa came under the responsibility of DIMIA. The confusion created about the status of Mr

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42 Minister for Foreign Affairs, Press Conference transcript, 8 June 2005, accessed at [http://fff.foreignminister.gov.au/transcripts/2005/050608\\_press\\_conf.html](http://fff.foreignminister.gov.au/transcripts/2005/050608_press_conf.html) on 2.8.05.

43 Letter from the Minister for Foreign Affairs to Mr Mark Green dated 14 June 2005.



Chen's application for a protection visa, highlights the importance of conveying decisions in writing to the applicant and for the applicant to be kept fully informed about the progress of their application.



## 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'.<sup>1</sup> 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.<sup>2</sup>

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'.<sup>3</sup>

#### ***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.<sup>4</sup> 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'.<sup>5</sup>

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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.<sup>6</sup>

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'.<sup>7</sup> 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'.<sup>8</sup> 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.<sup>9</sup>

4.8 Ms Lindsay advised that Mr Chen called back the next day and said 'he was unhappy about coming into the office'.<sup>10</sup> 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'.<sup>11</sup>

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'.<sup>12</sup>

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'.<sup>13</sup>

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

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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.<sup>14</sup> 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.<sup>15</sup>

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'.<sup>16</sup>

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.

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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.<sup>17</sup>

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.<sup>18</sup>

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

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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.'<sup>19</sup>

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.'<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup>

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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'.<sup>23</sup>

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.<sup>24</sup>

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

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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.<sup>25</sup>

#### *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.<sup>26</sup>

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.<sup>27</sup>

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

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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.<sup>28</sup>

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.<sup>29</sup>

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

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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.<sup>30</sup>

*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.<sup>31</sup>

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.<sup>32</sup>

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'.<sup>33</sup>

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.<sup>34</sup>

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

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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.<sup>35</sup>

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'.<sup>36</sup>

## 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.<sup>37</sup> On 8 July 2005, Mr Chen and his family were granted Class XA Subclass 866 protection visas.<sup>38</sup>

## *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.<sup>39</sup>

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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'.<sup>40</sup>

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'.<sup>41</sup>

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.<sup>42</sup> 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.<sup>43</sup> When asked about this contact, DFAT said they could not explain the press reports but they certainly did not make that request<sup>44</sup>

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

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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.<sup>45</sup> 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.

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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.





## **Chapter 5**

### **Mr Chen's claims and support for them**

5.1 This chapter considers the claims made by Mr Chen and others involving the treatment of Falun Gong practitioners, kidnapping allegations, an extensive spy network operating in Australia and the harassment and monitoring of Australian citizens. This chapter details the evidence provided to the committee about the actions taken by the government to investigate these claims.

#### **Mr Chen's claims**

5.2 On 26 May 2005, Mr Chen left two letters at the DIMIA security desk outlining the reasons for his request for political asylum and detailing his claims. A summary of the claims is as follows:

1. In his role as Consul for political affairs, Mr Chen has been in charge of implementing the PRC Central Government policy in relation to the Five Poisonous Groups (Falun Gong, pro-democracy movement activists, pro-Taiwan independence force, pro-Tibet separation force and Eastern Turkistan force). In particular, he has been required to persecute Falun Gong practitioners overseas;
2. While in Australia, Mr Chen has assisted Falun Gong practitioners avoid persecution in China;
3. He is fearful that these activities undertaken over the last 4 years and 1 month will be discovered by his successor at the PRC Consulate-General in Sydney;
4. Mr Chen has assisted Falun Gong practitioners avoid persecution because the PRC Central Government's policy is against his conscience and will. Mr Chen believes that Falun Gong is a vulnerable, innocent social group in need of help, not persecution;
5. Mr Chen is distressed that he has been working for an authority which has unjustifiably placed Falun Gong practitioners in labour camps, jails, forced re-education courses and put un-cooperative practitioners to death; and
6. Mr Chen fears that should he return to China, he may continue to be asked to assist in the persecution of Falun Gong. He could not do this, even under pain of death.<sup>1</sup>

#### **Persecution in China**

5.3 According to the Falun Dafa information centre, 'Falun Gong (or Falun Dafa) is an ancient form of qigong, the practice of refining the body and mind through

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1 *Submission 7 (RACS)*, pp. 11-12.

special exercises and meditation. Since being introduced to the general public in 1992 by Mr Li, Falun Gong has attracted tens of millions of people in over 60 countries'.<sup>2</sup>

5.4 The Chinese government does not see the Falun Gong in the same light. It has made clear it regards the Falun Gong as an evil cult.

Our struggle against Falun Gong is protracted, acute and complicated.<sup>3</sup>

5.5 In 2002, the Chinese Foreign Minister indicated that in the government's view 'there has been a tendency within the Falun Gong that merits our attention and alert, that is it's turning increasingly violent'. The Chinese government has taken measures to deal with Falun Gong but it states only legal means have been used.<sup>4</sup> Although the government has said any measures they are taking are lawful, Falun Gong practitioners do not accept this view.

5.6 Regarding the persecution of Falun Gong practitioners, Mr Chen told the committee:

At least in the past four years I received two delegations from the central 610 office, and I was told that there are 60,000 Falun Gong practitioners in China – half of them in prison and labour camps. I received some individual cases when I was working in the Chinese consulate and often used to express this to the outsiders and media reports to clarify China's position. Obviously that shows that there is serious persecution in China of the Falun Gong.<sup>5</sup>

5.7 The committee also received evidence from the Falun Dafa Association of NSW, the Federation for a Democratic China, Mr Collaery, Mr Hao and Mr Z detailing allegations of persecution of Falun Gong practitioners in China. Excerpts of evidence regarding the alleged activities of the 610 office towards Falun Gong practitioners is at Appendix 5.<sup>6</sup> Of particular concern to the committee were the allegations of monitoring and harassment of Falun Gong practitioners in Australia.

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2 Australia Falun Dafa Information Centre, accessed at <http://www.falunau.org/aboutdafa.htm> on 14.7.05.

3 Luo Gan, member of the Political Bureau of the Chinese Communist Party Central Committee, addressing a national conference of directors of justice departments, 28 December 1999, quoted in a paper by Amnesty International, The crackdown on Falun Gong and other so-called 'heretical organisations' accessed at <http://web.amnesty.org/library/print/ENGASA170112000> on 6.7.05.

4 Chinese Minister for Foreign Affairs, Tang Jiaxuan, meeting with the Australian Minister for Foreign Affairs, Alexander Downer on 19 March 2002, accessed at [http://www.dfat.gov.au/media/transcripts/2002/020319\\_pressconf\\_forin\\_china\\_aus](http://www.dfat.gov.au/media/transcripts/2002/020319_pressconf_forin_china_aus) on 10.8.05.

5 *Committee Hansard*, 26 July 2005, p. 53.

6 The evidence regarding the persecution of Falun Gong is supported by *Submission 1* (FDC), *Submission 4* (Falun Dafa Association of NSW) and *Submission 6* (Mr Collaery).

## Spying in Australia

5.8 Mr Chen also alleged the operation of an extensive spy<sup>7</sup> and information gathering and monitoring network in Australia:

I got the number of 1,000 secret agents and informants from a document and I know that there are two systems operating in the Chinese missions overseas in some important cities like Canberra and Sydney. One is the diplomatic system; the other is the information collection system reporting to the intelligence service of China. When I was working in the Chinese consulate in Sydney, I often accessed reports from Beijing, China, about some activities of dissidents that even we in Sydney did not know about. These were from certain intelligence services that indicated that they were very active in Australia, especially when there was a very senior official or leader visiting Australia including Chairman Li Peng in the year 2002, President Hu Jintao in the year 2003 and, this year, Chairman Wu Bangguo. They gave all these information alerts. That made it very clear to me that there must be a network operating in Australia.<sup>8</sup>

5.9 Mr Chen repeated these allegations when invited to speak to a US House of Representatives Human Rights Committee:

According to my knowledge, the persecution on the Falun Gong by the Chinese Communist Party is a systematic campaign. All the authorities especially of public security, state security and Foreign Affairs are involved in the persecution...In each Chinese mission overseas, there must be at least one official in charge of the Falun Gong affairs, and the head and the deputy head of the mission will be responsible for the Falun Gong affairs. I am aware there are over 1000 Chinese secret agents and informants in Australia, who have played a role in persecuting the Falun Gong...<sup>9</sup>

5.10 These claims were supported by other witnesses including Mr Collaery, Mr Hao and Professor Fitzgerald. See Appendix 5 for excerpts of their evidence.

5.11 Mr Liang, a member of the Federation for a Democratic China (FDC) said that the government must take action to investigate the spy and informer network claims. The Falun Dafa Association in Australia has also called upon the Australian Government to fully examine allegations of Chinese spies operating in Australia.

5.12 Professor Fitzgerald told the committee that in his view a message needs to be driven home to China's representatives in Australia that surveillance of Australian citizens will not be tolerated.<sup>10</sup> He noted:

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7 See *The Australian*, 6 June, p.4; the *Australian Financial Review*, 6 June 2005, p. 8.

8 *Committee Hansard*, 26 July 2005, p. 53.

9 Testimony of Chen Yonglin at the United States Congress Committee on International Relations, 21 July 2005.

10 *Committee Hansard*, 27 June 2005, p. 80.

It is an opportunity to make a number of very public gestures which would send a message home that, leaving aside trade, leaving aside diplomacy and all the constraints and protocols that apply in those areas, when it comes to Australian sovereignty and citizenship and what happens here, there is no mucking around – it has to stop.<sup>11</sup>

### ***Government response to allegations***

5.13 Mr Downer has refused to comment on the spy network claims saying that 'it is a time-worn tradition of Australian governments over many years not to get into any discussion about that aspect of intelligence matters'.<sup>12</sup>

5.14 ASIO advised that 'Mr Chen has made allegations in the media that the PRC government has been engaged in foreign interference and espionage in Australia. These allegations are being looked at closely and the Government has given Mr Chen the opportunity to bring forward any information he wishes'.<sup>13</sup>

### **Harassment of Australian citizens**

5.15 Mr Chen's allegations went beyond spying activities to the harassment and intimidation of Australian citizens.

5.16 These claims have been supported and examples have been provided by the FDC and excerpts of this evidence are at Appendix 5.

5.17 The FDC urges the Federal Government to fully investigate the claims made by Mr Chen and, if necessary, take firm measures to protect Australian citizens from harassment by the Chinese Government.<sup>14</sup> Mr Chin Jin from the FDC told the committee 'it is my view that governments should take action to stop the wrong doing of the Chinese communist government's infiltration and manipulation of the ethnic Chinese community'.<sup>15</sup>

### ***Kidnapping allegations***

5.18 Mr Chen alleged that people have been kidnapped from Australia and cited a particular case of Lan Meng. According to the press, Lan Meng was kidnapped by Chinese agents which forced his father Lan Fu to return to China.<sup>16</sup> This case was referred to the AFP for investigation on 9 June 2005 and they were asked to conduct

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11 *Committee Hansard*, 27 June 2005, p. 83.

12 *Canberra Times*, 6 June 2005, p. 3.

13 *Submission 5* (ASIO), pp. 1-2.

14 *Submission 1* (Federation for a Democratic China), pp. 2-3.

15 *Committee Hansard*, 25 July 2005, p. 2.

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

inquiries to establish whether any criminal offences occurred in Australia regarding the allegations of abduction.<sup>17</sup>

5.19 Ms Russ, Manager Economic and Special Operations, AFP, informed the committee that the person who was alleged to have been abducted, Lan Meng, was located and interviewed. Following the completion of inquiries, the AFP concluded that there was no substance to the allegations.<sup>18</sup> Notwithstanding that, Ms Russ confirmed that Lan Meng's statement could not be released to the committee because it contained important and sensitive information obtained during the interview.<sup>19</sup>

5.20 When Mr Chen was told of the AFP findings, he expressed surprise and questioned whether they had checked all the details. He thought that Chinese secret agents may have threatened Lan Meng. Mr Chen told the committee that Lan Meng's father is still in prison in China serving a life sentence.<sup>20</sup>

5.21 The committee cannot understand the failure of the AFP to obtain a statement directly from Mr Chen as to the kidnapping allegations and any other matters within their jurisdiction. This is a serious allegation but the committee is unable to make any determination in the matter.

## **Other issues raised with the committee**

### ***Treatment of Chinese nationals applying for protection***

5.22 The committee was informed about a number of cases of Chinese applying for protection visas who experienced some delay before being granted the visa. For example, Mr Hao Fengjun, who arrived in Australia and applied for a protection visa in February 2005, was not contacted by any government agencies until he went public on 7 June 2005.<sup>21</sup> Professor Yuan Hongbing, a well recognised participant in the pro-democracy movement, had to wait 12 months to get a protection visa.<sup>22</sup> Submission 6 contains further details on these and other cases. The committee draws the department's attention to what would seem to be undue delay in processing these cases. Notwithstanding, there is no evidence of them being declared unlawful non-citizens.

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17 *Committee Hansard*, 26 July 2005, pp. 1-2.

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

19 *Committee Hansard*, 26 July 2005, p. 10.

20 *Committee Hansard*, 26 July 2005, pp. 56-57.

21 *Committee Hansard*, 26 July 2005, pp. 68-69.

22 *Committee Hansard*, 26 July 2005, pp. 70-71.

### ***Concerns with information used for DIMIA assessments***

5.23 The Falun Dafa Association of NSW states that typically DFAT sources of Country Information from 1999 to 2001 indicate that:

only leaders or activists are at risk of attracting the adverse attention of the authorities. This may have been true at the start of the persecution in 1999 but it's clearly no longer the case. As the persecution has been evolving, leaders of Falun Gong are no longer the only targets. Common practitioners, family, friends and workplaces of practitioners, overseas practitioners, as well as other non-practitioners have also become targets of the persecution.<sup>23</sup>

5.24 The association levelled the same criticism at DIMIA stating that 'DIMIA assessments regularly imply that Falun Gong practitioners have the choice to stay home and hide ...and if they do then their freedom of expression or worship will not be compromised'.<sup>24</sup> They state emphatically that this presumption is not supported by the evidence presented in their submission.

5.25 Mr Deller, President, Falun Dafa Association of New South Wales, told the committee that DIMIA believes that only Falun Gong leaders face persecution and that the private practice would not lead to persecution and that this is incorrect.<sup>25</sup> He stated that 'the persecution is an attempt to eradicate the belief of every person in China who believes in Falun Gong. You cannot do that. I think that there is an acknowledgment on a superficial level that the persecution exists, but there is no real understanding of how bad it is'.<sup>26</sup> He added that he raised these concerns with DIMIA and DFAT when they had the opportunity and submitted additional information for clarification.<sup>27</sup>

5.26 In summary, Mr Deller said that he believed DIMIA exhibits an apparent lack of understanding of the totalitarian nature of the Chinese communist regime and what that means for anyone seeking protection.<sup>28</sup>

### ***Questioning of Chinese nationals by Chinese officials***

5.27 Mr Deller, told the committee of a number of Chinese nationals being questioned by Chinese officials at Sydney's Villawood detention centre in June 2005. He raised the issue that the Migration Act or Refugee convention may have been breached by these actions. Mr Deller told the committee that they have raised the issue

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23 *Submission 4* (Falun Dafa Association of NSW), p.3.

24 *Submission 4* (Falun Dafa Association of NSW), p.6.

25 *Committee Hansard*, 25 July 2005, p. 13.

26 *Committee Hansard*, 25 July 2005, p. 21.

27 *Committee Hansard*, 25 July 2005, p. 20.

28 *Committee Hansard*, 25 July 2005, p. 12.

with the Minister for Immigration and Multicultural and Indigenous Affairs on 31 May 2005 but have not yet received a reply.

5.28 In response, Mr Hughes, DIMIA, informed the committee:

There was a group of people at Villawood detention Centre many of whom, I am not sure if it was all, had been through visa processes and found not to be owed protection by Australia, so therefore the process was completed. However, they either did not have travel documents that were available to the department or were not cooperating with their removal. So in order to obtain travel documents for them, the removals area of the department has to liaise with the government of their home country about the issuing of travel documents so that the people can travel home. In some circumstances, the government of that country, as in this case, wants to actually be certain that the people are nationals of that country before issuing travel documents and so that is what that particular process was about. Otherwise, the people concerned would be potentially faced with very long-term detention. Having completed their visa possibilities and not got visas, if arrangements were not made to get them travel documents, they would face prolonged detention.<sup>29</sup>

I am advised that we do not give any information about the nature of any application to remain in Australia. We provide the source country with very limited biodata that may help them identify whether or not the person is a national of that country...We have a name and date of birth and some other basic details...but we tell them nothing about any applications that person may have made to stay in Australia or the content of those applications.<sup>30</sup>

5.29 Responding to a question regarding whether people who had applied for asylum were interviewed by Chinese officials, Hughes further stated:

I think the statement in the press at the time was that no-one who had not completed the asylum process was interviewed. That turned out to be wrong or partly wrong in one case, where I believe a person was subsequently found to have been finally determined in terms of a departmental and RRT decision but was still in litigation of some form, and the minister intervened to allow that person to stay.<sup>31</sup>

5.30 In additional information provided by DIMIA to the committee on 16 August 2005, Mr Hughes sought to clarify his answer and advised 'the interviews were conducted by three officials from relevant provincial areas in the PRC. The role of the officials was to assist the PRC Embassy in Australia in verifying the nationality and identity of those persons in Villawood Immigration Detention Centre who may be from the PRC and who are to be repatriated'.<sup>32</sup>

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29 *Committee Hansard*, 8 August 2005, p. 46.

30 *Committee Hansard*, 8 August 2005, p. 47.

31 *Committee Hansard*, 8 August 2005, p. 47.

32 Additional Information from DIMIA received on 16 August 2005.

5.31 Issues on human rights will be discussed in the Senate Foreign Affairs, Defence and Trade Committee report on Australia's relationship with China due to be tabled 15 September 2005.

### **Conclusion**

5.32 The committee draws attention to the allegations regarding Chinese surveillance carried out in Australia. It notes that the government has not directly refuted these allegations, which sometimes went beyond spying to involve harassment and intimidation of Australian citizens. Only the kidnapping allegation was considered by the AFP to have no substance. However, the AFP did not interview Mr Chen.

5.33 The committee understands that this is a most sensitive issue for the government. Even so, in light of the allegations now on the public record, the government should make some response to them. In so doing, take the opportunity to state publicly that the Australian government takes very seriously its obligations to protect those resident in Australia and will not tolerate its laws being disregarded.

SENATOR STEVE HUTCHINS  
CHAIRMAN



# **Additional Comments**

## **Senator Andrew Bartlett**

The extensive publicity given to a wide range of problematic cases involving the Department of Immigration & Indigenous Affairs (DIMIA) has led to the Minister, Senator Vanstone, conceding that the culture of the Department is a problem that needs to be addressed.<sup>1</sup>

I believe the evidence presented to this inquiry shows that the problems regarding the culture of DIMIA are clearly also present in the Department of Foreign Affairs & Trade (DFAT). The blithe overnight rejection of Mr Chen's request for political asylum, followed by the excessive pressure applied by DFAT officials to encourage Mr Chen to return to China, was completely inappropriate and clearly put political priorities above the basic principles of assisting a family in significant distress that clearly were making a genuine request for protection.

It is no coincidence that this Inquiry also produced further evidence of severe, methodical persecution being carried out by the Chinese Government. The willingness at the highest levels of the Australian Government to downplay and turn a blind eye to such major human rights abuses will inevitably impact on the culture and attitudes of officials in DFAT and DIMIA.

There are sound political, social, security and economic reasons for Australia to have as good a relationship as possible with the People's Republic of China. However, this should not occur at the expense of human rights, whether on the macro scale or in the case of individual families seeking protection.

The Chen incident generated a lot of criticism of the actions of a DIMIA officer in contacting the Chinese Consulate seeking details about Mr Chen. There is no doubt in hindsight that this action was a mistake and a misjudgement. However, from the evidence provided, the rarity of the situation, the junior rank of the officer involved and all the other surrounding circumstances, I do not think it is reasonable to be overly harsh about that specific action. However, the incident does reinforce the need for DIMIA to act on the recommendation the Committee has made in this report, for DIMIA officers to be made aware of their obligations in this area so the situation does not occur again.

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<sup>1</sup> E.g. Senator Vanstone in response to questions from Senator Ray, Senate Hansard, 12/5/2005 p58, and from Senator Faulkner, Senate Hansard, 18/8/2005, p 76

Of far greater concern to me are the many failures that occurred after the detail and seriousness of Mr Chen's request had become clear. It is also clear that this case was overseen at very high levels of DFAT and DIMIA in Canberra. It seems to me that the problems of culture are present at those levels, and that problem will never be adequately addressed until there is a clear change in the attitude and policy of the Government itself.

**Andrew Bartlett**  
**Queensland Democrat Senator**

# **Further Comment – Chen Inquiry**

**By Senator Bob Brown**

The overall picture presented to this committee is one of largely unchecked surveillance and, at times, harassment of Australian citizens in Australia by agents of the Peoples Republic of China. The Australian government is not responding to this unacceptable intrusion of a foreign government into the domestic life and freedoms of our country.

A case in point is Chen Yonglin's defection. Like the two former police officials of China who appeared before the committee, this courageous man expected safe harbour, if not an open-arms welcome, in Australia. He, and they, did not get it.

While the Committee is unable to prove who was responsible for the failure of the Department of Immigration to ensure Mr Chen's defection was not notified to Beijing, the matter may have been resolved by requiring the two secretaries who dealt directly with him on 26<sup>th</sup> May in Sydney, to appear. However, the lackadaisical attitude of senior officer O'Callaghan to Mr Chen's presence and urgent entreaty in his premises is inexcusable.

The consequent failure of the Minister for Foreign Affairs to accept Mr Chen's plea for asylum, and to promptly notify Mr Chen, disregarded Mr Chen's and the nation's best interests. This failure was compounded by Mr Downer's breach of Australian law when he spoke with China's Ambassador Fu about Mr Chen on 2 June 2005.

The evidence before the Committee leads to the conclusion that the Australian Government considers that its political relationship with the Chinese government is more important than the political, religious and human rights of individuals in both countries.

A handwritten signature in black ink, appearing to read 'Bob Brown', with a stylized flourish at the end.

**Senator Bob Brown**



# **Government Members' Minority Report**

**Senator David Johnston**



# **Chapter 1**

## **Introduction**

### **Background to the inquiry**

1.1 Mr Chen Yonglin, a Chinese diplomat working at the Chinese Consulate in Sydney, approached the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) on 26 May 2005 to request political asylum for himself and his wife and daughter. Questions soon arose over whether contact with the Chinese consulate by DIMIA to confirm Mr Chen's identity on 26 May was appropriate. Further to this it was the decision of the Minister for Foreign Affairs to reject Mr Chen's request for political asylum and his role in such requests was also questioned. The Committee further examined the actions of and meetings with DIMIA and the Department of Foreign Affairs and Trade (DFAT) which took place from 27 May to 3 June 2005 and Mr Chen's claims regarding the persecution of Falun Gong, the existence of an extensive Chinese spy network in Australia, kidnapping allegations and the monitoring and harassment of Australian citizens.





## Chapter 2

### Mr Chen Yonglin's request for political asylum

2.1 Mr Chen Yonglin, a 38 year old Chinese diplomat, arrived in Australia on a diplomatic passport in August 2001 and assumed the role of Consul for political affairs at the Chinese Consulate in Sydney. He tells the Committee that he was 'in charge of implementing the PRC Central Government policy in relation to the Five Poisonous Groups (Falun Gong, pro-democracy movement activists, pro-Taiwan independence force, pro-Tibet separation force and Eastern Turkistan force)'.<sup>1</sup>

2.2 In particular, he noted he was required to persecute Falun Gong practitioners overseas, a task which, if he is to be believed at all, presumably Mr Chen accepted and carried out for some time as his chosen diplomatic role, notwithstanding his subsequent comments that it distressed him to work for an authority which he deemed unjustifiably placed Falun Gong practitioners in labour camps, jails, forced re-education courses and put uncooperative practitioners to death.<sup>2</sup> He claims to have grown to hate his work because he supports democracy and the information he collected on these groups could be used against the individuals and their families.<sup>3</sup>

#### Initial contact with DIMIA

2.3 On 26 May 2005, Mr Chen Yonglin approached the Australian Government, more particularly the Sydney offices of DIMIA, to seek political asylum. According to Mr Chen:

I approached DIMIA on the morning of 26 May to ask for an appointment with the state director of DIMIA. I stood in the public space outside the entrance to the department's inquiry office and I used my mobile phone to call the department. I said I wished to speak to Mr Nick Nicholls. A male official indicated that Mr Nicholls was no longer the director and that the new director was Mr O'Callaghan. The male official transferred the call to the state director's office, but the phone line to the state director's office was busy.

A few minutes later I called the director's office directly. I introduced myself and identified myself. I said that I was the consul for political affairs in the Chinese consulate in Sydney and requested an urgent meeting. The female official asked whether I had made a prior appointment and I said 'no'. The female official then asked for the phone number of the Chinese consulate. I said, 'I would prefer not to give you the phone number but if you insist I can give it to you', and later I gave the phone number to the female official. I said: 'Please don't call them. It is an unusual meeting

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1 *Submission 7* (Refugee Advice and Casework Service), pp. 11–12.

2 *Submission 7* (RACS), pp. 11–12.

3 *The Weekend Australian*, 11 June 2005, p. 19.

request. I have a very important matter to talk to the state director about and I can prove myself with my ID issued by DFAT and my passport'. The official later indicated that the state director was in a meeting and asked if it was an urgent matter. I said 'Yes'. She later talked to the director and asked me to leave my mobile phone number and said that she would call me back.

I waited and about 10 minutes later I called again. The first official responded that the director already knew of my request but that he was in a meeting. She asked if it was necessary to interrupt the meeting. I said 'yes'. She went to talk to the state director and I approached the reception desk and showed my ID to the security guard and the security guard called the state director's office to prove that I held the ID card issued by DFAT.

At that time I called the state director's office again. The phone was answered by another female secretary and she said that the first official was connecting to the Chinese consulate to check my ID. I said that would not be necessary, that I had shown my ID to the security guard, and said that I would be in danger—my life would be in danger—if they contacted the Chinese consulate and I feared that.

The second female official said that the first one was connecting. I was very shocked to learn that. She said that the first one was transferring the call to my mobile, so that I was frightened and hurried to say, 'No, I have to go; I can't stay here any more'. I left two letters. One was addressed to the state director and I changed the name to Mr O'Callaghan. The other letter was addressed to Mr Illingworth. Then I left the immigration building. At that time, because I was frightened that the immigration office was too close to the Chinese consulate—it is about 10 minutes drive by car—I hurried to take a taxi and go to Chatswood railway station and go away to my hiding place.<sup>4</sup>

2.4 The submission from Mr Chen and his lawyer describes his concerns regarding contact with the Chinese embassy:

A DIMIA official informed the Chinese consulate that Mr Chen was present in the Department on 26 May despite Mr Chen's protestations that such action may endanger his life. This action, we submit, may reasonably be construed as an attempt to refole Mr Chen. We submit that the Department, by failing to keep Mr Chen's visit confidential, made it impossible for Mr Chen to re-avail himself of the protection of the PRC [People's Republic of China] government and in fact enhanced his chances of being persecuted. In this regard we submit that the mere act of seeking political asylum could be seen by the PRC as an act of treason or an act endangering state security.<sup>5</sup>

2.5 This account fails to address the fact that Mr Chen left a detailed letter addressed to his superiors setting out his intentions and indicating his disposition to his Government and its diplomatic mission as discussed below.

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4 *Committee Hansard*, 26 July 2005, pp. 45–46.

5 *Submission 7* (RACS), pp. 12–13.

2.6 DFAT told the committee the consulate advised them that Mr Chen also left a letter in his apartment which stated he was not happy in his job and was not going back to China.<sup>6</sup> The committee failed to question Mr Chen about the alleged letter as it had no knowledge of it at the time they spoke to Mr Chen. This was a consequence of Mr Chen failing to inform the Committee, either in his evidence or in the written submission made to the Committee, of the existence of this letter and accordingly the Committee was not afforded the opportunity to properly examine Mr Chen on this important aspect of matter.

### **DIMIA's version**

2.7 According to Mr Jim O'Callaghan, the current State Director, New South Wales, Mr Chen's calls on 26 May 2005 did not come to him personally but were handled by executive assistants as he was in a meeting in another part of the building at the time of the calls. Mr Chen was told that Mr O'Callaghan was unavailable. Mr O'Callaghan stated 'at one point the executive assistants sought to confirm he (Mr Chen) was who he said he was. He provided some telephone numbers for us to confirm that with the Chinese consulate'.<sup>7</sup> Mr O'Callaghan said that Mr Chen did not offer to wait when told he was unavailable but called back three or four times. When he could not meet the State Director or get past the security guards he left two identical letters addressed to two people with the security guards at the front desk.

2.8 Mr O'Callaghan indicated one of the executive assistants called the Chinese consulate mid-morning. He said he did not ask for the call to be made but that it had occurred by the time he returned to his office. Mr O'Callaghan stated:

I recall coming back into the office and saying, 'There is someone from the Chinese consulate seeking to talk to me. Where is the number?' and so on, I had returned, I had undertaken to follow up, and at that stage I was advised that one of the executive assistants had made contact with the Chinese consulate. That was done on the basis that Mr Chen was advised by the executive assistant that we wanted to confirm his identity as part of the process of determining whether he should be having an appointment with the state director. Mr Chen was asked to provide some telephone numbers. He provided two telephone numbers at the Chinese consulate. At no time did Mr Chen indicate any difficulty about following up his identity with the Chinese consulate.<sup>8</sup>

2.9 Mr O'Callaghan emphasised that until he read Mr Chen's letter there had been 'no information about what Mr Chen's interest in calling the immigration office was'.<sup>9</sup> He further stated, 'I asked what were the circumstances of the contact with the Chinese consulate and I was advised—and I did double check this on more than one

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

7 *Committee Hansard*, 25 July 2005, p. 56.

8 *Committee Hansard*, 25 July 2005, p. 66.

9 *Committee Hansard*, 25 July 2005, p. 66.

occasion—that Mr Chen provided two numbers and consented to his identity being checked at the Chinese consulate'.<sup>10</sup> Mr O'Callaghan told the committee that after he read Mr Chen's letter he asked the two executive assistants to prepare an account of what occurred that morning before he returned to the office.<sup>11</sup> This account was provided to the committee and is consistent with Mr O'Callaghan's evidence. It is attached at Appendix 4 to the majority report. In all of the evidence and the conduct and demeanour of Mr O'Callaghan before the Committee there is nothing to cause this account to be brought into any doubt.

## Identity check

2.10 During a phone call with Mr Chen, the executive assistant heard laughing in the background and became concerned that the call may not be genuine. She then asked for his number at the consulate to confirm his identity and Mr Chen said that he had no problem with them being contacted.<sup>12</sup>

2.11 Mr O'Callaghan further explained to the committee:

In this case Mr Chen provided numbers to the executive assistant and indicated no difficulty about that contact being made and that is why the contact was made. I think what that indicates is a responsiveness on behalf of this junior officer to Mr Chen's request to escalate his situation to see a senior officer. She was doing her job to test the appropriateness of him being able to see a senior officer.<sup>13</sup>

2.12 It would seem that Mr Chen and DIMIA had a different understanding of the reason for providing the number of the Chinese consulate. Mr Chen told the committee 'I just wanted to ensure that giving the consulate phone number should be enough'.<sup>14</sup> Mr O'Callaghan, however, took the view that Mr Chen was clearly being asked to provide assistance to confirm his identity and gave no indication that he had any difficulty with his identity being checked at the consulate.<sup>15</sup>

2.13 Mr Hughes, First Assistant Secretary, Refugee, Humanitarian and International Division in DIMIA, reiterated that Mr Chen did not indicate a problem with his identity being confirmed with the consulate and indicated to the committee that Mr Chen was not known to be an applicant for political asylum or a protection

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10 *Committee Hansard*, 25 July 2005, p. 67.

11 *Committee Hansard*, 25 July 2005, p. 68.

12 Statement of events on 26 May 2005 by the Executive Assistants to State Director, DIMIA, NSW Office.

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

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

15 *Committee Hansard*, 25 July 2005, p. 71.

visa at the time DIMIA spoke to the consulate and no information was provided to the consulate.<sup>16</sup>

2.14 DIMIA stated its position regarding contact with the consulate in a media release dated 8 June 2005. It emphasised that Mr Chen had not indicated any problem with his identity being confirmed with the consulate, DIMIA did not provide any information to the consulate and at the time of the call, DIMIA had no knowledge of the matter Mr Chen wanted to discuss.<sup>17</sup>

### **Discrepancies between Mr Chen and DIMIA's accounts of 26 May**

2.15 DIMIA's account of this period contradicts evidence provided by Mr Chen on the following points:

- Mr Chen claimed that he asked the executive assistant not to call the Chinese consulate. DIMIA officials stated to the committee and issued a media release saying that Mr Chen did not indicate any difficulty with the Chinese consulate being contacted;
- Mr O'Callaghan's evidence and the media release indicate Mr Chen provided more than one telephone number for the Chinese consulate. According to Mr Chen, he provided only one;
- Mr O'Callaghan indicated that the phone call with the Chinese consulate was only to check identity. Mr Chen's evidence seems to indicate that they were trying to transfer the Chinese consulate to his mobile; importantly, DIMIA's version does not mention that Mr Chen expressed concerns for his safety. Mr Chen told the committee that he tried to persuade the executive assistant not to call as he feared for his life if the Chinese consulate were contacted;
- DIMIA asserted that the call to the consulate was made without further information being provided. Mr Chen's submission notes that a DIMIA official informed the Chinese consulate that Mr Chen was present in the department on 26 May 2005; and
- there may also be an additional discrepancy as the DIMIA media release seems to suggest that Mr Chen offered the phone number of the Chinese consulate without being asked whereas Mr O'Callaghan told the committee that Mr Chen was asked to provide the number for the Chinese consulate.

2.16 The committee reminded Mr O'Callaghan that Mr Chen was on the public record saying he asked the consulate not to be called, that he had an unusual request and it was a serious matter. Mr O'Callaghan replied 'that is inconsistent with the

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16 *Committee Hansard*, 25 July 2005, p. 50.

17 8 June 2005, Department of Immigration and Multicultural and Indigenous Affairs, *Media Release*, titled *Setting the Record Straight—Contact with the PRC Consulate*. Accessed at [http://www.immi.gov.au/media\\_releases/media05/d05018.htm](http://www.immi.gov.au/media_releases/media05/d05018.htm) on 5.7.05.

advice my officers have given me'.<sup>18</sup> He further stated 'all I can say is what I have been factually advised, and that is that Mr Chen provided phone numbers for the consulate to be contacted and gave no indication that he had any difficulty with his identity being checked at the consulate'.<sup>19</sup>

2.17 There was, as has been stated, nothing save for Mr Chen's subsequent account to cause this version to be brought into doubt. Accordingly, the minority members of the committee make no determination as to which version of events regarding the contact with the Chinese embassy is correct. It is clear, however, that DIMIA did contact the Chinese consulate about Mr Chen.

2.18 The committee sought further explanation from DIMIA regarding why the phone call to the Chinese consulate was made. Mr Chen claims to have been offering his ID card and, according to Mr Chen, also his passport. Mr O'Callaghan stated several times that the call was made to confirm Mr Chen's identity and he indicated he had answered this question previously and had nothing to add.<sup>20</sup>

2.19 The circumstances surrounding Mr Chen's visit to DIMIA were highly unusual, quite rare and extraordinary and obviously took the Sydney office by surprise. Despite this unique turn of events it nevertheless raises the question of whether DIMIA should have been more sensitive to his circumstances. Mr Green asserted that:

Mr Chen, who was then an accredited diplomatic representative of the People's Republic of China made a very serious attempt to communicate his fear of persecution and the reasons for that fear to the Australian government. In taking that step Mr Chen and indeed his family clearly indicated that they no longer wished to avail themselves of the protection of the People's Republic of China.<sup>21</sup>

2.20 Mr Green told the committee that 'Mr Chen made several protestations on that day to Department of Immigration officials that, were they to take certain courses of action, his life would be in danger. These are not mere words; these are things which, when said, need to be taken very seriously'.<sup>22</sup> He further stated:

The department and the government of Australia throughout this case should have been aware, we would submit, that the mere act of seeking political asylum in Australia could always be seen by the government of the People's Republic of China as an act of treason and an act that endangered state security.<sup>23</sup>

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18 *Committee Hansard*, 25 July 2005, p. 70.

19 *Committee Hansard*, 25 July 2005, p. 71.

20 *Committee Hansard*, 25 July 2005, p. 67.

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

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

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

2.21 The letter from Mr Chen dated 25 May seeking political asylum clearly stated that he believed his life was at risk.<sup>24</sup> Mr Chen informed the committee that if he returned to China 'I definitely would have been persecuted. My life and my career would all be finished. Even my family would also be facing certain persecution. Freedom would be limited'.<sup>25</sup>

2.22 Mr Chen now claims to have said:

I said I would give the phone number, but please do not call the Chinese consulate. I just wanted to ensure that giving the consulate phone number should be enough. I persuaded her not to call the consulate, because, once she called, the consulate would definitely know that I was there to make some unusual, special meeting and that would definitely alert them.<sup>26</sup>

2.23 DIMIA's account of the telephone call to the Chinese consulate does not mention that Mr Chen expressed fears for his safety.

2.24 The minority members of the Committee have been presented with two conflicting accounts regarding whether Mr Chen made concerns for his safety known to DIMIA before it made contact with the Chinese consulate and are unable to determine the clear facts. Clearly, if Mr Chen did express fear for his safety, this should have been of importance to DIMIA and treated responsively.

2.25 With the benefit of hindsight, any contact with the Chinese consulate by a junior departmental official or others, albeit with innocent intentions, in the apparent circumstances of an asylum seeker also raises some concerns about the maintenance of confidentiality and protocols. Although it should be mentioned here that there was no specific evidence at all, of any prejudicial disclosure of matters which might be considered "confidential" to Mr Chen.

2.26 UNHCR has advised the following principles should inform the application of the Migration Act 1958, its regulations and guidelines concerning the maintenance of confidentiality, for any consular officials or staff who apply to DIMIA, DFAT, or their respective Ministers for territorial asylum and/or protection visas:

**Confidentiality in the context of Refugee Status of Determination**

The consent of the asylum seeker should be sought before individual case information about his or her claim for refugee status is shared with other parties. In addition, individual case information about asylum seekers should be kept strictly confidential because of the potential risk to the asylum seeker and others. Confidentiality in asylum procedures is particularly important because of the vulnerable situation in which refugees and asylum-seekers find themselves. As discussed during the Global Consultations in International Protection, 'the asylum procedure should at

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24 Letter from Mr Chen to Mr O'Callaghan seeking political asylum dated 25 May 2005.

25 *Committee Hansard*, 26 July 2005, p. 57.

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

all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request' and highlighted that 'no information on the asylum application should be shared with the country of origin'. State practice also shows that the principle of confidentiality is paramount in asylum procedures.

The decision-making authority in the country of asylum should not share any individual case information about an asylum seeker with the authorities of the country of origin...A decision-making authority should not confirm to the authorities or other entities in the country of origin whether or not a particular individual is or has been in contact with the decision-making authority, regardless of whether the person concerned is an asylum-seeker, a refugee, a resettled refugee, or whether she or he has been denied refugee status or excluded.

The decision-making authority in the country of asylum should not communicate with entities within the country of origin, whether they are governmental or non-governmental, in order to verify or authenticate declarations or documents provided by an asylum seeker.<sup>27</sup>

2.27 There was no conclusive evidence or at all, that any of these criteria were breached in Mr Chen's case.

### **The Migration Act 1958**

2.28 DIMIA, DFAT and the Minister for Foreign Affairs were also criticised in the press with suggestions that the Migration Act 1958 may have been breached by providing compromising information to the Chinese government about Mr Chen Yonglin's bid for political asylum.<sup>28</sup>

2.29 Part 4A of the Migration Act (obligations Relating to Identifying Information) contains the following provisions regarding the prohibitions on the authorisation to disclose and the disclosure of identifying information to foreign countries which are central to determining whether a breach occurred.

2.30 Section 336 E, Disclosing identifying information, states that:

A person commits an offence if:

the person's conduct causes disclosure of identifying information; and  
the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 2 years, or 120 penalty units or both.

A permitted disclosure is a disclosure that:

is for the purpose of data matching in order to:

identify, or authenticate the identity of a non-citizen; or

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27 *Submission 2* (UNHCR), pp. 1–4.

28 *Sydney Morning Herald*, 11 June 2005, p. 6.



facilitate the processing of non-citizens entering or departing from Australia; ...

2.31 Section 336 F (3), Authorising disclosure of identifying information to foreign countries etc, states:

... (3) A disclosure is taken not to be authorised under this section if:

the person to whom the identifying information relates is:

an applicant for a protection visa; or

an offshore entry person who makes a claim for protection under the Refugees Convention as amended by the Refugees Protocol; and

the disclosure is to a foreign country in respect of which the application or claim is made, or a body of such a country.

2.32 Section 336 F also states:

However, if:

the person to whom the identifying information relates has requested or agreed to return to the foreign country in respect of which the application or claim is made; or

the person is an applicant for a protection visa, and the application has been refused and finally determined...

2.33 Section 336A states:

In this Part :

"identifying information" means the following:

- (a) any personal identifier;
- (b) any meaningful identifier derived from any personal identifier;
- (c) any record of a result of analysing any personal identifier or any meaningful identifier derived from any personal identifier;
- (d) any other information, derived from any personal identifier, from any meaningful identifier derived from any personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.

2.34 Section 5A states:

In this Act:

"personal identifier" means any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of a person (including those taken using paper and ink or digital live scanning technologies);

- (b) a measurement of a person's height or weight;
- (c) a photograph or other image of a person's face and shoulders;
- (d) an audio or a video recording of a person (other than a video recording under section 261AJ);
- (e) an iris scan;
- (f) a person's signature;
- (g) any other identifier prescribed by the regulations, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the Crimes Act 1914."

2.35 The definition of personal identifiers in the Migration Act 1958, Section 5A, does not include names but it does include 'any other identifier prescribed in the regulations'.<sup>29</sup> A review of the regulations indicates that a person's name is not a personal identifier and the scheme of the Act and Regulations appears designed to establish identity over and above and separate from a person's name. In all of the circumstances of the facts before the committee, the minority members can conclude or comment that there is no evidence to support any objective contention that there has been any breach of the Migration Act by either the DIMIA executive assistants in Sydney, any DIMIA or DFAT officers in Sydney or Canberra or Minister for Foreign Affairs.

### **Action taken on 26 May AM after Mr Chen delivered his request for political asylum**

2.36 Once DIMIA became aware that Mr Chen was seeking political asylum, the government and Mr Chen became engaged in a formal process arising from the government's obligations under the Migration Act 1958.

2.37 Mr O'Callaghan clarified for the committee that he became aware of Mr Chen's approach somewhere between 10:30am and 11:00am on 26 May. He said that while in a meeting he received a message that someone was seeking to talk to him but he did not know about what saying 'I had no information about that because our officers had no information and Mr Chen provided no information'.<sup>30</sup> Mr O'Callaghan said the message he received indicated that the person wishing to speak with him

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29 According to the *Migration Act 1958*, 5A personal identifier means any of the following (including any of the following in digital form): (a) fingerprints or handprints of a person (including those taken using paper and ink or digital livescanning technologies); (b) a measurement of a person's height and weight; (c) a photograph or other image of a person's face and shoulders; (d) an audio or a video recording of a person (other than a video recording under section 261AJ); (e) an iris scan; (f) a person's signature; (g) any other identifier prescribed by the regulation, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*. Accessed at <http://www.comlaw.gov.au> on 2.8.05.

30 *Committee Hansard*, 25 July 2005, p. 61.

claimed to be an official of the Chinese consulate. He said his response to the executive assistant providing the message to him in the meeting was that 'I would respond when I got back to my office'.<sup>31</sup>

2.38 Mr O'Callaghan explained why he did not respond immediately to a matter which seemed to be of sufficient importance to his executive assistant that she chose to interrupt his meeting:

It was suggested that someone claiming to be an official of the Chinese consulate was seeking to speak to me. Many people seek to speak to the state director of the immigration department. We have between 1,000 and 1,500 people come into that office alone each day. We have 80,000 calls come into the contact centre in the office each month. We have many calls come through to the executives' numbers on a daily basis, where people are seeking to speak to the state director or the deputy state directors. As you know, Immigration is an agency dealing with people. There are a lot of people in New South Wales and beyond who seek to speak to me.<sup>32</sup>

2.39 Mr O'Callaghan went on to explain that on occasions his executive assistant does interrupt meetings to bring him messages that people want to speak to him and on that occasion he expected to be back in the office in 30–40 minutes 'and there was no reason to think that it could not wait until then'.<sup>33</sup>

2.40 Mr O'Callaghan told the committee that the letters left at the security desk by Mr Chen were taken by the security guards to the mail opening area where they were opened and brought to his office.<sup>34</sup> He clarified that he returned to his office about 11:20am and the letter was delivered around 11:30am.<sup>35</sup>

2.41 These identical letters were Mr Chen's request for political asylum. One was addressed to the former state director and this had been crossed out and Mr O'Callaghan's name written in handwriting and the other was addressed to Mr Robert Illingworth, Assistant Secretary of the Onshore Protection Branch in the Refugee, Humanitarian and International Division, DIMIA.<sup>36</sup>

2.42 Mr O'Callaghan told the committee that upon reading the letter his first reaction was surprise and then he called the business manager of the onshore protection area, Ms Louise Lindsay, to his office and asked her to contact Mr Chen. He then put a phone call through to Canberra to speak to any of the senior executive officers in the Refugee, Humanitarian and International Branch but all those officers

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31 *Committee Hansard*, 25 July 2005, p. 62.

32 *Committee Hansard*, 25 July 2005, p. 62.

33 *Committee Hansard*, 25 July 2005, p. 63.

34 *Committee Hansard*, 25 July 2005, p. 59.

35 *Committee Hansard*, 25 July 2005, p. 63.

36 *Committee Hansard*, 25 July 2005, p. 59.

were before a Senate estimates hearing and were unavailable. He then spoke to a director in that division, Ms Kathleen Dunham.<sup>37</sup>

### **Contact with senior executives in Canberra and DFAT**

2.43 Mr O'Callaghan told the committee that he understood that Ms Dunham sought to contact senior officers who were in Parliament House for Senate estimates hearings. She also spoke with some other senior officers in the Canberra office and contact was made with DFAT.<sup>38</sup> Mr Illingworth, DIMIA, clarified that Mr Chen's letter was faxed from the NSW office to Ms Dunham and she made a number of calls within the department and calls to contact him at Senate estimates hearings which she eventually did.

2.44 According to Mr Illingworth, 'The upshot was that we received the letter around noon, DFAT was called, they were briefed on the content of the letter and the issue of territorial asylum visas orally over the phone and the letter was faxed to DFAT at 1.06pm'.<sup>39</sup> Mr Hughes, DIMIA, said that he was not aware of DIMIA contacting the office of the Minister for Foreign Affairs.<sup>40</sup>

2.45 Mr Illingworth told the committee that DIMIA's response was to see this as a request for political asylum and to deliver it to the appropriate portfolio to be actioned. He added that at a practical level they continued to be in contact with the NSW office regarding the efforts to contact Mr Chen. Mr Illingworth said that there was communication during the afternoon between officers of the division in Canberra and DFAT but 'there was no response in terms of the outcome of the request put in the letter'.<sup>41</sup>

2.46 DFAT officers told the committee that DFAT first became aware of this matter:

...when it received from DIMIA a copy of Mr Chen's letter addressed to DIMIA New South Wales office seeking political asylum. We received this letter by fax from DIMIA on the afternoon of Thursday 26 May. This letter was brought to the attention of Mr Downer's office later that evening...about 7pm.<sup>42</sup>

2.47 Mr O'Callaghan said that Ms Louise Lindsay tried to contact Mr Chen around 11:30am on 26 May but his mobile phone was switched off. She was able to contact

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37 *Committee Hansard*, 25 July 2005, p. 65.

38 *Committee Hansard*, 25 July 2005, p. 73.

39 *Committee Hansard*, 25 July 2005, p. 73.

40 *Committee Hansard*, 25 July 2005, p. 79.

41 *Committee Hansard*, 25 July 2005, p. 74.

42 *Committee Hansard*, 26 July 2005, p. 76.

Mr Chen mid-afternoon on 26 May and they had a discussion regarding setting up a meeting for 27 May.

2.48 Ms Lindsay explained:

I attempted to contact him at about 11:30am or 25 past 11 as I had been requested to by the state director. His mobile was turned off. I got the message about the phone being out of range or switched off. I rang back later that afternoon, just after 3pm. I spoke to him and invited him to come in to our office for a chat about his visa options. We had been conversing with Canberra, who in turn had been conversing with DFAT as they have explained. Following the claim for territorial asylum, we wanted to inform Mr Chen of the kinds of options that would be open to him if he did indeed want to remain in Australia.<sup>43</sup>

2.49 Ms Lindsay told the committee that they organised for Mr Chen to come to the Parramatta office on 27 May and she arranged for one of the other business managers to attend as they had a lot more information and knowledge of the visa classes.<sup>44</sup>

## **Conclusion**

2.50 The Committee examined the events which took place on 26 May 2005 from the time Mr Chen called to make an appointment to see the state director until the appointment was made for a face-to-face meeting on 27 May 2005. This examination included an assessment of all accounts regarding the telephone contact made by DIMIA with the Chinese consulate on 26 May to verify Mr Chen's identity. The minority members see it a clear that there was no breach of the Migration Act.

2.51 From the evidence now provided by Mr Chen, he was clearly anxious to see the state director, calling several times in a short timeframe. Although not providing a reason for wanting to speak to Mr O'Callaghan, he stated the matter was urgent, important and unusual. In the circumstances of Mr Chen's surprise and extraordinary request, it is doubtful that any other reasonable response could have been anticipated by Mr O'Callaghan and his staff in Sydney.

2.52 The contact with the Chinese consulate, was, in the minority senator's view unfortunate, inadvertent and an error in judgement, but was to some extent excusable in the peculiar circumstances of Mr Chen's attendance at the DIMIA Sydney offices.

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43 *Committee Hansard*, 25 July 2005, p. 85.

44 *Committee Hansard*, 25 July 2005, p. 85.

2.53 On the basis of any proper and objective assessment of the evidence presented to the committee, the minority members do not consider obligations regarding confidentiality were breached when DIMIA contacted the Chinese consulate to confirm Mr Chen's identity.

# Chapter 3

## The Minister's decision and Ministerial responses

### Territorial asylum/subclass 800 Visa

3.1 In his initial request, Mr Chen was seeking political asylum which DFAT treated as a request for territorial asylum.

3.2 The Procedures Advice Manual 3 – Schedule 2 – Territorial Asylum, states that:

...territorial asylum is commonly known as 'political asylum' and is granted by instrument by a Minister (usually the Foreign Minister). It should not be confused with refugee status. Persons who have been recognised as refugees have not been granted territorial asylum. Most requests for asylum have been found to be, more accurately, requests for refugee status. Therefore, if a person enquires about 'asylum', officers should seek to establish whether the enquiry is, in fact, about refugee status and, if so, explain the procedures for applying for a Protection Visa. Anyone who insists on pursuing a request for (territorial) asylum should be advised to contact the nearest office of DFAT.<sup>1</sup>

3.3 The Manual further notes:

There is no approved application form for this visa. Rather, Schedule 1 (item 1131(3) (a)) requires application for this visa to 'be made...in a manner approved by the Minister'. Officers may expect further procedures to be notified as need arises ie if a person is granted territorial asylum (by DFAT). Any purported visa 800 application is incapable of being a valid application for the purposes of s46 of the Act unless territorial asylum has been granted. Schedule 1 item 1131 (3) (aa) requires that 'when the application is made, there is lodged...documentation that ...evidences the grant...to the applicant of territorial asylum.'<sup>2</sup>

3.4 Regarding Subclass 800 – Territorial Asylum, the Migration Regulations notes one of the criteria to be satisfied at the time of application is that 'the applicant must have been granted territorial asylum in Australia by instrument of a Minister'.<sup>3</sup> Mr Hughes from DIMIA clarified that under the Migration Act 1958 'you cannot make an application for a territorial asylum visa until you have an instrument of grant of asylum issued by the Minister for Foreign Affairs. So there is a precondition for any application under the Migration Act. If there is no instrument issued then you cannot get to the stage of making an application'. He added that 'it is generally

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1 DIMIA Procedures Advice Manual 3 – Schedule 2 Visa 800 – Territorial Asylum.

2 DIMIA Procedures Advice Manual 3 – Schedule 2 Visa 800 – Territorial Asylum.

3 Migration Regulations – Subclass 800 – Territorial Asylum.

accepted that the Minister for Foreign Affairs would be the minister exercising that power'.<sup>4</sup>

3.5 In Mr Chen's case the Minister decided in the national interest not to issue the instrument for territorial asylum which would have led to an application being considered. However it should be acknowledged that at no time was he declared an unlawful non-citizen, was subsequently afforded a protection visa and will no doubt be eligible for Australian citizenship in the future.

3.6 Mr Larsen, Legal Adviser, DFAT, advised the committee that 'the decision as to whether or not to grant territorial asylum is at the discretion, in our case of the Minister for Foreign Affairs. It is an executive power and it is an executive discretion' and is non-reviewable.<sup>5</sup> Regarding guidelines, Mr Larsen further advised there are no guidelines for the making of this decision, 'the minister would have various considerations in mind when he makes such a decision. No doubt, the national interest is a critical one of those, but there are no express criteria which limit how the minister exercises that discretion'.<sup>6</sup>

### **Concerns regarding refusal of territorial asylum visa**

3.7 Dr Neumann told the committee that traditionally, government have let their decisions about asylum claims be influenced by a combination of four factors: national interest; legal obligations; humanitarian considerations and public opinion.<sup>7</sup> He explained that when cabinet agreed on Australia's first asylum seeker policy a few months before the Melbourne Olympics, it decided three agencies would be involved in decisions about requests for asylum: ASIO would advise the government whether the person was a security risk; immigration would advise whether the person was a suitable immigrant and external affairs was left to weigh up humanitarian considerations and the national interest. He explained that 'Once Australia's response to asylum seekers became guided in a large part by international refugee law and its interpretation in Australian legislation, the immigration department became the principle agency responsible for decisions about asylum requests. But foreign affairs apparently retained the right to grant territorial asylum in sensitive cases'.<sup>8</sup>

3.8 The following concerns regarding the response of the Foreign Minister were voiced to the committee:

3.9 Mr Chen told the committee that at the 31 May meeting, he asked why political asylum had been denied and:

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4 *Committee Hansard*, 25 July 2005, p. 78.

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

6 *Committee Hansard*, 26 July 2005, p. 88.

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

8 *Committee Hansard*, 26 July 2005, p. 35.



The reason I was given by the senior protocol officer was that the decision had been made and the Australian government could deny my application for political asylum for reasons of foreign affairs.<sup>9</sup>

3.10 Ms Morton told the committee 'The minister has said that he believed that it would not be appropriate to give a territorial asylum certificate in that case and that it was appropriate that, if Mr Chen wished to stay in Australia, he apply for a visa and that it be considered under the Migration Act in the normal way.'<sup>10</sup>

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9 *Committee Hansard*, 26 July 2005, p. 48.

10 *Committee Hansard*, 26 July 2005, p. 88.



## **Chapter 4**

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

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

4.1 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 PM&C, DIMIA, ASIO and 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'. 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.<sup>1</sup>

4.2 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'.<sup>2</sup>

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

4.3 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 by DFAT officers.<sup>3</sup> 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'.<sup>4</sup>

4.4 The decision to reject his application for political asylum was conveyed to Mr Chen by Ms Lindsay by phone on 27 May 2005.<sup>5</sup>

4.5 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'.<sup>6</sup> To prepare for this, Mr

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

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

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

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

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

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

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'.<sup>7</sup> DIMIA stated that they wanted to ensure Mr Chen was provided with advice that would offer the full range of possibilities to him.

4.6 Mr O'Callaghan told the committee that a meeting originally scheduled with Mr Chen on 27 May did not proceed as Mr Chen called at about lunchtime on that day to cancel the meeting.<sup>8</sup>

### **31 May 2005 Meeting**

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

#### ***Did DFAT encourage Mr Chen to return to and contact the consulate***

4.8 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

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

8 Committee Hansard, 25 July 2005, pp. 60-61.

the end of the interview Mr Chen was also given the Protection Visa application forms.<sup>9</sup>

4.9 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.<sup>10</sup>

4.10 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 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 has 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.'<sup>11</sup>

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.'<sup>12</sup>

4.11 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

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

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

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

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

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.<sup>13</sup>

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

4.12 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'.<sup>14</sup>

4.13 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.<sup>15</sup>

4.14 The two versions are again unable to be fully reconciled. It is understandable that the government maintained that it expected and anticipated that this diplomat would, as in the normal course of events, return to China. A full and proper evaluation and assessment by government officers as to why such an expectation should be changed or reviewed is appropriate in the circumstances as presented in this case. It should always be remembered that notwithstanding the evaluation and review undertaken by government officials, Mr Chen was never declared an unlawful non-citizen, steps were taken to preserve his diplomatic passport and visa status and he was subsequently granted a protection visa.

### ***Further contact with Chinese consulate***

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

### ***DIMIA***

4.16 Mr O'Callaghan told the committee that the NSW office received two follow-up calls from the Chinese consulate on 27 May, one in the morning to Mr

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

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

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

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 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 consulted Canberra and passed a message back to Ms Lee which she passed on to the inquirer that they should speak to DFAT.<sup>16</sup>

## **DFAT**

4.17 Mr Chen told the committee that during the meeting on 31 May, 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.<sup>17</sup>

4.18 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.

4.19 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.<sup>18</sup>

4.20 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 Yujang, 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.

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

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

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

On Monday, 30 May at about 10:30, 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 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.

#### 4.21 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.<sup>19</sup>

#### 4.22 Mr Chen confirmed to the committee that it was the DFAT officer who had initially told him that the protection visa was extremely impossible.<sup>20</sup>

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

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



4.23 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 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'.<sup>21</sup>

4.24 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.<sup>22</sup>

4.25 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 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.<sup>23</sup>

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

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

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

4.26 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'.<sup>24</sup>

## Summary

4.27 The committee was unable to make a judgement on the discrepancies in the accounts of the 31 May meeting. Minority senators consider that in the circumstances Mr Chen was inclined to exaggerate his safety concerns and there is nothing in the nature of clear evidence to suggest that any of those concerns were born out or that he was ever at any risk.

## Government response to protection visa application

4.28 On 3 June 2005, Mr Chen presented a Protection Visa application to Ms Lindsay.<sup>25</sup> On 8 July 2005, Mr Chen and his family were granted Class XA Subclass 866 protection visas.<sup>26</sup>

## *Further Possible breaches - Foreign Minister and DFAT*

4.29 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.<sup>27</sup>

4.30 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'.<sup>28</sup>

4.31 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'.<sup>29</sup>

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

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

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

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

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

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

4.32 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 that the embassy was contacted to inquire what would happen to Mr Chen if he was returned to China.<sup>30</sup> (which was after Mr Chen made his position public in any event). 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.<sup>31</sup> When asked about this contact, DFAT said they had already outlined their contact with the Chinese consulate and embassy for the committee and did not make such a request<sup>32</sup>

4.33 Mr Downer has denied that he or his department disclosed improper or sensitive information to Chinese officials in Australia about Mr Chen Yonglin.<sup>33</sup> On the face of the legislation concerned and considering objectively the evidence the Committee has received there is nothing to contradict the Minister's position.

## Conclusion

4.34 There are discrepancies surrounding the 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 and the minority senators are unable to definitively state which account is correct although it should be remembered that the officials have no apparent motive or benefit in providing the committee with other than the truth.

4.35 Mr Chen expressed concerns for his safety. These claims not completely denied or contested by DIMIA or DFAT. There can be no doubt that they were made aware of Mr Chen's concerns on more than one occasion. Indeed Mr Chen's whole application and all of his conduct is founded upon the notion (and probably had to be) that there are real reasons and circumstances for him to fear for his safety. It appears that these officials required clear evidence to support Mr Chen's allegations and were to some extent contented when such evidence did not materialise. To some extent their position is understandable in the circumstances.

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

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

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

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



## Chapter 5

### Mr Chen's claims and support for them

#### Mr Chen's claims

5.1 On 26 May 2005, Mr Chen left two letters at the DIMIA security desk outlining the reasons for his request for political asylum and detailing his claims. A summary of the claims is as follows:

- In his role as Consul for political affairs, Mr Chen has been in charge of implementing the PRC Central Government policy in relation to the Five Poisonous Groups (Falun Gong, pro-democracy movement activists, pro-Taiwan independence force, pro-Tibet separation force and Eastern Turkistan force). In particular, he has been required to persecute Falun Gong practitioners overseas;
- While in Australia, Mr Chen has assisted Falun Gong practitioners to avoid persecution in China;
- He is fearful that these activities undertaken over the last 4 years and 1 month will be discovered by his successor at the PRC Consulate-General in Sydney;
- Mr Chen has assisted Falun Gong practitioners to avoid persecution because the PRC Central Government's policy is against his conscience and will. Mr Chen believes that Falun Gong is a vulnerable, innocent social group in need of help, not persecution;
- Mr Chen is distressed that he has been working for an authority which has unjustifiably placed Falun Gong practitioners in labour camps, jails, forced re-education courses and put un-cooperative practitioners to death; and
- Mr Chen fears that should he return to China, he may continue to be asked to assist in the persecution of Falun Gong. He could not do this, even under pain of death.<sup>1</sup>

#### *Persecution in China*

5.2 According to the Falun Dafa information centre, 'Falun Gong (or Falun Dafa) is an ancient form of qigong, the practice of refining the body and mind through special exercises and meditation. Since being introduced to the general public in 1992 by Mr Li, Falun Gong has attracted tens of millions of people in over 60 countries'.<sup>2</sup> This issue is surrounded by intrigue and claim and counterclaim. The Committee did not examine "Falun Gong" in any thorough sense and heard evidence on the periphery of a term of reference directed to Mr Chen. The minority senators consider it

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1 *Submission 7* (RACS), pp. 11-12.

2 Australia Falun Dafa Information Centre, accessed at <http://www.falunau.org/aboutdafa.htm> on 14.7.05.

inappropriate to reach any conclusions or to offer any opinion on this subject without a considerable body of evidence being examined.

5.3 The Chinese government does not see the Falun Gong in the same light that its practitioners portray. It has made clear it regards the Falun Gong as an evil and intemperate cult.

Our struggle against Falun Gong is protracted, acute and complicated.<sup>3</sup>

5.4 In 2002, the Chinese Foreign Minister indicated that in the government's view 'there has been a tendency within the Falun Gong that merits our attention and alert, that is it's turning increasingly violent'. The Chinese government has taken measures to deal with Falun Gong but it states only legal means have been used.<sup>4</sup> Although the government has said any measures they are taking are lawful, Falun Gong practitioners do not accept this view.

5.5 The minority reiterates that this is a matter largely relevant to a foreign government and therefore inappropriate for comment in the circumstances of this term of reference without considerable further evidence and investigation.

### ***Spying in Australia***

Mr Chen also sought to support his application for asylum with allegations of an extensive spy<sup>5</sup> and information gathering and monitoring network in Australia:

I got the number of 1,000 secret agents and informants from a document and I know that there are two systems operating in the Chinese missions overseas in some important cities like Canberra and Sydney. One is the diplomatic system; the other is the information collection system reporting to the intelligence service of China. When I was working in the Chinese consulate in Sydney, I often accessed reports from Beijing, China, about some activities of dissidents that even we in Sydney did not know about. These were from certain intelligence services that indicated that they were very active in Australia, especially when there was a very senior official or leader visiting Australia including Chairman Li Peng in the year 2002, President Hu Jintao in the year 2003 and, this year, Chairman Wu Bangguo.

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3 Luo Gan, member of the Political Bureau of the Chinese Communist Party Central Committee, addressing a national conference of directors of justice departments, 28 December 1999, quoted in a paper by Amnesty International, The crackdown on Falun Gong and other so-called 'heretical organisations' accessed at <http://web.amnesty.org/library/print/ENGASA170112000> on 6.7.05.

4 Chinese Minister for Foreign Affairs, Tang Jiaxuan, meeting with the Australian Minister for Foreign Affairs, Alexander Downer on 19 March 2002, accessed at [http://www.dfat.gov.au/media/transcripts/2002/020319\\_pressconf\\_formin\\_china\\_au](http://www.dfat.gov.au/media/transcripts/2002/020319_pressconf_formin_china_au) on 10.8.05.

5 See *The Australian*, 6 June, p.4; the *Australian Financial Review*, 6 June 2005, p. 8;

They gave all these information alerts. That made it very clear to me that there must be a network operating in Australia.<sup>6</sup>

5.6 Mr Chen repeated these allegations when invited to speak to a US House of Representatives Human Rights Committee:

According to my knowledge, the persecution on the Falun Gong by the Chinese Communist Party is a systematic campaign. All the authorities especially of public security, state security and Foreign Affairs are involved in the persecution...In each Chinese mission overseas, there must be at least one official in charge of the Falun Gong affairs, and the head and the deputy head of the mission will be responsible for the Falun Gong affairs. I am aware there are over 1000 Chinese secret agents and informants in Australia, who have played a role in persecuting the Falun Gong...<sup>7</sup>

5.7 These claims were supported indirectly by other witnesses although, save for Mr Chen, there was virtually no direct evidence of such matters.

### ***Government response to allegations***

5.8 Mr Downer has quite properly and reasonably refused to comment on the spy network claims saying that 'it is a time-worn tradition of Australian governments over many years not to get into any discussion about that aspect of intelligence matters'.<sup>8</sup>

5.9 ASIO advised that 'Mr Chen has made allegations in the media that the PRC government has been engaged in foreign interference and espionage in Australia. These allegations are being looked at closely and the Government has given Mr Chen the opportunity to bring forward any information he wishes'.<sup>9</sup>

### ***Harassment of Australian citizens***

5.10 Mr Chen's allegations went beyond spying activities to the harassment and intimidation of Australian citizens.

### ***Kidnapping allegations***

5.11 Mr Chen alleged that people have been kidnapped from Australia and cited a particular case of Lan Meng. According to the press, Lan Meng was kidnapped by Chinese agents which forced his father Lan Fu to return to China.<sup>10</sup> This case was referred to the AFP for investigation on 9 June 2005 and they were asked to conduct

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6 *Committee Hansard*, 26 July 2005, p. 53.

7 Testimony of Chen Yonglin at the United States Congress Committee on International Relations, 21 July 2005.

8 *Canberra Times*, 6 June 2005, p. 3.

9 *Submission 5* (ASIO), pp. 1-2.

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

inquiries to establish whether any criminal offences occurred in Australia regarding the allegations of abduction.<sup>11</sup>

5.12 Ms Russ, Manager Economic and Special Operations, Australian Federal Police, informed the committee that the person who was alleged to have been abducted, Lan Meng, was located and interviewed. Following the completion of inquiries, the AFP concluded that there was no substance to the allegations.<sup>12</sup>[12] Notwithstanding that, Ms Russ confirmed that Lan Meng's statement could not be released to the committee because it contained important and sensitive information obtained during the interview.<sup>13</sup> This would tend to suggest that Lan Meng was forthright and fearless in "naming names" and tends to refute any suggestion that he was intimidated or fearful and therefore was unlikely to substantiate the kidnapping allegation. The clear and salient point in this substantial allegation is that it was investigated thoroughly by the AFP and found to be baseless.

5.13 Notwithstanding, when Mr Chen was told of the AFP findings, he expressed surprise and questioned whether they had checked all the details. He thought that Chinese secret agents may have threatened Lan Meng. Mr Chen told the committee that Lan Meng's father is still in prison in China serving a life sentence.<sup>14</sup>

## **Other issues raised with the committee**

### ***Treatment of Chinese nationals applying for protection***

5.14 The minority is however concerned about a number of cases of Chinese applying for protection visas who experienced some delay before being granted the visa. For example, Mr Hao Fengjun, who arrived in Australia and applied for a protection visa in February 2005, was not contacted by any government agencies until he went public on 7 June 2005.<sup>15</sup> Professor Yuan Hongbing, a well recognised participant in the pro-democracy movement, had to wait 12 months to get a protection visa.<sup>16</sup> Notwithstanding, there is no evidence of them being declared unlawful non-citizens and this provides some comfort that whilst delayed, the cases are nevertheless being dealt with sensitively.

### ***Questioning of Chinese nationals by Chinese officials***

5.15 Mr Deller, brought to the committee allegations that a number of Chinese nationals had been questioned by Chinese officials at Sydney's Villawood detention

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11 *Committee Hansard*, 26 July 2005, pp. 1-2.

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

13 *Committee Hansard*, 26 July 2005, p. 10.

14 *Committee Hansard*, 26 July 2005, pp. 56-57.

15 *Committee Hansard*, 26 July 2005, pp. 68-69.

16 *Committee Hansard*, 26 July 2005, pp. 70-71.



centre in June 2005. He raised the issue that the Migration Act or Refugee convention may have been breached by these actions. Mr Deller told the committee that they have raised the issue with the Minister for Immigration and Multicultural and Indigenous Affairs on 31 May 2005 but have not yet received a reply.

5.16 In response, Mr Hughes, DIMIA, informed the committee:

There was a group of people at Villawood detention Centre many of whom, I am not sure if it was all, had been through visa processes and found not to be owed protection by Australia, so therefore the process was completed. However, they either did not have travel documents that were available to the department or were not cooperating with their removal. So in order to obtain travel documents for them, the removals area of the department has to liaise with the government of their home country about the issuing of travel documents so that the people can travel home. In some circumstances, the government of that country, as in this case, wants to actually be certain that the people are nationals of that country before issuing travel documents and so that is what that particular process was about. Otherwise, the people concerned would be potentially faced with very long-term detention. Having completed their visa possibilities and not got visas, if arrangements were not made to get them travel documents, they would face prolonged detention.<sup>17</sup>

I am advised that we do not give any information about the nature of any application to remain in Australia. We provide the source country with very limited biodata that may help them identify whether or not the person is a national of that country...We have a name and date of birth and some other basic details...but we tell them nothing about any applications that person may have made to stay in Australia or the content of those applications.<sup>18</sup>

5.17 Responding to a question regarding whether people who had applied for asylum were interviewed by Chinese officials, Hughes further stated:

I think the statement in the press at the time was that no-one who had not completed the asylum process was interviewed. That turned out to be wrong or partly wrong in one case, where I believe a person was subsequently found to have been finally determined in terms of a departmental and RRT decision but was still in litigation of some form, and the minister intervened to allow that person to stay.<sup>19</sup>

5.18 In additional information provided by DIMIA to the committee on 16 August 2005, Mr Hughes sought to clarify his answer and advised 'the interviews were conducted by three officials from relevant provincial areas in the PRC. The role of the officials was to assist the PRC Embassy in Australia in verifying the nationality and

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17 *Committee Hansard*, 8 August 2005, p. 46.

18 *Committee Hansard*, 8 August 2005, p. 47.

19 *Committee Hansard*, 8 August 2005, p. 47.

identity of those persons in Villawood Immigration Detention Centre who may be from the PRC and who are to be repatriated'.<sup>20</sup>

## **Conclusion**

5.19 Minority senators acknowledge that these issues are of considerable sensitivity but also note that the allegations are broadly within a particular context. The context is one of a political asylum applicant seeking to advance his application “beyond the point of no return” so to speak. It is clear to the minority that at all times Mr Chen understood the need to render his position so prejudiced as to preclude his repatriation to his former country. It is the fact that he has been successful in that regard, save for the technicality of him being afforded a grant of asylum.

SENATOR DAVID JOHNSTON  
DEPUTY CHAIRMAN

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20 Additional Information from DIMIA on 16 August 2005.

# **Appendix 1**

## **Public Submissions**

P1	Federation for a Democratic China
P2	United Nations High Commissioner for Refugees (UNHCR)
P3	Dr Klaus Neumann
P4	Falun Dafa Association of NSW Inc.
P5	Australian Security Intelligence Organisation
P6	Mr Bernard Collaery
P7	Refugee Advice + Casework Services (Aus) Inc.
P8	Mr R B Wilson
P9	Dr Ann Kent



## **Appendix 2**

### **Public hearings and witnesses**

#### **Monday, 25 July 2005 - Sydney**

Chin, Mr Jin, Chairman, Federation for a Democratic China

Daniels, Ms Yole, Assistant Secretary, Compliance and Analysis Branch, Border Control and Compliance Division, Department of Immigration and Multicultural and Indigenous Affairs

Deller, Mr John, President, Falun Dafa Association of New South Wales Inc.

Freedman, Mr Harry, Legal Team for Ms Vivian Solon

Hughes, Mr Peter Gerard, First Assistant Secretary, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs

Illingworth, Mr Robert Laurence Mark, Assistant Secretary, Onshore Protection Branch, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs

Liang, Mr John, Vice Chairman, Federation for a Democratic China

Lindsay, Ms Louise, Business Manager, Onshore Protection, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs

Newhouse, Mr George, Legal Team for Ms Vivian Solon

O'Callaghan, Mr James Gerard, State Director, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs

#### **Tuesday, 26 July 2005 - Canberra**

Chen, Mr Yonglin, Private capacity

Collaery, Mr Bernard Joseph Edward, Legal representative of Mr Hao, CC Law

Foskett, Mr Douglas, Director, Consular Operations, Department of Foreign Affairs and Trade

Gilding, Mr Simeon Richard, Assistant Secretary, Consular Branch, Department of Foreign Affairs and Trade

Green, Mr Mark Grenville, Coordinator, Refugee Advice and Casework Service (Australia) Inc.

Hao, Mr Charles Feng Jun, Private capacity

Larsen, Mr James Martin, Legal Adviser, Department of Foreign Affairs and Trade

Luo, Ms Serene, Interpreter for Mr Hao

Lynch, Ms Philippa, First Assistant Secretary, Information Law and Human Rights Division, Attorney-General's Department

Manne, Mr David Thomas, Coordinator, Refugee and Immigration Legal Centre Inc

Morton, Ms Lydia, First Assistant Secretary, North Asia Division, Department of Foreign Affairs and Trade

Neumann, Dr Klaus, Private capacity

Peace, Mr Brendan Scott, Associate Legal Officer, United Nations High Commissioner for Refugees, Regional Office

Robinson, Mr Jeff, Assistant Secretary, East Asia Branch, Department of Foreign Affairs and Trade

Russ, Miss Jenny, Manager, Economic and Special Operations, Australian Federal Police

Sheedy, Ms Joan Marie, Assistant Secretary, Information Law Branch, Attorney-General's Department

Wei, Ms Junling, Interpreter for Mr Hao, CC Law

Wright, Mr David Neill, Regional Representative, United Nations High Commissioner for Refugees, Regional Office

### **Monday, 8 August 2005 – Canberra**

Daniels, Ms Yole, Assistant Secretary, Compliance and Analysis Branch, Department of Immigration and Multicultural and Indigenous Affairs

Foskett, Mr Douglas, Director, Consular Operations, Department of Foreign Affairs and Trade

Gallagher, Mr Patrick James, Assistant Director, Compliance, Department of Immigration and Multicultural and Indigenous Affairs

Gilding, Mr Simeon Richard, Assistant Secretary, Consular Branch, Department of Foreign Affairs and Trade

Hughes, Mr Peter Gerard, First Assistant Secretary, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs

Illingworth, Mr Robert Laurence Mark, Assistant Secretary Onshore Protection Branch, Department of Immigration and Multicultural and Indigenous Affairs

Larsen, Mr James Martin, Legal Adviser, Department of Foreign Affairs and Trade

Lindsay, Ms Louise Jean, Business Manager, Onshore Protection, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs

Robinson, Mr Jeff, Assistant Secretary, East Asia Branch, Department of Foreign Affairs and Trade

Smith, Mr Rod, First Assistant Secretary, Public Diplomacy Consular and Passports Division, Department of Foreign Affairs and Trade

**Tuesday, 6 September 2005 – Canberra**

Daniels, Ms Yole, Assistant Secretary, Compliance and Analysis Branch, Department of Immigration and Multicultural and Indigenous Affairs

Illingworth, Mr Robert, Assistant Secretary, Onshore Protection Branch, Department of Immigration and Multicultural and Indigenous Affairs

Kennedy, Mr Matt, Deputy Chief Information Officer, Department of Immigration and Multicultural and Indigenous Affairs

Rizvi, Mr Abul, Acting Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs

Storer, Mr Des, First Assistant Secretary, Parliamentary and Legal Division, Department of Immigration and Multicultural and Indigenous Affairs

Tyler, Ms Deborah Anne, Director, Response Coordination Unit, Department of Immigration and Multicultural and Indigenous Affairs

Williams, Mr Jim, Assistant Secretary, Unauthorised Arrivals and Detention Operations Branch, Department of Immigration and Multicultural and Indigenous Affairs

**Wednesday, 7 September 2005 – Canberra**

Gilding, Mr Simeon Richard, Assistant Secretary, Consular Branch, Department of Foreign Affairs and Trade

Grigson, Mr Paul, First Assistant Secretary, South and South East Asia Division, Department of Foreign Affairs and Trade

Smith, Mr Rod, First Assistant Secretary, Public Diplomacy, Consular and Passports Division, Department of Foreign Affairs and Trade





## **Appendix 3**

### **Additional information, tabled documents, and answers to questions on notice**

#### Department of Foreign Affairs and Trade

- correspondence dated 18 July 2005
- opening statement prepared for public hearing, 26 July 2005

#### Federation for a Democratic China

- opening statement prepared for public hearing, 25 July 2005
- additional information provided at the Committee's hearing on 25 July 2005

#### Falun Dafa Association NSW Inc.:

- undated letter of complaint concerning Chinese radio program "Good day Sydney" broadcast on radio 2000
- summary of issues for Falun Gong practitioners seeking refugee protection in Australia – 8 July 2005
- Additional information, dated 11 August 2005, arising from the 25 July 2005 hearing.

#### Mr George Newhouse

- correspondence dated 4 August 2005

#### The Epoch Times Australia Inc.

- *Interference with the Epoch Times' normal business by the Chinese Government's personnel and agents in Australia – July 2005*

#### Attorney-General's Department

- answers to questions on notice at public hearing on 5 August received 8 August 2005

#### Department of Immigration and Multicultural and Indigenous Affairs

- answers to questions taken on notice at the Committee's hearing in Sydney on 25 July 2005
- response dated 12 August 2005, to questions on notice arising from the 8 August 2005 hearing
- response dated 16 August 2005, to questions on notice arising from the 8 August 2005 hearing

- response dated 19 August 2005, to questions on notice arising from the 8 August 2005 hearing in relation to Vivian Solon.
- response dated 23 August 2005, to question on notice asked by Senator Ludwig arising from the 8 August 2005 hearing.

Tabled (6/9/05) papers including Secretary's briefing – 8 August 2005; People. Our Business; copy of Ms Alvarez Qantas travel form.

Tabled at the Committee hearing on 6 September 2005:

- Minute - Deputy Secretary Correll - 25 August
- Removals Quality Assurance Forms – Description
- Removal Availability Assessment (revised)
- Draft MSI extract - 5.2 - Unresolved Identity or Nationality
- Air travel forms.pdf)
- Draft MSI extract - Notification of Proposed Air Travel
- Notice of Your Removal from Australia
- Request for Removal from Australia (revised)
- General Information for Escorts
- Progressing and Effecting Removal

Mr Mark Green

- Letter from Minister Vanstone dated 14 June 2005, tabled 26 July 2005
- Letter from Minister Downer dated 14 June 2005, tabled 26 July 2005

Australian Security Intelligence Organisation

- Letter from Mr Paul O'Sullivan dated 24 August 2005

Sen the Hon Amanda Vanstone

- Letter from Minister Vanstone dated 2 September 2005

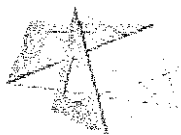
Commonwealth Ombudsman

- Covering letter dated 5 September 2005-09-09
- Letter to Senator the Hon Amanda Vanstone, 1 September 2005
- Letter to Secretary of the Department of Immigration and Multicultural and Indigenous Affairs

## **Appendix 4**

Below is the statement provided to the DIMIA State Director, Mr O'Callaghan by his executive assistants regarding the phone call to the Chinese consulate on 26 May 2005.

----- Forwarded by Jim O'Callaghan/NSW/IMMI/AU on 26/05/2005 02:01 PM -----



NSW/IMMI/AU  
26/05/2005 01:58 PM

To Jim O'Callaghan/NSW/IMMI/AU@IMMI  
cc

Subject This morning's events

**DETAILS OF THIS MORNING'S EVENT (26/5/05) AS REMEMBERED BY [REDACTED] AND [REDACTED]**  
(EAs to State Director)

- \* 10.30am - [REDACTED] took a telephone call from the contact centre saying that somebody from the Chinese Consulate called and wished to speak to Nick Nicholls
- \* [REDACTED] advised that person should be referred to Janet Mackin, Deputy State Director as she dealt with consular affairs and so call was transferred to Janet's EA, [REDACTED]. As Janet was in Adelaide, [REDACTED] then transferred call back to State Executive Office.
- \* 10.35am - [REDACTED] took this call and caller advised that he wants to speak with the State Director Nick Nicholls. Once again caller was advised Nick Nicholls was no longer here and current NSW State Director Jim O'Callaghan was unavailable as he was in a meeting.
- \* [REDACTED] asked for the caller's details, and then asked if she could assist or if there was any message and she would convey to the State Director. He said he was calling from the Chinese Consulate. He advised that his name was Yong Lin Chen, mobile 0400 446 775, and could the State Director please be interrupted as it was urgent. He then asked if the State Director could call him back within 5 minutes.
- \* 10.37am - [REDACTED] then called Louise Lindsay's office, (as Jim was in a meeting with Louise), she spoke to [REDACTED] and explained to her what had happened and the urgency that the client was claiming, and asked whether she could interrupt the meeting with the message for Jim.
- \* [REDACTED] said she would try and interrupt and give him the message. [REDACTED] passed the message to Jim and he undertook to follow up shortly when he returned to his office.
- \* Between 10.44am - 11am - Yong Lin Chen called back approximately 3 more times, and after the 3rd (or 4th) phone call advised [REDACTED] that he was downstairs. [REDACTED] then asked exactly his role in the Consulate and it was then that he advised he was the Consul and needed to speak with State Director as a matter of urgency. [REDACTED] heard laughing in the background and thought perhaps the call was not genuine.
- \* 10.44am - [REDACTED] contacted security in order to confirm if this man was really downstairs, and to ask for his details and also to keep an eye on him.
- \* Yong Lin Chen called again and said that he was with security and [REDACTED] asked for his number at the Consulate as she told him that she needed to check whether he was from the consulate or not. He gave the number 8595 8001 or we could contact him on 8595 8002. [REDACTED] advised Yong Lin Chen that she was going to check the numbers that he gave, and Yong Lin Chen said that it was OK for her to call and that it was better for her to call 8595 8002. [REDACTED] advised that she was still trying to get in touch with the State Director, and that she would keep trying to reach him and if he could hang up and she would call him back. He hung up.
- \* 10.47am - [REDACTED] then called the consulate number and there was a Chinese recorded message, and then an English message about visas only. This confirmed to [REDACTED] it was the Consulate number.
- \* [REDACTED] wanted to go down and see the man and his card and [REDACTED] suggested that we should leave this to security, and [REDACTED] would call the Consulate to see if a man by the name of Yong Lin Chen was actually the Consul as he claimed.
- \* 10.48am - We checked the business cards from the Consulate that we keep in Jim's office. We

found that the name shown on the card was different to the name that the person downstairs was claiming to be.

\* 10.49am - [REDACTED] called the Chinese Consulate number on the business card and asked to speak with the person on the card, Qiu Jian (Consul, Consulate-General of the PRC). [REDACTED] said that she was from the Department of Immigration and asked Qiu Jian to confirm that a man by the name of Yong Lin Chen worked there. Qiu Jian confirmed that a man by that name did work at the Consulate General. He said he would try his mobile, which he did and there was no answer. I thanked him and hung up.

\* 10.55am - While [REDACTED] was talking to security on the phone, Yong Lin Chen called the SD phone again and [REDACTED] answered. She advised that she had called the Consulate to confirm that this man did work there. The line then went silent and then the caller hung up.

\* 10.57am - Yong Lin Chen called again and [REDACTED] answered. She asked him if he was the genuine Consul as he said before, because we confirmed his name with the Consulate. He then said to [REDACTED] "I knew your friend did, you put my life in danger. Please transfer me to the State Director very urgently"

\* [REDACTED] asked him to hold the line so she could go and look for Jim, however he hung up.

\* 10.59am - [REDACTED] then called Louise's office and was advised that Jim had just left

\* 11.20am - SD entered the office with the message [REDACTED] had left him at Louise's office. We advised SD that man had mentioned we had put his life in danger, and so SD advised that we contact Louise Lindsay with his details as he may be seeking asylum so she could speak to him.

\* We then called Louise with his details, and [REDACTED] also explained to Louise that she had called the Consulate to confirm the man's name.

\* Louise tried to call Yong Lin Chen, however could not get through and received a message that phone was switched off or out of range. [REDACTED] was advised that the man had given 2 letters to security and departed quickly. Security then gave letters to OSA, (who are contracted to open all mail). The letters were opened and passed to Neville Nixon in Corporate Operations.

\* 11.30am - [REDACTED] received the letters from Neville Nixon and referred them to Jim O'Callaghan.

Kind Regards

[REDACTED]  
Executive Assistant

NSW State Director's Office, DIMIA

Tel. (02) 9032 4007 Fax (02) 9032 4090



## Appendix 5

### Support for Mr Chen's claims

1. The following are excerpts from evidence provided to the committee supporting 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.

#### *Persecution of Falun Gong*

2. Mr Bernard Collaery, legal representative for Mr Hao Fengjun told the committee of Mr Hao's experience of working in the 610 office and their activities:

...He left his policing duties on moral grounds. After his arrival in Australia on 16 February 2005, he provided an affidavit setting out his experiences as a professional police officer...He states that he enjoyed his career until he was drafted into the 610 office. By way of introduction, 'the 610 office' refers to an office established by proclamation on 10 June 1999 that suppressed the Falun Gong movement.

Mr Hao states that a notice went around his police district in Tianjin city, a large city with eight different police stations, asking for volunteers to join the 610 office. They only got one volunteer. Their police numbers were put into a computer, and he was unfortunate enough to be chosen to be drafted into the 610 office. In the 610 office, his first duty was to work on the human resources and analysis effort in studying the membership and structure of the Falun Gong in Tianjin City. He travelled necessarily to the 610 Office headquarters in Beijing, which are located in the Ministry of Public Security. He found that the 610 Office did not abide by all of the usual police codes of conduct for the arrest, interrogation and detention of prisoners.

Mr Hao became disheartened by the maltreatment of the Falun Gong and he decided to take to the West the story of what the 610 Office are doing to the Chinese people, particularly, and doing abroad. He secured a large quantity of electronic information and brought that to Australia. That information establishes irrefutably the existence of the 610 Office, now called No. 26 Bureau, headquartered in Beijing. The material brought by this courageous police officer includes information concerning the three-year plan for the 610 Office operations in China and abroad. The functions of the 610 Office, or No. 26 Bureau, have been expanded to embrace 14 religions in China, including the established religions known in Australia and other religions and Bible groups.<sup>1</sup>

3. Mr Hao told the committee:

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1 *Committee Hansard*, 26 July 2005. p. 66.

I did not personally witness any Falun Gong practitioner's deaths, but I saw those that had been arrested being interrogated and torture being used on them.<sup>2</sup>

Basically it was physical punishment like using an iron rod to beat them, or hanging them up on a door or elsewhere with handcuffs for a long time.<sup>3</sup> Normally, in our police rules and procedures and the criminal code, police cannot detain suspects for more than 24 hours without them being charged. It was different with the 610 Office detainees. There were no restrictions on holding detainees who were Falun Gong...and there were no restrictions on beating Falun Gong practitioners.<sup>4</sup>

4. Mr Collaery stated:

As an outcome of near global agitation by the Falun Gong movement, the activities of the notorious Gestapo-like 610 office have spread abroad. The 610 office is but one of many branches of the State Security apparatus dedicated to controlling discreet movements of the population and cohorts abroad. The Falun Gong movement has been more successful than other groups in drawing attention to persecutory actions.<sup>5</sup>

5. Mr Z, spoke to the committee and his affidavit is contained in Mr Collaery's submission. It tells of him being told by a colleague and friend of the torture and murder of a Falun Gong practitioner by police officers.<sup>6</sup>

6. Professor John Fitzgerald has written

leaving aside the rationality or otherwise of the Falun Gong religious movement, the liberty to believe and practise religion is a fundamental right in Western liberal democracies. Freedom of religion is non negotiable. If it can be established that China's secret security system has spun out of control in Australia in response to Falun Gong and other alleged threats to the Communist Party state, then Chinese attempts to suppress dissidents at home becomes a matter of concern not just to the AFP, to Foreign Affairs but to all citizens of this country.<sup>7</sup>

7. The Falun Dafa Association of NSW supports Mr Chen's claims of the existence of the 610 office which specifically targets Falun Gong practitioners and their submission provides examples.<sup>8</sup>

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2 *Committee Hansard*, 26 July 2005, p. 68.

3 *Committee Hansard*, 26 July 2005, p. 68.

4 *Submission 6* (Mr Collaery), p.12.

5 *Submission 6* (Mr Collaery), p.5.

6 *Submission 6* (Mr Collaery). pp.13-14.

7 Australian Policy Online, accessed at [http://www.apo.org.au/webboard/print-version.chtml?filename\\_num=01207](http://www.apo.org.au/webboard/print-version.chtml?filename_num=01207) on 15.7.05.

8 *Submission 4* (Falun Dafa Association of NSW), pp.8-9.



## ***Support for Mr Chen's claims of persecution of Falun Gong from overseas***

### *From Canada*

8. In early July, the press reported on a Chinese defector in Canada who supported claims made by Mr Chen and Mr Hao regarding a Chinese spy network in Australia. Mr Han Guangsheng was reported to be a former spy and prison camp administrator who defected to Canada in 2001 but only recently came forward with his story. He stated that he heard many accounts of maltreatment of hundreds of Falun Gong practitioners. 'They try to brainwash Falun Gong practitioners. The ways they use is to force them to read the newspaper and to watch news from the Communist Party and then force them to write a denunciation. They talk to them 24 hours a day, so these practitioners who refuse to get brainwashed can't get rest and if they continue to refuse they will be tortured'.<sup>9</sup>

9. Claims of an aggressive network of Chinese agents and the 610 Bureau were also confirmed by a former Canadian Intelligence Officer speaking to the press. Mr Michel Juneau-Katsuya said that harassment of pro-democracy and Falun Gong practitioners occurs in Canada. He stated 'definitely there would be sort of campaign harassment from phone calls in the middle of the night to monitoring or surveillance...We have evidence also or allegations at least of people coming from Canada going back for a trip for one reason or another to China and claiming they had been arrested right away on boarding the plane and had been heavily questioned by the Chinese authorities...'.<sup>10</sup>

### *US State Department*

10. A report by the US State Department, Supporting Human Rights and Democracy: The US Record 2004-05, states:

China's authoritarian Government continues to suppress political, religious and social groups, as well as individuals that it perceived to be a threat to regime power or national stability. The Government's human rights record remained poor, and the Government continued to commit numerous and serious abuses. It refused to allow social, political or religious groups to organize or act independently of the Government and the Communist Party. Those who tried to act independently were often harassed, detained or abused by the authorities.<sup>11</sup>

11. A report on International Religious Freedom in 2002, stated:

During the period covered by this report, the Government's respect for freedom of religion and freedom of conscience remained poor, especially

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9 Lateline transcript, 6 July 2005.

10 Lateline transcript, 6 July 2005.

11 U.S Department of State, Supporting Human Rights and Democracy: The US record 2004-05, 28 March 2005, accessed at <http://www.state.gov/g/drl/rls/shrd/2004> on 7.7.05.

for many unregistered religious groups and spiritual movements such as the Falun Gong...The Government continued its repression of groups that it determined to be cults in general and of the Falun Gong in particular. Various sources report that thousands of Falun Gong adherents have been arrested, detained, and imprisoned, and that several hundred or more Falun Gong adherents have died in detention since 1999.<sup>12</sup>

12. Yet another U.S Department of State Report, Country Reports on Human Rights Practices 2002, stated:

The Government continued its crackdown against the Falun Gong spiritual movement. Thousands of practitioners were incarcerated in prisons, extrajudicial re-education-through-labor camps, psychiatric facilities or special deprogramming centres...Several hundred Falun Gong adherents reportedly have died in detention due to torture, abuse and neglect since the crackdown on Falun Gong began in 1999.<sup>13</sup>

### ***Non-Government organisations***

#### *Amnesty International*

13. Amnesty International reports that the Falun Gong spiritual movement was banned in China in 1999 as a heretical organisation and a threat to social and political stability. They further state that:

Since then, thousands of Falun Gong practitioners have reportedly been imprisoned, assigned to 're-education through labour', or forcibly institutionalised in psychiatric hospitals where they are at high risk of torture and ill-treatment, in particular if they refuse to renounce their beliefs. Overseas Falun Gong organisations claim that over 1,800 practitioners in China have died either in custody or shortly after they have been released, largely as a result in injuries sustained as a result of torture and ill-treatment while in custody. Amnesty International has been unable to verify these statistics but remains concerned about the widespread use of arbitrary detention and torture or ill-treatment against Falun Gong practitioners.<sup>14</sup>

14. In 2002, Amnesty International stated that:

Falun Gong sources have claimed that a special government taskforce, the '610 office' was established to lead the campaign against the Falun Gong

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12 U.S Department of State, China (includes Hong Kong and Macau) International Religious Freedom Report 2002, accessed at <http://www.state.gov/g/drl/rls/irf/2002/13870.htm> on 11.7.05.

13 U.S. Department of State, China (includes Tibet, Hong Kong and Macau) Country Reports on Human Rights Practices 2002, accessed at <http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm> on 11.7.05.

14 22 April 2005 UA 97/05 Fear of torture or ill-treatment/possible prisoner of conscience, accessed at <http://web.amnesty.org/library/print/ENGASA170092005> on 6.7.05.

and it issued unwritten instructions in 2001 allowing police and other officials to go beyond legal restraints in the campaign, discharging them of responsibility if a Falun Gong member dies in detention due to beatings. Over 350 Falun Gong practitioners are reported to have died in custody since the 1999 ban.<sup>15</sup>

## Spying in Australia

15. One witness in particular, Mr Hao Fengjun, came forward to support Mr Chen's claims in this area. Mr Bernard Collaery told the committee on behalf of Mr Hao:

If your committee wants a comment on Chen Yonglin's statement about a thousand spies in Australia, or words to that effect, the witness has brought large megabytes of information that indicates intensive agent activity in Canada, the United States, Hong Kong, and Macau, less intensive activity in Australia and a preoccupation, of course, with Taiwan and groups there. If you want a professional comment, it is police special branch type information. It is not information that relates to nuclear scientist spies and that type of espionage. It is what the French historically call 'correspondance'. They are people who have useful information and who agents get alongside, get information from and otherwise seduce. We have all the instruction manuals, the information for it and the list of payments, because Mr Hao was a paymaster, in some respects. Because of a concern about where this information would go in Australia, Mr Hao is assisting the translation of that material at the moment to determine where people are and to make sure nothing is compromised accidentally at this stage.<sup>16</sup>

16. Professor Fitzgerald supports Mr Chen's claims of a spy network and has written:

The size and impact of the Chinese informant network in Australia reaches far beyond the small cohort of cloak and dagger intelligence operatives who are based in embassies, consulates, information bureaus, travel agencies and other legitimate businesses. Like the old East German Stasi informant system, China's informant network is built on the benign principles of neighbourhood watch under the less benign supervision of paid operatives. These operatives gather and file information from a large number of formally recruited informers and informal volunteers in Australia, who report on their fellow students and working colleagues, before passing it on to higher authorities in the intelligence system back in China. It is estimated that one in 50 East Germans was an unpaid Stasi informant. With 40,000 to 50,000 visitors from China in Australia at any one time, one thousand informers in Australia is well within the range of plausibility.<sup>17</sup>

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15 15 March 2002 UA 81/02 People's Republic Falun Gong practitioners in Chanchun City of China, accessed at <http://web.amnesty.org/library/print/ENGASA170112002> on 6.7.05.

16 *Committee Hansard*, 26 July 2005, p. 67.

17 Australian Policy Online, 21 June 2005, accessed at [http://www.apo.org.au/webboard/print-version.chtml?filename\\_num=12165](http://www.apo.org.au/webboard/print-version.chtml?filename_num=12165) on 15.7.05

## Surveillance/Monitoring/Harassment in Australia

17. Mr Collaery told the committee about surveillance allegations:

We live in a democracy but, if you open up ringbinder after ringbinder of documents that Mr Hao has effectively brought, you drop into another world of a billion dollar program of surveilling all your citizens around the world. It is a different world. It should not be approached from our perspective, with respect. On the basis of the documents that we have seen to date, the Chinese government must be spending huge sums of money keeping their former or present citizens under surveillance – and, as we found, Australian and American and New Zealand citizens.<sup>18</sup>

18. A media statement by Falun Dafa reports that:

For six years Falun Dafa practitioners in Australia have been subject to a wide range of interference and harassment orchestrated by the Chinese Embassy and consulates in this country. These incidents include physical threats, harassing phone calls, damage to property, salacious misinformation about the practice of Falun Dafa, practitioners being on a travel black list, having their phones monitored, homes broken into and attempts to adversely influence local councils and events organisers to exclude us from community functions...we therefore have no doubt that statements by Mr Chen and Mr Hao about Chinese Communist Party infiltrators in Australian society are absolutely true.<sup>19</sup>

19. Mr Liang from the FDC, outlined two cases for the public record and provided others. The first, described Mr Lu Zhansuo who was discussing a possible job as a pastor. The priest he was talking with said that the Chinese consul-general had approached him several times demanding Mr Lu not be given a job.<sup>20</sup>

20. The second case involved Mr Ian Turner, who attended an Australia day party organisation by a Melbourne Chinese organisation. He attended with his wife and Ms Xiaoqing Luo, a journalist for the Epoch Times. He claims that just before the event was to start, the secretary of the organisation told Ms Luo to leave as the Deputy Consul-General of the Melbourne Chinese Consulate would be very angry if she was there.<sup>21</sup>

21. Mr Liang also told the committee that the activities of the FDC have been monitored by the Chinese government. He said their meeting times, discussion details and plans for events have been made known to the Chinese government through their

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18 *Submission* 26 July 2005, p.74.

19 9 June media statement regarding the defection of Mr Chen Yonglin and Mr Hao Fengjun from the Chinese government accessed at <http://www.falunau.org.printArticle.jsp?itemID+15762> on 6.7.05.

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

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

network of informants. He further stated that when their members return to China they are harassed and followed.<sup>22</sup>

22. Mr Chin Jin, FDC told the committee that he had raised his concerns regarding the monitoring and harassment of Australian citizens with a government department. He told the committee that as an Australian citizen he did not need a visa for Hong Kong but last year he was stopped from entering Hong Kong when he was boarding in Frankfurt. He said he raised this with a government department but there was no action and no feedback.<sup>23</sup>

23. Professor Fitzgerald has stated that:

..there is no doubt that this [the surveillance of Australian citizens] is taking place on a very wide scale.<sup>24</sup>

24. He said that Mr Chen's case 'reveals...an element of surveillance of the Australian community that is quite alarming. I am speaking specifically of the Chinese Australia community'.<sup>25</sup>

25. He added that in conversation with Australians who are of Chinese background he has sensed that they 'do not feel adequately protected by or recognised as equal citizens under Australian law when it comes to protection from surveillance by a foreign power, even though they are full and equal Australian citizens'.<sup>26</sup>

26. Professor Fitzgerald further stated:

I have been teaching and working in Chinese studies in this country for 25 years. I have an intimate acquaintance with his kind of behaviour. This is an opportunity to speak up about it. There is no doubt that it is extremely widespread. I cannot go into greater detail simply for fear of placing at risk friends and acquaintances who are fellow Australians.<sup>27</sup>

27. Professor Fitzgerald has written in Australia Policy Online:

...what should concern us is indicative evidence of relentless attempts by the Chinese regime to monitor and report on the behaviour of Australian citizens by invisible means. There is no formal mechanism for dealing with this kind of harassment of Australian citizens. Through DFAT, the Australian Government can and does lodge formal protests with the Chinese government concerning the exercise of 'improper influence' when such claims are fully substantiated. But formal diplomatic protests are

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

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

24 *Committee Hansard*, 27 June 2005, p. 80.

25 *Committee Hansard*, 27 June 2005, p. 79.

26 *Committee Hansard*, 27 June 2005, p. 80.

27 *Committee Hansard*, 27 July 2005, p. 81.

extremely rare because substantiating a claim of surveillance or harassment involves two conditions that cannot normally be met. First foreign officials on diplomatic passports can be called to account for improper influence only when they are caught red handed. As the informant system operates through intermediaries without diplomatic status, no official is likely to be caught in the act ...Second, Australians who are intimidated in this way are unlikely to test Chinese government threats to harm their families in China. Putting claims of this kind in writing to support an official complaint of improper influence would be to sign a warrant for the arrest and persecution of their friends and families in China.<sup>28</sup>

28. Professor Fitzgerald stated further:

It is largely Chinese-Australians who are under surveillance whereas intimidation can apply to anyone. Why do I say 'largely Chinese-Australians'? It is not exclusively. When it comes to Falun Gong it is clear that any member is subject to surveillance, but it is particularly Chinese-Australian members of Falun Gong who are reported on, because they are the ones who can be threatened by reference to family or other connections in China.<sup>29</sup>

29. Professor Fitzgerald summarised and suggested:

I would like to put a couple of proposals. One is where the Australian government is constrained in its actions because of its dealings with China that applies to human rights dialogues and things to do with China out there. When it comes to Chinese Australia, the government is not restrained in speaking proudly, openly and boldly about the contribution these communities make, how welcome they are and how their rights shall be fully protected under the law. This is not to do with diplomacy; it is not to do with trade. This is about sovereignty and citizenship and there is no restraint on what the government can say and do in that regard as far as I can understand. So it should be handled not by Foreign Affairs or by Immigration but by the Attorney General's department – I am not quite sure. It should be handled by those who speak on behalf of Australian law, justice, rights and citizenship. So speaking openly and publicly and on many occasions and making this commitment very clear would be useful. That too would make its way back through Foreign Affairs and other channels to other places where it would be registered that Australian governments and Australian people do not like their citizens being harassed.

What concerns me – I would almost like to say this off the record, but I cannot – is that the Chinese government will not hesitate to push this government around when it comes to protecting its Chinese-Australian citizens if it detects that Chinese-Australian citizens are not as valued as

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28 Australian Policy Online, 21 June 2005, accessed at [http://www.apo.org.au/webboard/print-version.chtml?filename\\_num=12165](http://www.apo.org.au/webboard/print-version.chtml?filename_num=12165) on 15.7.05.

29 *Committee Hansard*, 27 June, 2005, p. 82.

others. The Chinese government is as inclined to think of Australia as a racist place as anyone else and if it thinks the Australian government will not defend its Chinese-Australian citizens to the hilt then things will get worse before they improve. We are at a critical moment here. This is an opportunity to do something.<sup>30</sup>

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30     *Committee Hansard*, 27 June 2005, p. 83.