QUESTION TAKEN ON NOTICE

**SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE:
11 OCTOBER 2005**

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

**1.   On page 52, continuing onto Page 53, of the Hansard, 27th September of
the Legal and Constitutional References Committee hearing in Melbourne,
reference was made by Mr Burnside that said in part, "Some commentators have
rather uncharitably pointed out that the principal qualification in recent years
seems to be a failed candidacy for a Liberal seat." This related to RRT
membership.**

**Could the Department give a breakdown of the qualification of the membership
of the RRT?**

Members of the Refugee Review Tribunal (RRT) come from a broad cross-section of
the community, representing a variety of professions with a breadth of work
experience in a host of areas. Members of the RRT have impressive tertiary
qualifications, with many possessing legal qualifications. Of the 71 Members
currently appointed to the RRT:

- 6 have Doctors of Philosophy;
- 2 have Doctors of Judicial Studies;
- 11 have a Masters of Law;
- 44 have a Bachelor of Laws;
- 20 have Masters Degrees in disciplines other than law;
- 55 have one or more Bachelor degrees in disciplines other than law;
- 25 have additional Diploma qualifications; and
- 12 have other tertiary qualifications.

In short, 98.5% of RRT Members hold a tertiary qualification and 79% have more
than one tertiary qualification. The 1.5% of Members who do not have tertiary
qualifications had extensive experience in refugee matters prior to their appointment.

Background:
Appointments to the RRT are made under the *Migration Act 1958* (the 'Act') by the
Governor-General based on recommendations made and approved by Government.

Generally, appointments are made following a nationally advertised recruitment
campaign. A Selection Advisory Committee appointed by the Minister measures
applicants against published selection criteria designed to identify people with the
following skills:

- a sound understanding of the relevant law;
- the ability to apply relevant law to make quality decisions in a manner that is fair, just, economical, informal and quick (as required by the Act);
- analysis and research skills; and
- interpersonal skills (including sensitivity to cross-cultural issues).

RRT Members are statutory office holders independent of the Minister and the Department of Immigration and Multicultural Affairs. Whilst the Act permits the Minister and Principal Member of the Tribunals to provide general Directions to Members concerning their method of performance or exercise of general powers or functions under the Act, that power does not allow a member to be directed as to how to exercise his or her powers in specific cases.

A summary of the RRT membership current as at 1 November 2005 is attached.

RRT Membership Summary

Principal Member	Deputy Principal Member	Senior Members	Full-Time Members	Part-Time Members	Total Members
1	1	4	10	55	71

2. Under the Refugee and Humanitarian Program, how many refugees do we allow into Australia?

Australia's Humanitarian Program comprises an offshore resettlement component, which provides resettlement to persons overseas who are in the greatest need of this durable solution, and an onshore protection component which provides protection to persons who arrive in Australia and are in need of that protection. Refugees are permitted to stay in Australia under both the offshore and onshore components.

The offshore component of Australia's Humanitarian Program is guided by the priorities of the United Nations High Commissioner for Refugees (UNHCR) and comprises a Refugee category and a Special Humanitarian Program (SHP). The resettlement component of the program goes beyond any international obligations and reflects Australia's desire to assist persons around the world in greatest need of resettlement.

The Refugee category assists persons who are subject to persecution in their home country and living outside their home country. Most applicants under this category have been identified and referred by the UNHCR.

The SHP assists persons who are subject to substantial discrimination amounting to gross violation of human rights in their home country and who are living outside their home country. People who wish to be considered for a SHP visa must be proposed for entry by an Australian citizen, permanent resident, eligible New Zealand citizen or an organisation operating in Australia.

Australia is one of just ten countries operating a well established and successful resettlement program, and consistently ranks within the top three countries in terms of the number of persons resettled alongside the US and Canada.

The Humanitarian Program is planned on an annual basis. The government increased the size of the program in 2004-05 to 13,000 places and within it the Refugee category to 6,000 places, up from 4,000 places. This is the largest offshore Refugee category for 20 years.

Places under the Humanitarian Program are used for the offshore resettlement component as well as for the onshore protection component. The flexibility in the program means that places can be moved between the SHP category of the offshore component and the onshore protection component. Where places are required for protection visas to meet our obligations under the Refugees Convention, a place is deducted from the available offshore SHP places. The 6,000 places for the offshore Refugee category are for use for that purpose only.

In 2005-06, the allocation of 13,000 comprises:

- 6,000 Refugee category places for use *offshore*; and
- 6,400 SHP for use *offshore*; and
- 600 places retained for use *onshore*.

In line with UNHCR's recommended regional priorities the focus of the offshore program in 2005-06 will be on Africa, followed by the Middle East and South West Asia.

3.   What is the UNHCR criteria for refugee admission under the program referred to in the Question above?

In order to meet UNHCR's definition of a refugee, a person must be outside their home country and be unable or unwilling to return owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

UNHCR assesses individual claims against its resettlement criteria which also take into account the protection needs of the person and whether resettlement is the most appropriate durable solution. Before a decision is taken to pursue resettlement in a third country for the person, UNHCR fully explores the possibility of voluntary repatriation in the foreseeable future and local integration in the country of first asylum. Detailed information relating to UNHCR's resettlement criteria and related procedures can be found in UNHCR's Resettlement Handbook which can be sourced at the website www.unhcr.ch.

If a person is considered to be in need of resettlement, UNHCR refers the case to the most appropriate resettlement country. This referral is partly based on the individual's links to a particular resettlement country. It is at this point that many UNHCR mandated refugees lodge an application for humanitarian entry to Australia.

Australian immigration officers process refugee applications. UNCHR referrals are also assessed against Australia's own regulatory criteria for all relevant humanitarian visa subclasses. To be eligible for the grant of a visa, all applicants must satisfy public interest criteria including strict health and character requirements.

4.   How do you judge and what indicators do you use to assess whether Australia's immigration system is operating well or not?

These judgements and the associated indicators are considered at two levels – firstly at a policy level and secondly at an operational level.

At a policy level, we look at indicators linked to the overall objectives of Australia's immigration system. These objectives focus in particular on delivering immigration arrangements that balance:

- Australia's demographic, economic, budgetary, labour market, social, humanitarian and environmental interests; and
- reduce risks of negative impacts from people movements in terms of health, character, national security, identity and other fraud, misuse of government services and benefits, breaching of Australian laws, particularly in relation to the exploitation of overseas workers.

Progress with the above is assessed through a range of commissioned research, conduct of surveys, in-house evaluations, monitoring of key statistics and benchmarking with other countries. Comprehensive information on the above is provided via the DIMA web-site, published reports and DIMA's Annual Report.

Some key results areas include:

Support for immigration and Australian multiculturalism
- Surveys conducted by a variety of agencies

Immigration arrangements that are in Australia's short and long-term demographic, economic, budgetary, labour market and social interests
- Relative impact on size of Australia's working age population
- Impact on per capita income
- Impact on Commonwealth/State budgets
- Labour force participation and employment rates – convergence with national average

Extent to which Australia is effective in assisting those most in need
- Size of off-shore refugee intake
- Responsiveness to UNHCR priorities
- Effectiveness of settlement services to Humanitarian entrants

Co-operation with state/territory governments on skilled migration
- Take-up of state-specific and regional migration mechanisms
- Retention rates of skilled migrants sponsored by individual states
- Processing times for state sponsored visas
- Feedback from state governments on visa, promotional and consultative arrangements

Immigration arrangements that give Australian industry a competitive edge
- Benchmarking our visa policies and processes with those of competitors in terms of features such as:
  - Visa conditions and requirements
  - Feedback on joint promotion work
  - Accessibility (inc via internet and agents)
  - E:visa take-up rates
  - Processing times
  - Approval rates (accompanied by high levels of visa compliance)
- Effectiveness of consultative arrangements

Reduction of negative impacts and risks
- Effectiveness of border security systems and arrangements
- Co-operation with key Australian and overseas agencies
- Declining rates of overstay, non-return, compliance locations, airport turnarounds, unfounded PV applications, detainee days

Underpinnings of visa system
- Declining rates of appeals to tribunals and courts and ministerial intervention requests
- Effectiveness of management tools such as risk management plans, quality assurance tools, evaluations, research and statistics, business plans

6.   As migration agents play an important role in assisting with visa applications, what has the government done to address the problem of unscrupulous Migration Agents undermining the visa decision making system?

The government and the Migration Agents Registration Authority (MARA) are taking strong action against agents who lodge large number of applications with no chance of success.

The *Migration Agents Integrity Measures Act 2004* was developed following an analysis of the activity of migration agents who lodge Protection visa applications, which showed that 95 agents appeared to be engaging in "vexatious activity". Between them, these agents had 3,470 Protection visa applications refused over an

eight month period from 1/11/01 to 30/6/02. A total of 9,238 Protection visa applications were lodged during 2001-02 financial year.

These statistics were used to help develop a list of agents of concern for the Migration Agents Task Force (MATF), which was set up in June 2003 to investigate particular registered and unregistered agents allegedly involved in breaches of the *Migration Act 1958* and other Commonwealth legislation.

The deterrence effect of the Migration Agents Integrity Measures Act, combined with the effect of increased sanction action taken by the MARA and the disruption activities of MATF, has already resulted in a significant number of the 95 agents of particular concern in terms of lodging large numbers of vexatious Protection visa applications (referred to above), being removed or forced out of the industry.

The MARA has now taken sanction action against all but one of the "top 10" agents of concern. All agents on the list have, however, reduced their Protection visa activities significantly, and many have dropped out of the profession and are no longer registered.

Since the legislation came into effect on 1 July 2004, only seven agents have been identified as coming within the scope of the vexatious activity sanction scheme, in terms of the lodging of Protection visa applications. This includes only 1 agent previously amongst the 20 most active agents of concern.

Every Protection visa application lodged by these seven agents has been identified. All the relevant case files are being collated to enable comprehensive analysis of each agent's activities. One of these agents has already had their registration cancelled by the MARA under its discretionary sanction powers. Three agents have already been formally asked to explain their actions, as a precursor to being considered for referral to the MARA for possible sanction under the sanction regime introduced in the Migration Agents Integrity Measures Act, pending judicial review of some of their cases. "Show cause" letters are being prepared to send to two more of these agents. The department has decided not to take any further action against the remaining agent, following an analysis of the relevant files.

Any additional agent found to be potentially in breach of the vexatious activity scheme will be asked to explain their actions and if unable to do so satisfactorily, may be referred to the MARA for sanction action.

Since 1 July 2004, no agents have been identified as within the scope for the vexatious activity sanction scheme in terms of their lodgement of other types of visa applications.

The MARA has continued to take strong action against agents of concern, although at a lower level than in 2003-04, with:

- 37 sanction decisions made during 2004-05 (compared to 42 in 2003-04); and
- 28 agents refused registration (a drop from 44 in 2003-04).

The department is continuing to take a pro-active approach in relation to other agents of concern**.**

Profiles are being created, in relation to all agents with high refusal rates and those who have lodged a number of applications with fraudulent supporting documentation. These profiles have been included in the department's "Safeguards" system that officers check prior to making a decision on a visa application and which triggers additional integrity checking.

Warning letters are being sent to registered migration agents who:

- are involved in at least five cases where fraudulent supporting documentation has been identified;
- repeatedly lodge incomplete applications;
- act in cases where a conflict of interest may arise; or
- appear to lack sound knowledge of migration law and procedure.

Better researched and more substantive complaints about migration agents are referred to the MARA for further investigation – 31 such complaints have been referred to the MARA since 1 July 2005.

Greater comparative checking of visa applications lodged by agents of concern is being undertaken to identify cases with similar characteristics, claims or addresses, indicating that the involvement of an agent may have been hidden contrary to the recently introduced requirement for agents to declare their involvement in a visa application.

Increased data sharing between DIMA, the review tribunals and the MARA is being undertaken to ensure that persons of concern are not registered as agents in the first place and that different avenues for taking action against agents of concern are utilised when appropriate.

7.   Given the exorbitant fees charged by some agents, what is the government doing to protect vulnerable consumers from being financially exploited?

Complaints about exorbitant fees have long been a feature of consumer complaints. As many consumers only seek migration advice once, the level of community knowledge about what may be an appropriate fee for a certain visa has always been low. Further, information about quality and price has not been readily available, making comparisons difficult.

The Migration Agents Registration Authority (MARA) published information about the average fees charged by migration agents in November 2005, as recommended by the most recent industry review. Fee information has been provided for most of the permanent visas, as well as for student and other temporary visas. The MARA will update this information periodically to ensure that consumers are aware of current fees.

This information will improve consumer protection through building community expectations about appropriate fees and changes. Clients of agents should benefit from any increase in competition and be better placed to receive value for money. Armed with such information, consumers should be less vulnerable to being exploited through overcharging. Both the MARA and the department will be taking steps to ensure consumers, community groups, parliamentarians and their staff are aware of the published average fee information.

8&9. To what degree does Australia use the internet to assist the visa application processes and how does this compare with other countries? How does this help with issues of client service and how do you deal with issues of fraud?

Australia has developed a facility that allows people to apply for their visas over the internet, known as 'eVisa'. The eVisa builds on technology that was introduced in 1996 for tourists from low immigration risk environments seeking to enter for a short holiday, known as the Electronic Travel Authority (ETA).
The first eVisa (for visitors in Australia applying for another visa) was introduced in August 2001. Since then, a range of eVisas and related products have been developed.

eVisa options are available in the following visa categories:

- Tourists - Electronic Travel Authority (ETA);
- Visitors (offshore: UAE, Kuwait, Oman, Qatar, Bahrain, ETA countries and 9 EU Accession countries; onshore: all visitors);
- Students (offshore: Assessment Level 1, and pilot for Assessment Levels 2 – 4 in China, India, Thailand and Indonesia; onshore: all student visa applicants and Permission to Work);
- Working Holiday Makers;
- Temporary skilled workers (Long Stay Temporary Business category) (on and offshore – includes nomination, sponsorships and visa application);
- Resident Return (onshore); and
- General Skilled Migration applications onshore and Skilled Independent Regional visa applications from on and offshore.

In addition:

- Applications for Temporary Medical Practitioner visas can be lodged using the temporary skilled worker (Long Stay Temporary Business) facility;
- There are electronic forms available for Partner visa applicants, that can be completed online and then printed out and mailed in to a DIMA processing office;
- Bpay has been introduced as an alternative method of paying the Visa Application Charge for onshore student visa applicants; and
- An online health-checking system is now available for eVisa applicants at selected clinics in Singapore, Japan, Hong Kong, Taiwan, South Korea, UK, Ireland and Germany. It includes an identity check of the applicant via collection of a biometric facial image, a digital or computer x-ray and online

completion of medical history and doctor's opinion of health status of the applicant. All data is sent electronically to the specialist health processing unit in Sydney for processing.

Take-up rates for eVisas are increasing. For example, rates for working holiday makers are at 99%, students from low risk environments are at 89% and temporary skilled workers are over 60%. More than 34% of all new student visa applications in China are now made over the internet and recent approval rates are over 98%.

Almost 1,000 applications have been received from onshore applicants for skilled migration visas with a take-up rate of 21% since the eVisa was introduced in July 2005.

Over 70% of people granted visas outside Australia in 2004-05 had applied for an electronic visa.

Client Service

The technology allows clients to obtain information about each visa category via the department's website and then select the service they require. They can enter their details into a series of screens and pay the Visa Application Charge by credit card. The information provided is captured into DIMA's visa processing system and a number of checks and processes are completed electronically. Any process requiring manual intervention is managed in specialised processing centres in Australia. This allows staff to build up specific knowledge and expertise and improves the quality and consistency of processing and decision-making.

A key advantage of eVisa is that clients can apply for a visa anytime, anywhere, if they have access to a computer and the internet, either directly or via an authorised third party. There is no need to attend a DIMA office to lodge an application. The technology also now allows for supporting documents to be attached and transmitted electronically and applicants are able to check the status of their application online so they are able to keep track of its progress without the need to contact a DIMA office.

Integrity

The internet lodgement of visa applications has been carefully managed to ensure that the integrity of Australia's visa programs is maintained, if not increased. Internet lodgement enables direct checking of databases thereby reducing fraud risks that can arise with paper documents. Special strategies have been developed to manage eVisas in high risk environments, involving the use of authorised agents bound by legal agreements to assist clients and maintain integrity.

The electronic format ensures greater consistency of processes, including requirements for documentation and checking of databases. Risks are identified for all new eVisa products, and better targeted checks can be undertaken by automatically comparing the characteristics of an application against DIMA's alert lists and profiles of concern. Where there are concerns applications are referred electronically to one of DIMA's overseas posts for further checking.

The ability to capture a digital facial image electronically and store it as part of online health processes improve the department's ability to identify applicants in future interactions with DIMA and other government agencies.

Visas details are verified by airlines against the holder's passport at time of check-in and again at the border on arrival in Australia.

DIMA's online visa systems are protected by the same technology used by banks and government agencies worldwide.

eVisa in Other Countries

Australia has pioneered the internet lodgement of visas. Although other countries such as UK, US, NZ and Canada have developed some electronic products they are mainly limited to visitor visas and only allow forms to be completed online for printing in contrast to Australia's end to end process involving automatic lodgement and processing.

These countries have shown interest in Australia's eVisa developments and are seeking further information from DIMA on the business and technological designs we have adopted.

10.   We are all aware of the complexities of visas and work permits and this is a difficulty for potential employers. What is DIMA doing to assist employers to engage only those lawfully in the country?

DIMA has introduced a number of initiatives to help employers, including:

- an Employer Work Rights Checking Information Line for inquiries about general work right issues, help with reading visa labels and information about Illegal worker Warning Notices. This is a free service and operates from 8:30am to 4:30pm Monday to Friday.
- a free call centralized Employer Work Rights Fax-back Facility where employers or labour suppliers can obtain information about a non-citizen's work entitlement.
- An internet-based real-time visa entitlement checking system called Entitlements Verification Online (EVO). It allows employers and labour suppliers to quickly and easily check the work entitlements of non-citizens they wish to employ. This is a free service and is available to registered users 24 hours a day.

12.   What part do ALO's play in the overall management of travel to Australia?

Australia has a layered approach to border control which includes the airline liaison officer (ALO) program, our universal visa system; and the advanced passenger processing (APP) system.

Before talking about the ALO program and the role it plays in managing our borders, I would like to give you an overview of our APP system.

APP is one of the most advanced border control systems in the world. It performs two primary functions with benefits for border security:

- it allows an airline to electronically verify a passenger's authority to travel to and enter Australia prior to the passenger boarding a flight; and
- if a passenger is cleared for travel by the app system, it will signal the pending arrival of that person on a particular international flight.

APP has now expanded to cover airline crew, special purpose visa holders (including transit without visa passengers) and passengers and crew on international cruise ships.

All international airlines flying to Australia must provide advance passenger and crew reports to DIMA using the app system. Currently, DIMA receives advance information on 98% of all passengers and crew.

Importantly, app allows DIMA to issue passenger-boarding directives to airlines (eg. "not ok to board") that may prevent the boarding of passengers who do not have permission to travel to Australia.

The effectiveness of app is reinforced by our ALO program. The program commenced in 1989 with the placement of one DIMA officer in Singapore. Since then, it has expanded to 19 ALO's located at 14 key hub international airports with direct flights to Australia and/or last ports of embarkation to Australia. Currently, we have ALO's placed in Bangkok, Denpasar, Hong Kong, Jakarta, Johannesburg, Kuala Lumpur, Manila, Port Moresby, Mumbai, Nadi, Seoul, Singapore, Shanghai and Taipei.

The primary role of the ALO is to assist airlines in verifying that passengers boarding flights for Australia are adequately documented for travel. However, the facilitative role of the ALO is also very important. On occasion, passengers, through genuine misunderstanding, fail to have obtained a visa for travel to Australia. In such situations where genuine misunderstanding has occurred, the ALO is there to assist the Traveller in whatever way possible. It our aim that any such experience with the ALO – often their first with an Australian – is a positive one.

In the lead-up to the 2006 commonwealth games in Melbourne, DIMA will deploy additional ALO's to facilitate the travel of athletes and officials coming to Australia.

The presence of ALO's deters the activities of those involved in people smuggling.

ALO's also cover certain flights that are not directly Australia bound. This strategy was implemented to allow the interdiction of passengers with fraudulent documentation who may seek to travel to Australia by more circuitous travel routes.

Ongoing risk assessments are conducted to determine the placement of ALO's. Creating a new placement or maintaining current locations are determined through:

- the analysis of changing domestic and international environments;
- the presence of direct flights to Australia departing from that airport/country;
- the analysis of refused immigration clearance data which indicates upward trends in the number of inadmissible passengers arriving from a particular location; and
- the movement trends of people of concern.

ALO's undertake a valuable training role while on placement. In addition to training airline staff on Australia's visa requirements, ALO's also provide training on Australia's entry systems. This training has significantly assisted in reducing the numbers of infringements issued to airlines over the past three years: during the financial year 2002-03, 2,354 airline infringements were issued; in 2003-04, 1,211 infringements were issued; and in 2004-05, the number reduced again to 993 infringements.

During the financial year 2003-04, 223 Australia bound interdictions were recorded. During the same period, 1609 non-Australia bound interdictions occurred. In the financial year 2004-05, the number of Australia bound interdictions reduced to 179, while the number of non-Australia bound flights increased to 2543.

The decrease in Australia-bound interdictions can be attributed to both the effectiveness of app and the presence of ALO's at international airports.

13.   Reference was made to a client information system similar to the ATO. Can you provide us with an outline of how that system operates and its perceived effectiveness in the DIMA system?

DIMA recognises the need to manage clients' needs from the first point of contact right up to the moment that the case is finalised and closed. At least for more complex or sensitive cases DIMA people and processes will need a system to support this work. The Australian Taxation Office (ATO) developed or procured a customer relationship management (CRM) system for their client service, and DIMA has explored this system with ATO. DIMA is now undertaking a technical proof of concept for a system including the CRM element, to inform future strategy for CRM. The proof of concept process is due for completion in February 2006. DIMA does not want to pre-empt or prejudice the outcome of the proof of concept process, but is continuing to liaise with the ATO.