

QUESTION TAKEN ON NOTICE

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

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

Inquiry into the Administration of the Migration Act 1958

Senator Ludwig asked:

1. How many students are currently held in detention for breaches of visa conditions?

Answer:

As at 14 October 2005, there were four people held in immigration detention as a direct result of breaching a condition of their student visa and a further 14 were held for overstaying their student visas.

2. Have any of those students accrued detention related debts which remain unpaid and, if so, how many students? Please break the figures down per student and type of visa breach and which detention facility.

Answer:

All eighteen of the students in detention have accrued a debt. These students were held at the following facilities: Baxter, Maribyrnong, Villawood Stage 1, Villawood Stage 2, and Villawood Stage 3. The total of debts accrued by these students was \$394,675. This amount was comprised of \$213,736 for 'Student Other Breach' and \$180,939 for 'Student Overstayer'. The amount for each student has not been listed because it would enable the identification of individuals.

3. How many students have been released in the last 12 months on paying the outstanding debt?

Answer:

Payment of a detention debt is not a deciding factor when determining whether a student, or any other person in detention, can be released.

4. Where it was found that they were not in breach of a visa condition or were not lawfully detained, do students still accrue a detention related debt or a debt to DIMIA which is required to be paid? If so, is the student released without the payment of the debt? Is the debt waived? If not, what is the usual procedure that is adopted in these circumstances?

Answer:

Section 189(1) of the *Migration Act 1958* requires that: “If an officer knows or reasonably suspects that a person in the migration zone is an unlawful non-citizen, the officer must detain the person.” If the person is subsequently found to be lawful, that does not invalidate the original decision made in accordance with Section 189(1). This means that, in most cases, a debt does accrue.

A debt waiver may be sought by the person holding the debt, or their representative, or by DIMIA. Waiver or extinguishing of debts can occur on a case by case basis, depending on the factors in each individual case. Where a debt is waived, the Commonwealth no longer has a claim for the debt on the individual.

Debt waiver requests are submitted by DIMIA to the Department of Finance and Administration for the consideration of the Finance Minister or his delegate, who are the only persons authorised to approve a waiver of a debt to the commonwealth. The Finance Minister has delegated this power to his Parliamentary Secretary. In some cases, a person may choose to approach Finance directly. In these cases, Finance seeks additional information about each case to inform their briefing to the Parliamentary Secretary to the Finance Minister.

For some groups, DIMIA pursues a blanket debt waiver decision for a group of people. For example, for those students found to be affected by the Uddin decision, DIMIA will be seeking a single blanket debt waiver from the Minister for Finance and Administration. The Department of Finance and Administration is aware of this issue and has agreed to this approach.

In providing information to the Department of Finance and Administration, the Financial Strategy Division of DIMIA examines the applicant’s case history and seeks clarification of issues from other areas of DIMIA if required. The sort of information which may be relevant to consideration of a debt waiver includes:

Any legislative issues which may impact on the case.

Details of any actions taken by DIMIA which may have contributed to the debt and which are not in line with legislation or agreed government policy.

The person’s ability to pay the debt now or in the future. In assessing this, DIMIA seeks to determine whether it would be unreasonable to expect a person to repay the debt. That is, whether their circumstances would mean repayment of the debt would place undue financial hardship on the person.

Payment of debt by instalment is also considered on a case by case basis.

5. How many students have had their debts waived in the last 12 months?

Answer:

For the 2004-05 financial year, one student’s detention debt was waived. In this case, the person had breached their visa conditions. The waiver was granted as, due to the financial and health considerations of the person, it was not considered reasonable to expect repayment. This person was the only student who applied for a debt waiver in 2004-05.

For those students found to be affected by the Uddin decision, DIMIA will be seeking a single blanket debt waiver from the Minister for Finance and Administration. The Department of

Finance and Administration is aware of this issue and has agreed to this approach. They are aware of the need for priority to be given to this caseload.

6. How many students have not been released who have accrued debts? How much is the debt in each of these instances?

Answer:

At 7 October 2005, there were seventeen students in detention who have accrued a debt. These students were held at the following facilities: Baxter, Maribyrnong, Villawood Stage 1, Villawood Stage 2, and Villawood Stage 3. The total of debts accrued by these students was \$394,447. This amount was comprised of \$213,736 for 'Student Other Breach' and \$180,711 for 'Student Overstayer'. The amount for each student has not been listed because it would enable the identification of individuals.

7. How many students have not been released because they have accrued debts? How much is the debt in each of these instances?

Answer:

Payment of a detention debt is not a deciding factor when determining whether a student, or any other person in detention, can be released.

8. Are you aware of instances where students have to borrow money to pay detention related debts or a debt to DIMIA? If so, can you outline the process that would be involved in waiving debts? If not, why not?

Answer:

DIMIA is not in a position to comment on whether or not students have to borrow money to pay detention related debts.

The process for the waiving of debts is outlined in the answer to question 4.

9. How many students have been granted bridging visas and what type after being detained and for what period were they detained for prior to release?

Answer:

Our records indicate that during 2004-05 153 former student visa holders were released from detention on a Bridging Visa E. Of these the detention periods are:

Period of Detention	Number Detained
< 1 week	88
< 1 month	51
1 – 3 months	8
3 – 6 months	1
6 – 12 months	4
12 – 24 months	0
2 years 4 months	1

Source: ORS Report

10. How many of the students who have been detained indicated that they are prepared to be removed?

Answer:

We are not able to provide the number of former student visa holders who while in immigration detention indicated that they were prepared to be removed. However, our records indicate that there were 155 former student visa holders who had been detained and departed at their own expense.

An additional 244 persons are recorded as having been removed with the departure arrangements being made by DIMIA. Some of these persons may have departed voluntarily.

11. How many students cannot be removed because of an outstanding debt?

Answer:

Payment of a detention debt is not a deciding factor when determining whether a student, or any other person in detention, can be released and, therefore, removed.

12. How many students have been removed in the last 12 months?

Answer:

Our records indicate that 244 former student visa holders were removed in 2004-05.

13. How many students are provided with a debt when removed?

Answer:

If a student voluntarily leaves Australia or leaves under a monitored departure arrangement and has not been detained, they would not incur a debt. The monitored departure arrangement is the most common form of student removal, with 2,100 leaving under these circumstances in 2004-05. The table below provides information in relation to the other categories of student removal in 2004-05:

Departure type	Number
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Criminal deportation	2
Destitute removal	1
Removed	244
Supervised departure	155

In all removal cases, detention debts are written off in the month invoiced where recovery is highly unlikely. Where a person is removed from Australia, it is considered unlikely that a debt will be recovered unless they wish to re-enter Australia. It is good accounting practice to write off debts which are unlikely to be recovered, because it removes them from the balance sheet. This ensures that the debts won't be taken into account when reporting the department's financial position.

A write off is an accounting treatment for recording debts which are unlikely to be recovered. It does not remove the debt at law. A debt which has been written off may be reinstated later, if it becomes likely to be recovered. This differs from a waiver, which permanently expunges a debt at law.

14. Does removal and/or incurring of a debt affect their ability to return to Australia for a visit or to resume studies?

Answer:

Special Return Criterion 5002 (SRC 5002) in Schedule 5 of the Migration Regulations 1994, provides for a 12-months exclusion for non-citizens who have been removed from Australia, under s 198, 199 or 205 of the Act, from being granted a temporary or permanent visa. A visa may only be granted within 12 months of the removal if a delegate of the Minister is satisfied there are compelling circumstances that affect the interests of Australia or compassionate and compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand Citizen, that justify the grant of the visa within 12 months after the removal.

A person applying for a tourist or student visa within 12 months of removal will need to satisfy SRC 5002 as part of the normal application process. Those who cannot show compelling or compassionate circumstances will be ineligible for grant of the visa during this period. Even where the delegate is satisfied that such circumstances exist, the applicant must still meet all the other criteria for the visa before that visa can be granted.

Public Interest Criteria 4004 (PIC 4004), Part 1 of Schedule 4 of the Migration Regulations 1994, states that the Minister, or their delegate, must be satisfied that “the applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment”.

If a client applies for a student visa or a tourist visa they will have to satisfy PIC 4004 as part of the normal visa application process. If the client has a debt to the Commonwealth and the debt has not been waived or the client has been unable to repay the debt or enter into appropriate arrangements to repay the debt by instalments, the client will not satisfy PIC 4004 and consequently will be ineligible for the grant of a student or tourist visa. Even where the debt has been repaid, they will still need to meet all the other criteria for the visa before that visa can be granted.

People are encouraged to contact the department to discuss payment options, and may enter into an agreement with the department to pay in instalments.

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(18) Inquiry into the Administration of the Migration Act 1958

Senator Crossin (L&C 39) asked:

Can you provide me with the date when the three officers identified in the Comrie report were removed as case officers?

Answer:

None of the officers referred to in the Comrie Report as A, B and C were case officers.