



Inquiry into the efficacy of current regulation of Australian migration agents

Department of Home Affairs responses to Questions on Notice.

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QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 December 2018

HOME AFFAIRS PORTFOLIO

(AMA/001) – Law enforcement acts

Asked:

CHAIR: In my previous role in law enforcement, if the government is putting such a low threshold on penalties, law enforcement acts accordingly, too. Obviously, that needs to be one of our recommendations. Is that something you can send us so that we can put it on the record as a recommendation? Is that something you can do?

Mr Copeman: Yes. I am happy to provide further details.

Answer:

Where the levels of risk are greatest and actions are criminal in nature, an enforcement response is likely to be required. Compliance activities and responses initially focus on providing guidance, education and information to enable employers to make informed decisions on who to employ and to self-regulate.

The Australian Border Force (ABF) applies a tiered framework of compliance and enforcement tools according to the frequency and seriousness of breaches, including:

- **Illegal worker warning notices** intended to warn businesses of the consequences of continued breaches.
- **Infringement notices** with fines of up to \$3,780 for individual employers and up to \$18,900 for bodies corporate, per illegal worker.
- **Civil penalties** carry fines for individuals of up to \$18,900 and up to \$94,500 for bodies corporate, per illegal worker.
- **Criminal penalties** carry fines for individuals of up to \$25,200 and/or two years' imprisonment and up to \$126,000 for bodies corporate per illegal worker. There are significantly higher criminal penalties for aggravated offences (involving exploitation) – fines of up to \$63,000 and/or five years' imprisonment for individuals and up to \$315,000 for bodies corporate, per illegal worker.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 December 2018

HOME AFFAIRS PORTFOLIO

(AMA/002) – Applications for protection

Asked:

CHAIR: The same with you, Mr Richards. I think you said before that in the last four years there have been 28,000 applications overall for protection.

Mr Richards: 27.

CHAIR: My apologies.

Mr Richards: We can give you those.

Answer:

There were 27,832 protection visa lodgements from the top ten ETA source countries between 1 July 2016 and 4 December 2018.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 December 2018

HOME AFFAIRS PORTFOLIO

(AMA/003) – Fast-track system

Asked:

CHAIR: If we can have that. It is always difficult to tell the public a story without actually saying, 'Here are the facts.' The other thing, Miranda, is a question on notice. Could you supply us with the difference between what's happening at the moment and what, potentially, we could do with the fast-track system, just in dot points, to explain it?

Ms Lauman: Yes, we could do a snapshot of the different processes.

CHAIR: Yes, a snapshot, and time frames or costings—but you may not have that. How long does a fast track take?

Ms Lauman: I would have to take that on notice.

CHAIR: So we still won't stop that. Is there a danger, though, if we go fast track—I assume all the Federal Court fees are paid by the taxpayer too. Would that be correct or not?

Ms Lauman: I would need to take that on notice as well.

Answer:

Timeframes for procedural fairness and merits review - Fast Track and non-Fast Track

	Fast Track Applicant	Non-Fast Track Applicant
Application validity	Correct form, fee (\$35), must be in Australia	Correct form, fee (\$35), must be in Australia
Protection assessment	Must be found to engage Australia's international protection obligations as set out in s36 of the <i>Migration Act 1958</i>	Must be found to engage Australia's international protection obligations as set out in s36 of the <i>Migration Act 1958</i>
Oral request for more information/ invitation to	7 calendar days to	7 calendar days to respond

comment on adverse information	respond	
Written request for more information/ invitation to comment on adverse information	14 calendar days to respond	28 calendar days to respond
Extension to respond to written and oral requests	Additional 14 calendar days to respond	Additional 28 calendar days to respond
Request for more information/ invitation to comment on adverse information – applicant in immigration detention	3 working days to respond	3 working days to respond
Extension to respond to requests – applicant in immigration detention	Additional 2 working days to respond	Additional 2 working days to respond
Indicatively negative decision	Assessment to determine if the applicant meets the definition of 'excluded fast track review applicant'	NA
Excluded fast track review applicant refusal	Excluded fast track review applicants no review at the IAA. Can seek judicial review	NA
Merits review	Refusal decision reviewable by the Immigration Assessment Authority (IAA). Automatically referred as soon as reasonably practicable after refusal	Refusal decision reviewable by the Migration and Refugee Division of the Administrative Appeals Tribunal (AAT). Applicant must apply within 28 calendar days after the notification of the decision
Judicial review	Applicant can seek judicial review (within 35 calendar days of notification of decision)	Applicant can seek judicial review (within 35 calendar days of notification of decision)

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 December 2018

HOME AFFAIRS PORTFOLIO

(AMA/004) – Figures on two step process and the penalties

Asked:

CHAIR: The only real options we have are fast tracking. They may apply for the federal—put it this way. There's no way these people are paying. This is all taxpayers money through the federal and various other courts. Can you please get us those figures—the two-step process and the penalties, which seem ridiculously low? Are there other penalties you can compare them to? What's something that became a centre of inquiry three or four years ago, where all of a sudden the penalties are greatly—

Mr Copeman: I'll have a look at that. There might be some Fair Work precedents or things that we might be able to lean on there.

Answer:

The Department of Home Affairs is funded to defend applications for judicial review of decisions in the federal courts where the Minister is named as a party. If an applicant is successful, the Court may, under the relevant court rules, order that the costs of the applicant be paid by the Minister. If the applicant is not successful, the court may order the applicant to pay the costs of the Minister.

Please refer to AMA/001 in regards to compliance and enforcement responses.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 December 2018

HOME AFFAIRS PORTFOLIO

(AMA/005) – Organised crime group

Asked:

CHAIR: Are you happy to make it public or not? That's the question. Let's put it on notice. We'll leave it up to you. Have a look at the transcript and then decide. The evidence where you spoke about the organised crime group might be the only thing.

Answer:

The Department does not object to the testimony it provided to the Committee being made public.