

**DIAC REPLIES TO QUESTIONS ON NOTICE TAKEN AT THE
SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE
HEARING INTO THE MIGRATION AMENDMENT
(IMMIGRATION DETENTION REFORM) BILL
ON 7 AUGUST 2009**

Note: this document addresses Questions 4(b), 8 and 13.

4. Senator Barnett (L & CA 7) asked:

(b) You said earlier that you are leasing the houses. I would like to know the details of the lease arrangements. If there are any other capital costs that you are planning to spend on Christmas Island, I want to know what those costs are. If there are none, that is fine. But if there are some, I would like to know what they are.

Answer:

To confirm Ms Wilson's advice during the hearing:

(b) We own all of these facilities. We own North West Point and all of the construction camps, so there are no lease costs involved in that. I have just leased those 22 demountables that Mr Correll spoke about this morning. But we own the land. The 22 demountables are the only things I am leasing at the moment. I think we are leasing them for two years.

B – CHRISTMAS ISLAND LEASING ARRANGEMENTS

Lease Costs:

The cost of the lease of the 22 demountables, which are leased over a three-year period, is \$375,336 per annum.

Freight for the buildings \$528,845

Installation and fit out and commissioning of these buildings \$2,760,700.00

8. Senator Barnett (L & CA 48) asked:

My final question goes back to Christmas Island. I would really appreciate it if you could take on notice to give us details of the plan that you have for the expansion of Christmas Island in terms of increasing the number of beds. We heard that there will be an additional 300-odd beds in the next three months or so, and over the next 12 months you must have some plans. I know that you have options that you are considering, but I would like you to take that on notice and provide us further and better particulars regarding the options and your plans for Christmas Island.

Answer:

In the short-term, consideration is being given to removal of existing single accommodation units and replacing them with 16 leased en suited accommodation units similar to those being installed in the other two areas at Phosphate Hill. This would effectively provide 64 single beds as opposed to the current 28 beds. Capacity could be further increased with the use of bunk beds providing an effective capacity of 128 places with a good level of amenity and open recreational space contained within the secure compound, an additional eight accommodation units could be installed potentially increasing the capacity further by 64 beds in a bunk bed format. The total capacity of the compound could be as high as 192 beds.

Regarding longer-term options, the Department is working closely with the Attorney-General's Department (AG's) on the possible development of permanent accommodation on land located at Drumsite, Christmas Island. This option needs to be further developed by way of consultation with the Christmas Island community, Christmas Island Shire and relevant stakeholders.

13. Secretariat Mr Watling (via phone/email) asked:

Can the Department explain the necessity of proposed subsection 189(1C) given the broad discretion to detain conveyed by foregoing subsections? Would the Department foresee any negative consequences from its removal from the Bill, assuming the Bill is passed?

Answer:

The proposed provision - subsection 189(1C) is needed to maintain the universal visa principle which underlies Australia's migration control legislation.

This principle is basically that all non-citizens require a visa in order to be lawfully in Australia - and it incorporates the corollary that a person who is unlawfully in Australia (that is, who has no right to be here) can be detained and removed, if they will not leave voluntarily.

Currently all unlawful non-citizens in the Migration zone (other than an excised offshore place) must be detained. The proposed legislation changes would restrict the cohort of unlawful non-citizens subject to this mandatory detention obligation to those categorised in the new subsection 189(1). For all unlawful non-citizens outside the excised offshore places who are not covered in the new subsection 189(1), the proposed subsection 189(1C) replaces the current 'must detain' obligation with a 'may detain' discretion to detain. This preserves the underlying principle that a person with no authority to be in Australia can if necessary be detained and removed.

Without subsection 189 (1C), there would be a cohort of people who are unlawful non-citizens (ie are unlawful and have no right to remain in Australia), but in respect of whom Australia would have no capacity to detain to remove. There is no framework or basis on which to provide any support in the community to such people

- and if they cannot be detained, they cannot be put into a residence determination arrangement which would enable their support, at public expense, in a community setting. Section 197AA of the Migration Act 1958 states that the power only applies to a person who is required or permitted by section 189 to be detained, or who is in detention under that section.

The Minister would also be unable to use his personal intervention power under subsection 195A(1) to grant a visa resolution in such cases. Section 195A requires a person to be in immigration detention for the Minister to be able to use that power. This power is a valuable mechanism to provide a visa resolution to a person who is unable to meet the requirement for a substantive visa, but where the Minister considers that grant of a visa is in the public interest.

Were the Act to be silent on what may happen to the cohort covered by proposed subsection 189(1C) - that is, were subsection 189(1C) dropped from the Bill - there would be no basis on which the Government could apply any reporting, bond/security, or residence notification requirements to such people if they did not hold a visa. Currently, where the Government grants a Bridging visa to an unlawful non-citizen (thus making them a lawful non-citizen for the visa term), such conditions can be applied to the person as part of the strategy to manage risk.