

SENATE QUESTION

INQUIRY INTO THE DETENTION OF INDONESIAN MINORS IN AUSTRALIA

Senator Cash asked the following questions at the hearing on 24 August 2012:

1. How many Indonesian crew claiming to be minors are currently in the system?
2. Where are they being held and in which states?
3. For how long has each of them been held in detention / jail?
4. How long has each of their cases taken to be determined?
5. What has been the result in each of the cases i.e. have they been found to be minors or not?
6. What are the costs incurred to date of holding them in detention / jail whilst their age is being determined?
7. What are the projected costs of holding them in detention / jail going forward?
8. Who pays these costs – the State or Federal Government?
9. If the State Government – is there a cost reimbursement policy in place? If so, what are the terms of the costs reimbursement policy?
10. How is it determined in which state a crew member who claims to be a minor is placed?
11. What happens if the state objects to the placement?
12. How many crew who are minors are currently being held in detention?
13. How long have they been held for?
14. Where are they being held and in what state?
15. What has been the cost of holding them to date?
16. What are the projected costs of holding them going forward?
17. Who pays these costs – the State or Federal Government?
18. If the State Government – is there a cost reimbursement policy in place? If so, what are the terms of the costs reimbursement policy?

The answer to the honourable senator's questions are as follows:

1. How many Indonesian crew claiming to be minors are currently in the system?

The Australian Government was aware of a total of 33 Indonesian nationals suspected of people smuggling offences in immigration detention or in prison who are currently claiming to be minors as at 15 August 2012. This figure comprises:

- 13 people who were in immigration detention who had not been referred to the AFP for investigation and who claim to be minors:

| Location | No. of days in detention (as at 15 August 2012*) | No. of days from detention to age assessment (as at 31 August 2012) | Age assessment outcome |
|------------------------------|--|---|------------------------|
| Berrimah House, NT | 28 | 6 | Minor |
| Berrimah House, NT | 28 | 5 | Minor |
| Berrimah House, NT | 24 | 9 | Minor |
| Lilac APOD, Christmas Island | 22 | 18 | Minor |
| Lilac APOD, Christmas Island | 18 | 16 | Minor |
| Lilac APOD, Christmas Island | 6 | 5 | Minor |

| Location | No. of days in detention (as at 15 August 2012*) | No. of days from detention to age assessment (as at 31 August 2012) | Age assessment outcome |
|------------------------------|--|---|------------------------|
| Lilac APOD, Christmas Island | 6 | 6 | Minor |
| Lilac APOD, Christmas Island | 3 | 10** | Adult |
| Lilac APOD, Christmas Island | 3 | 10** | Minor |
| Lilac APOD, Christmas Island | 3 | 10** | Adult |
| Lilac APOD, Christmas Island | 3 | 11** | Minor |
| Lilac APOD, Christmas Island | 1 | 15** | Minor |
| Lilac APOD, Christmas Island | 1 | 10** | Adult |

*The most recent data available to AGD on time spent in detention is as at 15 August 2012.

**Discrepancies between number of days in detention and days to age assessment occur where DIAC has indicated that an age assessment was undertaken between 15 August 2012 and 31 August 2012.

- 14 people who were in immigration detention under investigation by the AFP for people smuggling offences who claim to be minors:

| Location | No. of days in detention (as at 15 August 2012) | No. of days to age assessment (as at 15 August 2012) | Age assessment outcome |
|---|---|--|------------------------|
| Northern Immigration Detention Centre, NT | 67 | 10 | Adult |
| Northern Immigration Detention Centre, NT | 67 | 13 | Adult |
| Northern Immigration Detention Centre, NT | 65 | 8 | Adult |
| Northern Immigration Detention Centre, NT | 65 | 9 | Adult |
| Northern Immigration Detention Centre, NT | 57 | 0 | Adult |
| Northern Immigration Detention Centre, NT | 40 | 8 | Adult |
| Northern Immigration Detention Centre, NT | 40 | 8 | Adult |
| Northern Immigration Detention Centre, NT | 40 | 11 | Adult |
| Northern Immigration Detention Centre, NT | 29 | 11 | Adult |
| Northern Immigration Detention Centre, NT | 29 | 11 | Adult |
| Aqua APOD, Christmas Island | 20 | 7 | Adult |
| Aqua APOD, Christmas Island | 20 | 18 | Adult |
| Northern Immigration Detention Centre, NT | 24 | 9 | Adult |
| Aqua APOD, Christmas Island | 23 | 19 | Adult |

- two people who have raised age as an issue in court proceedings (both are in immigration detention on bail):

| Location | No. of days in detention / jail (as at 15 August 2012) | No. of days to age assessment (as at 31 August 2012) | Age assessment outcome |
|---|--|--|------------------------|
| Brisbane Immigration Transit Accommodation, Qld | 377 | Not available | Not available |
| Brisbane Immigration Transit Accommodation, Qld | 86 | 12 | Adult |

- one person convicted of a people smuggling offence who has raised age for the first time on appeal :

| Location | No. of days in detention / jail (as at 15 August 2012) | No. of days to age assessment (as at 31 August 2012) | Age assessment outcome |
|--|--|--|------------------------|
| Southern Queensland Correctional Centre, Qld | 871 | Not available | Not available |

- two people who claim to be minors, have been given the benefit of the doubt and were in immigration detention awaiting voluntary return:

| Location | No. of days in detention (as at 15 August 2012) | No. of days to age assessment (as at 31 August 2012) | Age assessment outcome |
|---|---|--|------------------------|
| Northern Immigration Detention Centre, NT | 66 | 10 | Adult |
| Berrimah House, NT | 35 | 0 | Adult |

- one person assessed to be a minor and prosecuted as a minor as exceptional circumstances exist:

| Location | No. of days in detention (as at 15 August 2012) | No. of days to age assessment (as at 31 August 2012) | Age assessment outcome |
|---|---|--|------------------------|
| Villawood Immigration Detention Centre, NSW | 106 | 8 | Minor |

These figures do not include any people smuggling crew who have:

- previously claimed to be a minor but age has not been raised as an issue by their legal representative, or
- been assessed by a Commonwealth agency or determined by a court to be an adult, and have not sought to raise age again.

These figures also do not include a further person assessed to be a minor at the time of arrival and prosecuted as a minor as exceptional circumstances exist, but who is now an adult:

| Location | No. of days in detention | No. of days to age assessment | Age assessment outcome |
|---|--------------------------|-------------------------------|------------------------|
| Northern Immigration Detention Centre, NT | 179 | 30 | Minor |

2. Where are they being held and in which states?

See response to question 1.

3. For how long has each of them been held in detention / jail?

See response to question 1.

4. How long has each of their cases taken to be determined?

See response to question 1.

5. What has been the result in each of the cases i.e. have they been found to be minors or not?

See response to question 1.

6. What are the costs incurred to date of holding them in detention / jail whilst their age is being determined?

Costs of holding persons in immigration detention are a matter for the Department of Immigration and Citizenship. Costs of holding persons on remand or following conviction are a matter for State or Territory corrections authorities.

7. What are the projected costs of holding them in detention / jail going forward?

Costs of holding persons in immigration detention are a matter for the Department of Immigration and Citizenship. Costs of holding persons on remand or following conviction are a matter for State or Territory corrections authorities.

8. Who pays these costs – the State or Federal Government?

The costs of holding people smuggling crew, including those claiming to be minors, in immigration detention are met by the Federal Government.

The costs of holding people smuggling crew, including those claiming to be minors, in State and Territory correctional facilities are met by the relevant State or Territory Government.

9. If the State Government – is there a cost reimbursement policy in place? If so, what are the terms of the costs reimbursement policy?

Since 1901 State and Territory Governments have met the costs of housing federal offenders, who are a very small proportion of the overall corrections population. There is no reimbursement policy for the costs associated with accommodating people smuggling crew in State and Territory correctional facilities. However, States and Territories are allocated funding as part of the GST distribution, via the Commonwealth Grants Commission, for 'justice services' which includes courts and prisons.

10. How is it determined in which State a crew member who claims to be a minor is placed?

Under our constitutional arrangements, almost all federal offences are tried in State and Territory courts, and those convicted are sent to prisons in the State or Territory in which they are prosecuted. People smuggling crew, including crew claiming to be minors, can be prosecuted in any State or Territory.

The Government has committed to working towards a distribution of people smuggling prosecutions across jurisdictions, rather than all occurring for example in Western Australia. Whether a people smuggling crew member claims to be a minor is not determinative of the jurisdiction they are charged in.

AGD chairs a regular teleconference with relevant Commonwealth and State and Territory agencies. Issues raised through this forum, such as prison capacity, are considered when distributing cases between jurisdictions.

11. What happens if the State objects to the placement?

As outlined above, the Commonwealth is legally able to prosecute people smuggling crew, including crew claiming to be minors, in any State or Territory.

The Commonwealth has protocols in place for the handling of people smuggling prosecutions with each jurisdiction except Western Australia, and has well established arrangements in place with Western Australia. These protocols and arrangements include mechanisms for States and Territories to raise issues with the relevant Commonwealth agencies, including crew who claim to be minors.

12. How many crew who are minors are currently being held in detention?

See response to question 1.

13. How long have they been held for?

See response to question 1.

14. Where are they being held and in what State?

See response to question 1.

15. What has been the cost of holding them to date?

See response to question 6.

16. What are the projected costs of holding them going forward?

See response to question 7.

17. Who pays these costs – the State or Federal Government?

See response to question 8.

18. If the State Government – is there a cost reimbursement policy in place? If so, what are the terms of the costs reimbursement policy?

See response to question 9.

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Senator Hanson-Young asked the following question at the hearing on 24 August 2012:

Senator HANSON-YOUNG: You don't recall receiving a letter from the Australian radiologists association questioning the expertise of Dr Low?

Mr Sheehan: I will have to check whether we received such a letter. I am not sure that we did.

Mr Colvin: Can you help, Senator, in terms of a time frame—is this more recent?

Senator HANSON-YOUNG: Twelve months ago.

Mr Sheehan: We would have to take that on notice.

The answer to the honourable senator's questions are as follows:

On 19 August 2011, the Royal Australasian College of Physicians, Australasian Paediatric Endocrine Group, Australian and New Zealand Society for Paediatric Radiology and the Royal Australian and New Zealand College of Radiologists wrote to the Minister for Immigration and Citizenship, the Hon Chris Bowen MP. The letter raised concerns over the use of wrist X-rays and paediatric examinations for age determination by the Australian Federal Police (AFP) and Department of Immigration and Citizenship (DIAC). It did not specifically question the expertise of Dr Low.

DIAC responded to this letter on behalf of the Minister for Immigration and Citizenship on 29 September 2011. The former Attorney-General, the Hon Robert McClelland MP, responded to the letter in relation to the age determination process used in the criminal justice context on 17 October 2011.

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Senator Hanson-Young asked the following question at the hearing on 24 August 2012:

Senator HANSON-YOUNG: Thank you. Did DIAC request of the various state jurisdictions any money earned from the various in-prison work of those who have been charged and convicted of people-smuggling?

Ms Pope: I need to check my brief on this. It is not an area directly under my responsibility.

My brief advises that both in Western Australia and in Victoria state legislation has the capacity to prevent remittances such as you are referring to. It does not actually state that Immigration asked them to, but I have a recollection that in the case of Western Australia on behalf of other agencies we may have made that request.

Senator HANSON-YOUNG: Could you take that on notice.

Ms Pope: Yes, I can.

Senator HANSON-YOUNG: I would appreciate the correspondence to be tabled to the committee.

Ms Pope: Certainly, if there is any.

Mr Sheehan: The discussions with the states and territories, while they may have occurred through DIAC, would have been based on discussions between DIAC and the Attorney-General's Department about matters involving remittances, so we will also take that question on notice.

Senator HANSON-YOUNG: Thank you, that would be helpful.

The answer to the honourable senator's questions are as follows:

The Australian Government has arrangements in place to recover debts for the removal and detention of persons convicted of people smuggling. Under the *Migration Act 1958*, all non-citizens removed from Australia are liable for the cost of their removal. In addition, persons convicted of people smuggling and illegal foreign fishing offences are liable for the costs of their detention.

To ensure removal and detention debts can be recovered, the Attorney-General's Department has requested State and Territory corrections authorities to prevent convicted people smuggling crew from remitting their gratuity earnings overseas. This request was first made during a teleconference with State and Territory authorities on 8 April 2011.

The Attorney-General's Department has, however, advised State and Territory authorities that, if they implement such a policy, persons convicted of people smuggling offences should be able to earn gratuities and use them to purchase consumables and other low-value quality of life items such as food and phone credit.