

## QUESTION TAKEN ON NOTICE

### BUDGET ESTIMATES HEARING: 25-27 May 2005

#### IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

#### (28) Output 1.3: Enforcement of Immigration Law

Senator Carr asked:

South Asia Times (Melb) Feb 2005

1. Please provide details of the case of an Indian student, who was reportedly removed from Australia in the first six months of 2005, and who was detained in Baxter and Maribyrnong detention centres for two years and nine months, and was subsequently billed \$97 000 for the cost.
2. Please include details of the reason why he was initially detained, the visa breach(es) he had allegedly committed, and the various events that followed his initial detention, including all actions taken by DIMIA in this case.
3. If there is more than one student detained in similar circumstances, please provide details of those cases also.
4. Is it the case that the student ended up detained for this length of time essentially because he did not understand the consequences of what apparently seemed to him relatively minor breaches of his student visa conditions?
5. Do you have reason to believe that so-called education agents, or even migration agents, do not inform students in India and elsewhere of the full severity of Australia's immigration laws? Do you have evidence of this, directly or indirectly? What evidence?
6. What steps does DIMIA take to ensure that students understand that they will be detained indefinitely, or removed, for what may seem minor breaches, such as missing some classes?
7. (a) How many persons holding student visas have been detained by DIMIA since 1 January 2001?  
  
(b) Please provide details, including:
  - Number and sex of students each year;
  - In which facilities they have been detained;
  - Reasons for detention;
  - Providers for which they held student visas;
  - Nationality;
  - Outcome in each case – eg release, granting new visa (type), removal.
8. For those removed from Australia, please provide information about how much they were each billed for the cost of their detention.

9. Do you have a system jointly with DEST for investigating these cases, and for information flow in both directions? What is your role in assisting DEST, and in ensuring that DEST is informed about the students involved, and particularly about the providers for which they held visas?
10. Do you routinely inform DEST about providers associated with students taken into detention? Do you compile information about any trends or patterns – such as providers whose names appear more frequently on the list?
11. Is it the case that two students have suicided while in immigration detention? Can you provide me with (de-identified) details about those cases?

*Answer:*

1 & 2. The student visa of the person referred to in the South Asia Times article was cancelled on 24 January 2002 for breaching student visa condition 8202 (failure to meet attendance requirements and achieve satisfactory academic progress). The person had received warnings from his education provider during the previous 18 months regarding both his attendance and academic performance.

He was detained for 6 days at the Maribyrnong Immigration Detention Centre (MIDC) until 29 January 2002 when he lodged an application with the MRT for review of the decision to cancel his visa. He was granted a bridging visa E (BVE), on payment of a \$3500 bond, in association with this review.

The MRT affirmed the Department's decision on 7 June 2002. The person then lodged an application for Ministerial Intervention. When this was unsuccessful, a further BVE was granted on the basis of departure arrangements. On 31 October 2002 he lodged a Protection Visa application and was granted a BVE in association with this application. On 21 November 2002 the Department refused the Protection Visa application. The person then applied to the RRT on 16 December 2002 for review of the refusal decision.

On 30 January 2003 the person was located working in breach of condition 8101 (no work) that was attached to his visa. His visa was cancelled and he was detained as an unlawful non-citizen and taken to the MIDC.

On 3 February 2003 he lodged an application with the MRT for review of the decision to cancel the BVE. The Department's decision was affirmed by the MRT on 11 February 2003.

On 25 February 2003 the RRT affirmed the Department's decision to refuse the Protection Visa application.

The person then applied for judicial review of the decision to the Federal Court and unsuccessfully appealed the Federal Court's decision to the Full Federal Court. Following the Full Federal Court's decision he lodged 3 consecutive applications for Ministerial Intervention. The outcome of the last Ministerial Intervention request was provided on 21 January 2005.

During this time he remained in the MIDC until 31 March 2004 when he was transferred to the Baxter IDC. On 9 February 2005 he was removed from Australia to India in accordance with s198 of the *Migration Act 1958*.

3. Generally overseas students are only detained for short periods and are often granted bridging visas or if appropriate they are removed within a short time of becoming unlawful. If a former student visa holder is detained for anything more than a matter of days, it is usually because of issues which are not directly relevant to their stay as a student.

4. This person's longer period of detention was largely irrelevant to the person's previous status as a student.

5. No, however, where fraudulent applications are lodged, it could be that in some cases agents may not be informing students of the full severity of Australia's immigration laws.

6. Conditions applicable to student visas are listed where the student visas are evidenced, as well as being provided to students granted visas via online applications. The onus is upon students to ensure they comply with the conditions of their visas, the conditions of which are also clearly explained on the DIMIA website, and which education providers are also fully aware of and provide information to students on.

Education providers are obliged, under the ESOS Act, to report students who fail to meet attendance and academic requirements. Where a student is reported, the provider will write to the student explaining the breach of their condition. The student must then report to DIMIA, who will decide on whether their visa will be cancelled, and if it is, then a full decision record explaining the reasons and providing information on processes for revocation of cancellation and review of that decision will be provided. If the student fails to report to DIMIA, the visa will be cancelled automatically. The student is responsible for ensuring that their provider is kept informed of their address. If a visa was cancelled and the student remained in Australia following this, they may have become unlawful and in some circumstances be liable for detention.

7. (a) & (b) Departmental records indicate that some 2,310 former student visa holders have been detained from 1/1/2001 to 22/7/2005. This includes:

- some 440 females and 1870 males;
- most were housed in immigration detention facilities although some were accommodated in alternative arrangements including correctional facilities, police watch houses and hospitals;
- reasons for detention include non-attendance, unsatisfactory academic performance, failure to commence course, overstaying a visa, withdrawal from study and work breaches;
- 83 nationalities are represented. The top 10 nationalities are China, India, Vietnam, Indonesia, Thailand, Korea, Bangladesh, Malaysia, Sri Lanka and Kenya;

- there are a wide range of outcomes for these cases including Bridging Visa grant, cancellation overturned, criminal justice visa grant, departure from Australia, temporary or permanent substantive visa grant;

Details of educational institutions attended by these students are not readily available;

8. Data on the cost of detaining each student since 2001 is not readily available and to collate this would involve a manual examination of individual files, which is an unreasonable diversion of departmental resources.

The average cost in 2003-04 was approximately \$235 per detainee per day, covering contract costs for managing the detention centres as well as DIMIA expenses such as employees, travel, motor vehicles, telephones, interpreting costs and administrative costs.

9. DIMIA and DEST are parties to a Memorandum of Understanding (MoU) developed in recognition of the Government's intention to strengthen Australia's engagement in international education and training. Under the MoU DIMIA, DEST and other stakeholder agencies have identified and agreed roles and responsibilities, shared priorities and co-operative arrangements.

DIMIA has an effective working relationship with DEST. Central Office staff attend regular inter-departmental meetings to discuss and progress issues relating to international education. Our State offices also conduct regular meetings with DEST and State authorities and participate in joint educational and monitoring visits to providers.

Where DIMIA obtains evidence to suggest that an education provider is not complying or has not complied with the requirements of the ESOS Act or the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (The National Code), that information is referred to DEST and/or the State authority for investigation. Should DIMIA receive an allegation from a student regarding a particular course, DIMIA would refer the student to DEST. DIMIA has no jurisdiction or responsibility for courses.

DIMIA does not routinely pass to DEST information about the detention of former student visa holders. However, cancellation of a student visa on DIMIA systems flows through to DEST's Provider Registration and International Students Management System (PRISMS). The PRISM system contains details of overseas students including their names, education provider and course details. The cancellation notification updates the student's visa status and enrolments on PRISMS causing the student's certificate of enrolment to be cancelled.

10. DIMIA does not routinely inform DEST about providers associated with students taken into detention. DIMIA officers monitor trends in relation to education providers and as appropriate participate in joint operations with DEST and State authorities.

11. There is no record of a student having committed suicide whilst in Australian immigration detention.

One former student visa holder died in January 2002 as a result of injuries sustained after falling from a balcony at the Villawood Detention Centre. A coronial inquiry was held in November 2002 and the NSW Deputy Coroner delivered an open finding as to whether the fall was intentional or accidental.