

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 13 February 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(36) Output 1.3: Enforcement of Immigration Law

Senator Nettle (L&C 62) asked:

In relation to Mr SVT on page 26 of the Ombudsman's report, can you explain to me why they are not affected by the Nystrom decision?

Answer:

The majority of the Full Federal Court in the *Nystrom* case held that, where a person holds an absorbed person visa, consideration must be given to this fact before a valid decision under section 501 of the *Migration Act 1958* can be made.

Mr SVT did not hold an absorbed person visa at the time of the relevant section 501 decision on 9 April 2002. The only visa that he held at that time was a subclass 155 (Five Year Resident Return) visa and this fact was clearly identified in the decision record. Mr SVT was granted a subclass 155 visa on 15 November 2001. Any other substantive visa that he may have previously held (including an absorbed person visa) would have automatically ceased at that time under subsection 82(2) of the *Migration Act 1958*.