

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 12 February 2007

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(98) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

In the *Ballarat Courier* 14 February 2007, there was a story on Ali Bakhtiarvandi, which reports that Mr Bakhtiarvandi was an asylum seeker from Iran who was initially detained in immigration detention at a number of detention centres before being provided a permanent visa to remain in Australia.

- (a) Can the Department confirm details of Mr Bakhtiarvandi's detention history and current visa status?
- (b) The article reports that Mr Bakhtiarvandi has been billed over \$270,000 for his time in detention, is this correct?
- (c) Is it correct that this is being repaid at \$125 a month for 200 years?
- (d) What is the policy regarding detention debts and which former detainees must repay the debt?
 - (i) How can a debt be appealed and can all former detainees appeal a debt?
 - (ii) How can a debt be waived, and who waives the debt?
 - (iii) In what circumstances is a debt waived?

Answer:

(a) The Department can confirm that, as reported in the *Ballarat Courier* on 14 February 2007, Mr Bakhtiarvandi arrived in Australia unlawfully. His claims for protection were assessed and refused, and as such he was found conclusively not to be a refugee after a thorough assessment of his case by the Department, an independent review tribunal and the courts.

Mr Bakhtiarvandi was granted a temporary spouse visa by a previous Minister on 18 August 2004 and has since become a permanent resident. He entered into an agreement to pay this debt as a condition of receiving a permanent spouse visa issued by the Department on 9 November 2006.

(b) No.

(c) On 7 February 2006, Mr Bakhtiarvandi entered into an instalment agreement with the Department to repay his detention debt by monthly instalments of \$125. Instalment plans are typically reviewed annually to determine the appropriate repayment rate in line with changes in debtors' financial circumstances.

(d) The detention debt policy was introduced by the Keating Government in the *Migration Reform Bill 1992*, and had the objectives of ensuring that all unlawful non-citizens bear primary responsibility for the costs associated with their detention, removal or deportation.

Section 209 of the *Migration Act 1958* provides that a non-citizen who is detained is liable for the cost of his or her detention.

The legislation provides a wide range of statutory powers to assist in the recovery of debts. However, departmental guidelines provide that debt recovery must be pursued in a manner that promotes the efficient, effective and ethical use of Commonwealth resources.

The exception to this policy is that the costs of detention owed by persons granted refugee or humanitarian visas must not be pursued. These debts are not recovered as to do so would contravene Article 31 of the Refugees Convention.

(i) Detention debts cannot be appealed by a merits review process. With regard to people previously in immigration detention, they may pursue court action but only in circumstances where there is jurisdictional error or by constitutional challenge to the legislation.

(ii) Only the Finance Minister, or his delegates in the Department of Finance and Administration, has the power to waive debts for immigration detention costs.

(iii) The Finance Minister, or his delegates in the Department of Finance and Administration, has the discretion to determine requests on a case-by-case basis. However, the most common condition under which a waiver is granted is where, due to the particular circumstances of the case, the decision maker concludes that there is a moral obligation, rather than a legal obligation, on the Commonwealth to extinguish the debt including if the person is granted a Protection Visa or where there are compelling reasons on equity or hardship grounds.