

QUESTION TAKEN ON NOTICE

ADDITIONAL BUDGET ESTIMATES HEARING: 9 FEBRUARY 2010

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(123) Program 1.1: Visa and Migration

Senator Humphries asked:

- (1) What kind of bona fide checks are undertaken in high risk posts?
- (2) Which posts are they?
- (3) What is the current overstay rate of visitors from those overseas posts?
- (4) How does this compare with the past three years?

Answer:

1. The integrity risk of caseloads changes from time to time and location to location. The Department, therefore, has high risk caseloads as its ongoing integrity focus as opposed to high risk posts. High risk caseloads and high risk cases can occur at any post at any time given the global nature of migration processing where applications may be lodged in a country other than that of a person's normal residence or of course in some cases electronically.

To mitigate against these high risk caseloads, Australia's border management implements a number of 'layers' of bona fide and integrity checking. These include:

- the universal visa system (to enter Australia all non-citizens, with the exception of a small group entitled to a Special Purpose visa on arrival, must obtain a visa). Each visa application is subject to scrutiny before a decision is made;
- the Advance Passenger Processing System (APP) which operates at airport check-in overseas;
- Airport Liaison Officers at key posts; and
- the processing at Australian airports on arrival in Australia.

All persons seeking to travel to, enter or remain in Australia must pass through this layered approach.

At the time of application there is a check against the Movement Alert List (MAL) prior to visa issue. The MAL is a database of persons and travel documents of concern. People listed in the Person Alert List (PAL) include criminals, those who may pose a security risk, and people barred for immigration breaches and health matters. The documents listed in the Document Alert List (DAL) include lost, stolen and fraudulent passports and travel papers.

PAL records are grouped into 16 different alert codes ranging from persons of national security interest to people whose bona fides are suspect. The 16 codes are further grouped into three categories of risk, ie high, medium and low.

The high risk category includes national security and organised migration fraud. Over 40 per cent of the total records are in this group. The medium risk group includes health and people convicted of crimes – around 30 per cent of the total. The low risk group includes overstayers and people with a debt to the Commonwealth – around 29 per cent of the total.

Applicants who match any of the above checks may undergo some or all of the following bona fide checks:

- *Public Interest Criterion (PIC) 4001 (mandatory for all visa applicants).*

This embodies the Department's character requirement. It requires that all visa applicants be assessed against the 'character test', as it is defined in section 501 of the *Migration Act 1958* (the Act);

Grounds for failing the character test are that:

- the person has a substantial criminal record (substantial is defined as having been found guilty of a crime that has incurred a sentence of 12 months or more);
- the person is associated with a person, group or organisation that is reasonably suspected of involvement in criminal activity;
- having regard to their past and present criminal or general conduct, the person is not of good character; or
- there is a significant risk that, if allowed to enter or remain in Australia, the person would:
 - engage in criminal conduct in Australia;
 - harass, molest, intimidate or stalk another person in Australia;
 - vilify a segment of the Australian community;
 - incite discord in the Australian community; or
 - otherwise represent a danger to a segment of the Australian community.

If it is found that any visa applicant fails to pass the character test, then section 501 of the Act provides the Minister (or their delegate) with the discretion to refuse the grant of a visa.

- *Public Interest Criterion (PIC) 4002 and 4003.*

Assessments by external agencies against the requirements of Public Interest Criteria 4002 and 4003 also form a key element of the Department's character screening process, particularly for high-risk clients.

Public Interest Criterion 4002 requires an assessment to identify non-citizen visa applicants whose entry or continued stay in Australia would present a threat to Australia's national security. A visa will be refused under this criterion if the competent Australian authorities assess that the applicant is directly or indirectly a risk to Australian national security.

Public Interest Criterion 4003 consists of two distinct components, both of which require assessments from the Department of Foreign Affairs and Trade.

A visa will be refused under PIC 4003(a) if the Minister for Foreign Affairs determines that a visit by the applicant would be prejudicial to relations between Australia and a foreign country. A visa will be refused under PIC 4003(b) if the Minister for Foreign Affairs determines that the applicant may be directly or indirectly associated with the proliferation of weapons of mass destruction.

As with PIC 4002, any assessment by the Minister for Foreign Affairs that a visa applicant does not meet PIC 4003 (a) or (b) is binding and mandates non-discretionary refusal of the application.

- *War crimes screening*

War criminality is a relevant consideration when exercising the discretion to refuse or cancel a visa pursuant to section 501 of the Act. Visa and citizenship applicants may be subject to additional screening if there are indications they may have been involved in any of the conflicts in the Former Socialist Federal Republic of Yugoslavia from 1991 or in Rwanda.

The *International War Crimes Tribunals Act 1995* provides the domestic legal mechanism for enabling the Commonwealth to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) as well as the International Criminal Tribunal for Rwanda (ICTR), pursuant to United Nations Security Council Resolutions 827 (1993) and 955 (1994).

Individuals suspected of having been involved in war crimes are listed on MAL. There are currently over 7000 names on MAL related to war crimes and crimes against humanity.

The number of applicants subject to additional screening has been increasing steadily since 1999-00. During 2002-03, a War Crimes Screening Unit was established to enhance screening capabilities within the Department. The unit also screens applicants who may have been involved in conflicts other than those in the former Yugoslavia or Rwanda, however, there are no corresponding international tribunals to which their details can be referred.

- *Document verification*

A case officer may refer an applicant's documents to post should they have concerns about their authenticity. Document verification and referral is particularly common for clients from high risk countries. Documents commonly referred include: educational qualifications, employment history, English language testing qualifications, identity documents etc.

- *Migration Integrity Officers*

The Department currently has 34 Migration Integrity Officers (MIO) located in 22 locations collecting immigration intelligence, investigating caseload fraud, and combating human trafficking and people smuggling. Sometimes MIOs have a regional role. As the source of high risk caseloads may change for various reasons so will the locations of the MIOs.

In posts where there is not a dedicated MIO, visa applicants are still the subject of scrutiny by immigration staff, who assess applicants against all relevant criteria.

2. As noted above the Department focuses on high risk caseloads, and cases, and they may emanate from any post.
3. Table 1 provides the five countries (arrivals > 5000) with the highest Modified Non Return Rate (MNRR) in 2009-10 (as at 30 April 2010).

2009-10 (as of 30 April 2010)		
Citizenship	Number of Arrivals	MNRR*
Greece	5,299	3.38
Sri Lanka	9,826	2.49
Fiji	21,107	2.47
Portugal	5,502	2.25
Vietnam	21,381	1.91

Table 1 – MNRR 2009-10 (YTD) – top five MNRR countries with arrivals >5000

*The Department uses Modified Non Return Rates (MNRR) to determine which case loads represent high risks.

The MNRR is the percentage of visitors who do not comply with their visa conditions by either leaving Australia within the period of their visa validity or are otherwise legally remain (eg on a subsequently issued visa) after their arrival.

The global average MNRR (to 31 January 2009-0) was 0.75 per cent.
The MNRR in 2008-09 was 0.65 per cent.

4. The table below shows those high risk cohorts based on nationality where the MNRR for the last three years was higher than the global average and where the number of arrivals was more than 5000 persons per annum.

The changing nature of the high risk caseloads is evident in this chart. Emerging high risk caseloads are identified early and a coordinated response delivered.

HIGHEST MODIFIED NON RETURN RATES 2007-08 to 2009-10 (TO DATE) WITH ARRIVALS OF 5000+								
2007-08			2008-09			2009-10 (as of 30 April 2010)		
Citizenship	Number of Arrivals	MNRR	Citizenship	Number of Arrivals	MNRR	Citizenship	Number of Arrivals	MNRR
Greece	6,318	3.70	Tonga	6,698	5.04	Greece	5,299	3.38
Lebanon	5,650	3.42	Lebanon	5,929	2.84	Sri Lanka	9,826	2.49
Vietnam	20,588	2.83	Sri Lanka	11,797	2.72	Fiji	21,107	2.47
Portugal	6,313	2.23	Greece	6,017	2.48	Portugal	5,502	2.25
Sri Lanka	10,932	2.11	Portugal	6,927	2.12	Vietnam	21,381	1.91