

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES - 25 FEBRUARY 2014

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE14/125) PROGRAMME – 4.1: Visa Compliance and Status Resolution

Senator Carr (Written) asked:

Under the new regulation, a person can be held in detention if they refuse to sign to the Code and prevents a person whose BE has been cancelled for breach of the Code from applying for a further BVE.

Will this mean that this category of persons may potentially face indefinite detention?

What safeguards are in place to afford procedural fairness to applicants?

What happens if a person who is charged has the charges dropped?

Will they face indefinite detention?

How does the Code comply with Australia's human rights obligations?

How do these regulations change what was already in place?

How does the Code affect/interact with the Disclosure of Information Regulation 2013?

Answer:

1. Will this mean that this category of persons may potentially face indefinite detention?

The Code of Behaviour applies to persons who have been released from detention through grant of a Bridging visa E (BVE) by the Minister using his personal powers under section 195A of the *Migration Act 1958* (the Act). This power remains available to the Minister in the event that the person refuses to sign the Code of Behaviour or is subsequently detained because their visa has been cancelled.

2. What safeguards are in place to afford procedural fairness to applicants?

The provision of natural justice is a legislative requirement for visa cancellation consideration.

3. What happens if a person who is charged has the charges dropped?

Where a BVE is cancelled on the basis of charges which are later dropped the Minister is able to consider the use of his personal, non-delegable powers under section 195A to grant a visa to the non-citizen where this is in the public interest.

4. Will they face indefinite detention?

The Minister may consider the use of his personal powers under section 195A of the Act to grant a visa to a person in detention if he considers it to be in the public interest.

5. How does the Code comply with Australia's human rights obligations?

The Code of Behaviour is compatible with Australia's human rights obligations. As part of the Code of Behaviour Migration Amendment the department submitted a comprehensive Statement of Compatibility with Human Rights as part of the Explanatory Statement – Select Legislative Instrument No. 269, 2013 which is a publically available document at:

<http://www.comlaw.gov.au/Details/F2013L02102/Explanatory%20Statement/Text> .

The department has also provided further information to the Parliamentary Joint Committee on Human Rights, this response is a publically available document at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/44th/244/c05

6. How do these regulations change what was already in place?

The regulation changes include a new Public Interest Criteria and a new mandatory visa condition which link non-compliance with the Code of Behaviour to the existing discretionary cancellation powers under section 116 of the Act. The regulation change also included the creation of a new application bar to prevent a person who has breached the Code of Behaviour, and had their visa cancelled on that basis, from being able to apply for a further BVE.

7. How does the Code affect/interact with the Disclosure of Information Regulation 2013?

The intention of the information sharing arrangements is to assist police to provide the department with timely advice when a BVE holder has been charged with, or convicted of, an offence and is thus liable for possible BVE cancellation under regulations which commenced on 29 June 2013. However, the police have been briefed on the Code of Behaviour and it is possible that some Code of Behaviour issues not otherwise covered by the regulation changes of 29 June 2013 may be brought to the department's attention by the police.