QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

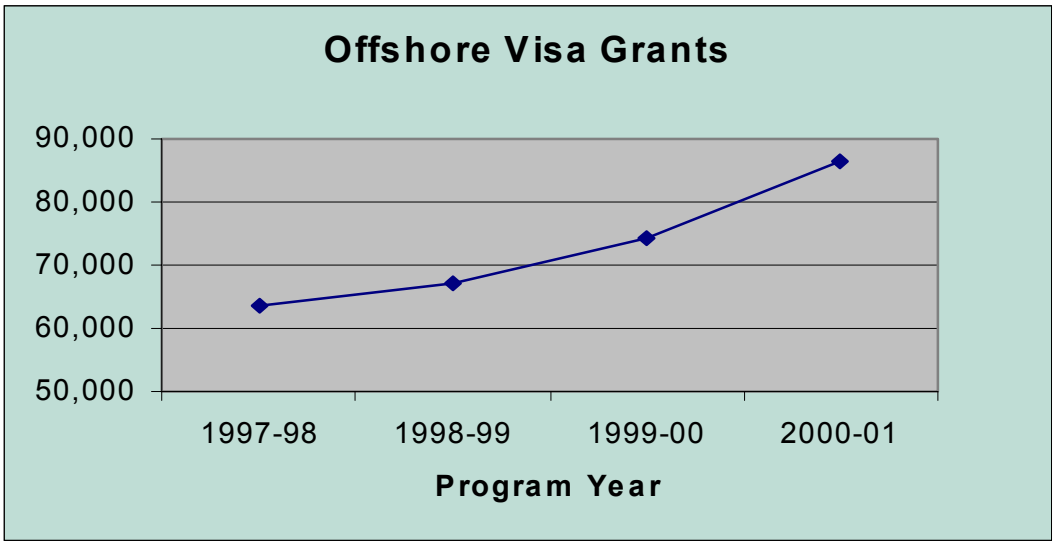
(44) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr (L&C 304) asked that the Department provide a trendline for the past four years for the increase in the number of student visa grants offshore.

Answer:

Program Year	Offshore Visa Grants
1997-98	63,574
1998-99	67,166
1999-00	74,428
2000-01	86,277

In the current financial year, to the end of March, there has been a 16% increase in offshore grants (75,594 in 2001-02 compared with 65,119 in 2000-01), and a 7% decrease in onshore grants (41,771 in 2001-02 compared with 44,960 in 2000-01), giving an overall increase of 7% (117,365 in 2001-02 compared with 110,079 in 2000-01).



QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(45) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr (L&C 307) asked for the rate of fraudulent applications coming out of India.

Answer:

The total number of refusals from India in the last 12 months was 2459. Out of these, 115 cases or approximately 5 per cent were refused solely on the basis of fraudulent documents. However, the instances of applications lodged with fraudulent documents would be higher than these figures indicate, because if an application is refused on other grounds (see below), the case officer is not required to verify the genuineness of all documents.

Other refusals can be categorised as follows:

Reason	**Number of cases**	**Percentage of refusals**
Financial Requirements	1516	62%
Multiple reasons*	462	19%
Failure to submit other documents**	116	5%
Other reasons***	133	5%
English Language Requirements	106	4%
Not stated	11	.5%

* the applicant failed more than one criterion - in most of these cases the applicant failed to satisfy Financial and English language requirements

** Offer letters, Medical clearance, Confirmation of Enrolment

*** Generally related to student dependant applicants, or the applicant's *bona fides*

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(46) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr (L&C 308) asked that the Department provide a breakdown of categorisation of reasons for refusal of non-genuine student visas.

Answer:

The reasons for refusing student visa applications under Schedule 2 of the *Migration Regulations* where the Minister is not satisfied about the applicant's genuineness are that the applicant:

- did not meet the *Migration Regulations* requirement of financial capacity; or
- did not meet the *Migration Regulations* requirement of English language proficiency; or
- did not meet " other requirements" under Schedule 5A of the *Migration Regulations*, which, depending on the educational sector and assessment level of the applicant may include, for example, a requirement that the applicant has previously achieved a minimum of Year 12 or equivalent, or that the applicant demonstrate that their proposed course is consistent with or necessary for their career direction; or
- has indicated an intention not to comply with the conditions of their visa; or
- has raised another relevant matter, which, on balance, makes the decision-maker not satisfied that the applicant is genuinely intending to study; or
- has provided fraudulent or misleading documents or statements in relation to any of the factors listed above.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(47) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr (L&C 308) asked that if the Minister is in agreement, the Department provide the Committee with a copy of the review of student visas when it becomes available.

Answer:

This issue will be discussed with the Minister when the review is completed.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(48) Output 1.1: Non-Humanitarian Entry and Stay

Senator Carr (L&C 312) asked in relation to the registration on CRICOS, what is DIMIA's understanding of the fit and proper persons test.

Answer:

The fit and proper person test is applied to a provider by State and Territory authorities before recommending to the Commonwealth that a provider be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). Administration of the Education Services for Overseas Students Act 2000 (ESOS Act) and CRICOS is the responsibility of the Department of Education, Science and Training (DEST). This includes decisions relating to the registration of a provider on CRICOS.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(49) Output 1.1: Non-Humanitarian Entry and Stay

Senator Cooney (L&C 317) asked for a copy of Professor Graeme Hugo's progress report on his study of Australians living and working overseas.

Answer:

Professor Graeme Hugo is heading a team of researchers from the University of Adelaide, who are currently working on the second stage of a major study of emigration. The research is being funded through grants from the Australian Research Council (ARC), the Committee for Economic Development of Australia (CEDA), the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and the Department of Education, Science and Training (DEST).

The report of the first stage of the study was published in June 2001. A copy of this publication, entitled " Emigration from Australia: Economic Implications" is available on the CEDA website at www.ceda.com.au.

Professor Hugo spoke at the DIMIA " Migration: Benefiting Australia" conference in Sydney on 7 May 2002, where he provided a report of work in progress on the second stage of the study. A copy of the report is attached. This stage of the research consists mainly of analyses of a cross section of Australian university graduates living and working overseas.

EMIGRATION OF SKILLED AUSTRALIANS : PATTERNS, TRENDS AND ISSUES

by
Graeme Hugo
Professor of Geography
and Director of the National Key Centre
for Social Applications of GIS,
University of Adelaide

Paper Presented to DIMIA Immigration and Population Issues Conference, *Migration: Benefiting Australia*, Australian Technology Park, Sydney, 7 May, 2002

INTRODUCTION

Australian international migration has experienced a major transformation in the last decade. For most of the postwar period there has been virtually universal support for a policy which favoured the attraction of immigrants to Australia who were planning to settle permanently in the nation. Policies involving temporary migrant labour which were adopted elsewhere in the world were eschewed in Australia. However, this has changed dramatically in the last decade. DIMIA estimates that on 30 June 2001 there were 554,200 people in Australia on temporary entry visas excluding New Zealanders equivalent to 2.9 percent of the total population. Of these, more than half have the right to work and people in Australia on temporary visas make up over 3 percent of the workforce. The opening up of Australia to a range of mostly skilled temporary entrants has been in response to the internationalisation of many labour markets and a range of other globalisation forces. However, these forces have not only produced an increase in the amount of movement of foreign workers to and from Australia but it also has seen a substantial increase in the number of Australians living and working overseas. Since this movement is selective of young and highly educated people from time to time there has been alarm raised about a 'brain drain' from Australia. While undoubtedly these outmovements are considerably outweighed by the number of skilled immigrants (Hugo, 1994; Birrell *et al*., 2001; Hugo, Rudd and Harris, 2001) there has been very limited examination of the nature and effects of changing patterns of emigration from Australia.

While most OECD nations collect relatively high quality data on immigration, few have equally comprehensive information on emigration. Australia is an exception and this paper outlines the main features and trends in Australians leaving the country on a more or less permanent basis. It is shown that incorporation of Australia into global labour markets has seen an upsurge of both immigration and emigration of highly skilled people to and from Australia. Attention is focused on trends in the numbers, characteristics and destinations of Australians moving overseas permanently or on a long term basis. An analysis is made of arrivals and departures data over the last decade to establish these trends. The paper also makes use of a survey of more than 1,000 Australians based

overseas to examine their motivations for moving, their linkages with Australia and their future migration intentions. The final part of the paper discusses the implications of the findings for policy. Increasingly, OECD nations are developing more complex programs to attract talented and skilled individuals from foreign nations as part of their strategy to enhance innovation and economic growth. Few have developed policies aimed at retention of such people or at attracting back expatriates with qualifications, experience and networks deemed to be of value to national development. These issues are explored and the issue raised as to whether there are ways in which Australians living in other countries can be incorporated into national, economic and social development strategies.

COUNTING AUSTRALIA'S POPULATION

The increased mobility of Australians raises some fundamental questions about who should be counted as being among Australia's population. Traditionally, the national population has been counted as those resident on the night of the census and there is provision for those who are temporarily overseas to be identified and included by members of their household remaining in Australia. But what of the Australians living on a long term or permanent basis in other countries? These are estimated to be 830,000 by the Department of Foreign Affairs (*The Australian,* 11 August 2001) equivalent to 4.3 percent of the 2001 resident population. Moreover, they are a selective group in terms of age, education, income and skill. In a globalising world it may be that we should be seeking alternative conceptualisations of what constitutes the national population. In the past the bulk of a nation's citizens and permanent residents were resident in that country (Figure 1). However, with globalisation an increasing proportion of nationals are likely to be absent for considerable periods (the bottom left hand rectangle), while there will be larger numbers of foreign nationals present in the country (top right hand rectangles). This raises the question as to whether national censuses should seek to include nationals who are living and working overseas on a permanent or long term basis.

Figure 1: Diagrammatic Representation of a National Population

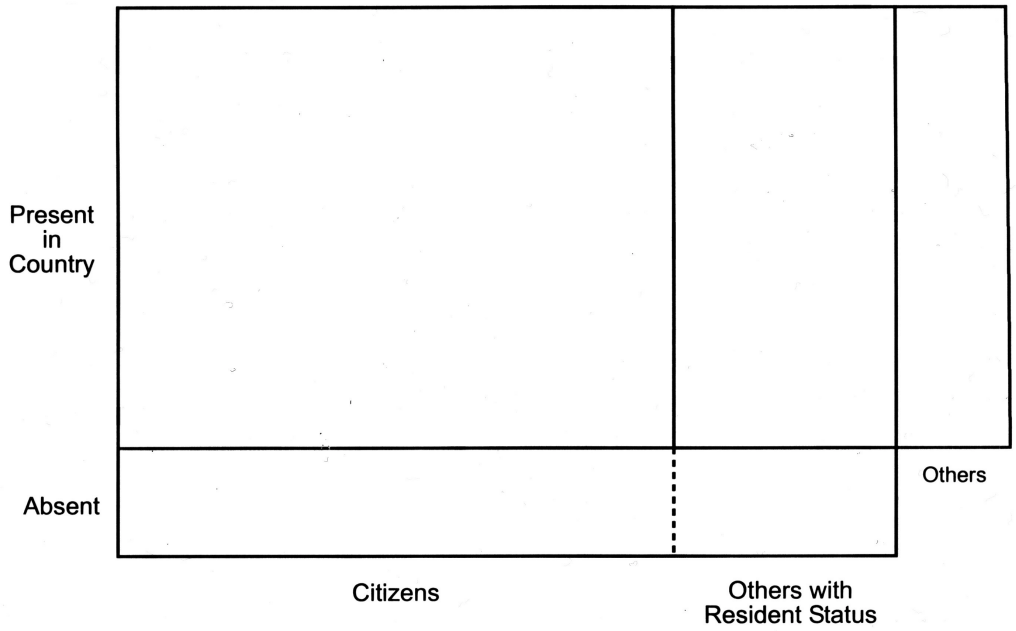
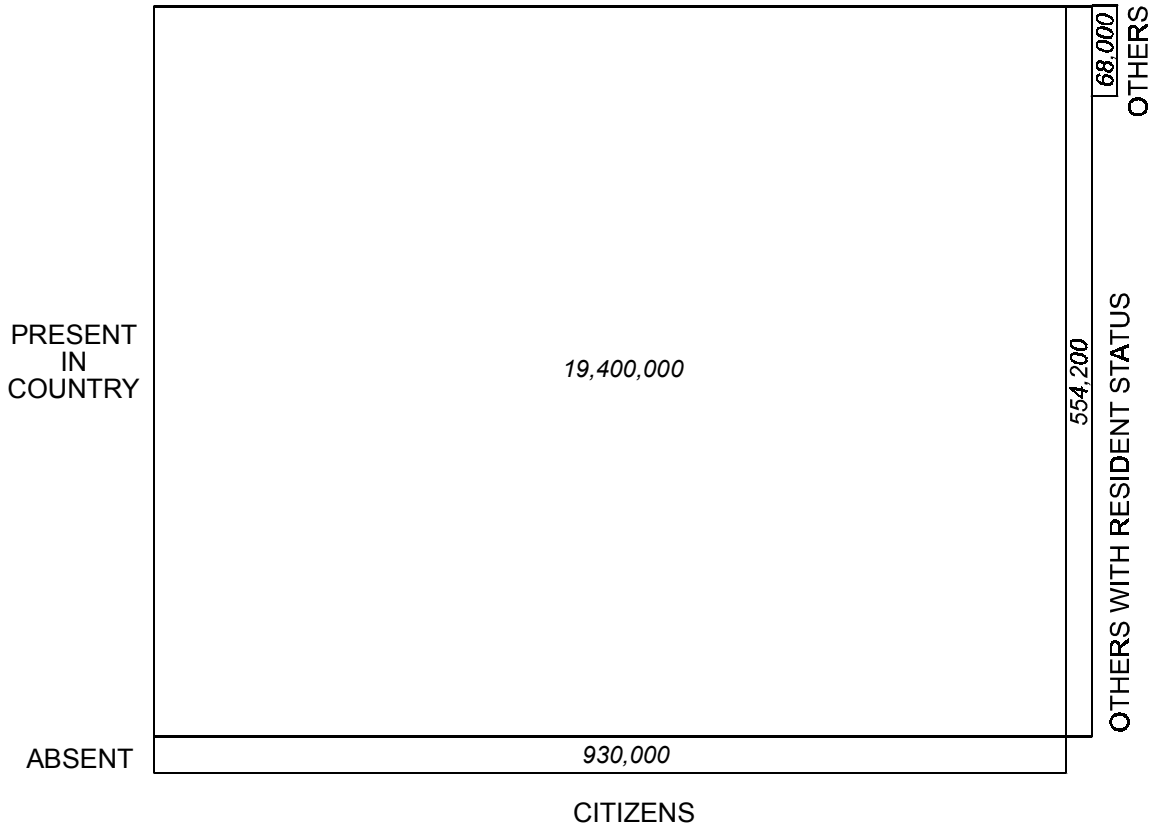


Figure 2: The Australian Population in Mid 2001



Indeed, the United States of America will hold a special census of its citizens based in foreign countries and there are suggestions that the 2010 US census will not only include all people resident in the United States but all of its citizens abroad. Figure 2 attempts to put numbers to the schema in Figure 1 and it can be seen that the foreign based population are a substantial part of the nation's potential human resources.

TRENDS IN EMIGRATION

Australia recognises the following categories of international population movement for statistical purposes:

- Permanent movement – persons migrating to Australia and residents departing permanently.
- Long term movement – visitors arriving and residents departing temporarily with the intention to stay in Australia or abroad for twelve months or more, and the departure of visitors and the return of residents who had stayed in Australia or abroad for twelve months or more.
- Short term movement – travellers whose intended or actual stay in Australia or abroad is less than twelve months.

However:

a) this depends upon the *intentions* of movers and these intentions may change over time so that there is significant 'category jumping'. It is clear, for example, that 'onshore' settlement in Australia is increasing whereby people coming to the country as temporary residents of one kind or another apply to settle in the country.

b) there are, in fact, visa categories for entry into Australia which overlap these categories. For example, holders of *Temporary Business Entrants* visas may stay in Australia for periods of up to four years and hence overlap the short term and long term movement categories.

Trends in permanent emigration from Australia are depicted in Table 1 and Figure 3. A key distinction is between former settlers who subsequently leave Australia returning to their home country or moving to a third country and Australia-born persons.

Table 1: Australia: Permanent Movement, Financial Years, 1968-2000[1]

Sources: DIMA *Australian Immigration Consolidated Statistics* and *Immigration Update*, various issues

Financial Year	Settler Arrivals	Permanent Departures					
		Former Settlers*		Australia-Born**		Total	Departures as % of Arrivals
		No.	% of Departures	No.	% of Departures		
1968-69	175,657	23,537	74.3	8,141	25.7	31,678	18.0
1969-70	185,099	26,082	72.3	10,000	27.7	36,082	19.5
1970-71	170,011	28,244	71.8	11,072	28.2	39,316	23.1
1971-72	132,719	32,280	72.8	12,439	27.8	44,719	33.7
1972-73	107,401	31,961	71.2	12,945	28.8	44,906	41.8
1973-74	112,712	26,741	67.8	12,699	32.2	39,413	35.0
1974-75	89,147	20,184	64.0	11,361	36.0	31,545	35.4
1975-76	52,748	17,150	62.5	10,277	37.5	27,427	52.0
1976-77	70,916	15,447	62.8	9,141	37.2	24,588	34.7
1977-78	73,171	13,972	60.5	9,124	39.5	23,096	31.6
1978-79	67,192	13,797	54.3	11,632	45.7	25,429	37.8
1979-80	80,748	12,044	54.7	9,973	45.3	22,017	27.3
1980-81	110,689	10,888	55.8	8,608	44.2	19,496	17.6
1981-82	118,030	11,940	57..2	8,940	42.8	20,890	17.7
1982-83	93,010	15,390	62.0	9,440	38.0	24,830	26.7
1983-84	68,810	14,270	58.7	10,040	41.3	24,300	35.3
1984-85	77,510	11,040	54.2	9,340	45.8	20,380	26.3
1985-86	92,590	9,560	52.8	8,540	47.2	18,100	19.5
1986-87	113,540	10,800	54.2	9,130	45.8	19,930	17.6
1987-88	143,470	10,716	52.3	9,755	47.7	20,471	14.3
1988-89	145,320	15,087	69.7	6,560	30.3	21,647	14.9
1989-90	121,230	19,458	69.8	8,399	30.2	27,857	23.0
1990-91	121,688	21,640	69.5	9,490	30.5	31,130	25.6
1991-92	107,391	19,944	68.5	9,178	31.5	29,122	27.1
1992-93	76,330	18,102	64.9	9,803	35.1	27,905	36.6
1993-94	69,768	17,353	63.6	9,927	36.4	27,280	39.1
1994-95	87,428	16,856	62.6	10,092	37.4	26,948	30.8
1995-96	99,139	17,665	61.6	11,005	38.4	28,670	28.9
1996-97	85,752	18,159	60.8	11,698	39.2	29,857	34.8
1997-98	77,327	19,214	60.1	12,771	39.9	31,985	41.4
1998-99	84,143	17,931	50.1	17,250	49.0	35,181	41.8
1999-2000	92,272	20,844	50.7	20,234	49.3	41,078	44.5

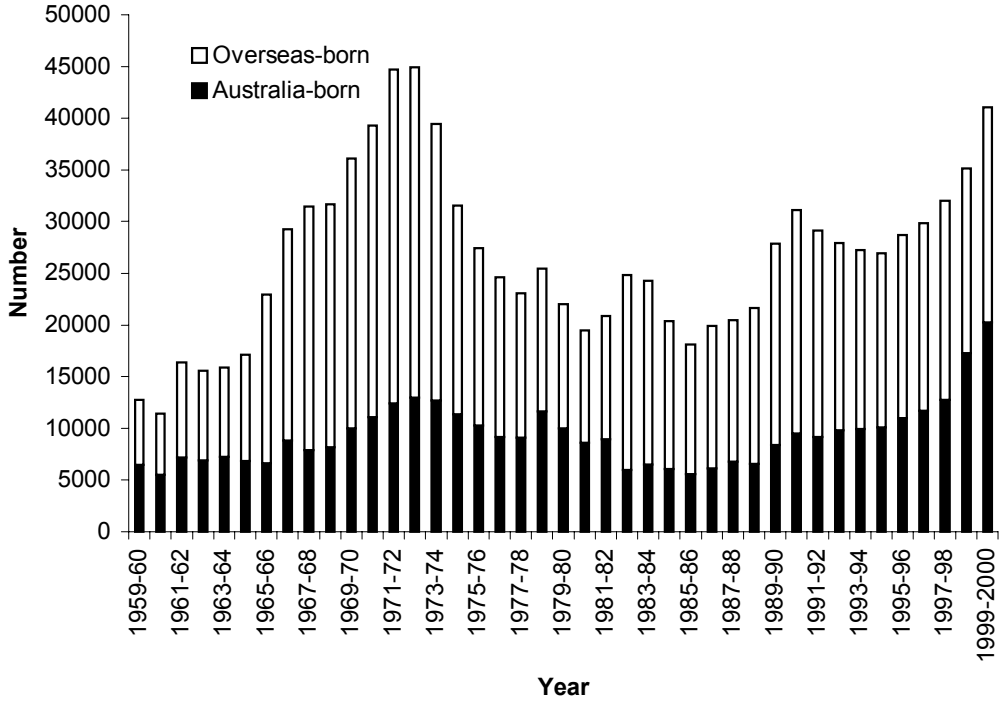
* Data 1988-89 to 1999-2000 constitute permanent overseas-born departures due to a change in definition by DIMA. Data prior to this constitute former settler departures.

** Data prior to 1988-89 constitute permanent departures other than former settlers.

[1] Statistics on arrivals and departures in this table and elsewhere in this paper are based on information from international passenger cards completed by persons arriving or departing from Australia. DIMIA has recently automated processing of passenger cards and problems with the introduction of the new system have caused delays in making the 2000-01 data available.

Figure 3: Permanent Departures of Australia-Born and Overseas-Born Persons from Australia, 1959-60 to 1999-2000

Source: DIMA Australian Immigration Consolidated Statistics and Immigration Update, various issues



A small proportion of the latter are made up of the Australia-born children of former settlers. Settler loss has some distinctive characteristics (Hugo, 1994; Hugo, Rudd and Harris, 2001; Rampa, 1988; National Population Council, 1990):

- Over 1 in 5 postwar settlers have left Australia.
- Half of settlers who leave Australia leave within 5 years of settlement, 70 percent by 10 years and 90 percent by 20 years.
- The highest rates of settler loss are among the skilled occupations and in the economic categories of migration. Refugees are the least likely to leave.
- The highest rates of settler loss are among those from Mainly English Speaking countries like UK, New Zealand, USA and Canada.
- Males are more likely to return than female settlers.

Trends in settler loss tend to shadow trends in numbers of settlers but around three years ahead. Over the years there have been several enquiries into issues of settler loss.

Settler loss has been an important feature of the postwar Australian migration scene with around a fifth of all postwar settlers subsequently emigrating from Australia, most of them returning to their home nation. There has been concern about this settler loss among policy makers (Hugo, 1994) but it has a number of components including a group of migrants who never intended to settle permanently in Australia as well as people who are influenced by family changes, are not able to adjust to life in Australia etc. The pattern of settler loss while it varies between birthplace groups (e.g. it is high among New Zealanders but low among Vietnamese) has tended to remain a relatively consistent feature of the postwar migration scene in Australia and the fluctuations in its numbers are very much related to earlier levels of immigration. With an increase in the skill profile in immigration we can expect an increase in settler loss since skilled migrants have a greater chance of remigrating than family migrants.

A striking trend in Table 1, however, is the upsurge in the more-or-less permanent emigration of the Australia-born. The last year for which data are available showed a record number of Australia-born permanent departures. It is apparent from Figure 3 that there has been an upward trend in the numbers of Australia-born permanent departures in the 1990s and this is indicative of a greater tendency for Australia-born adults deciding to move overseas on a permanent basis. This has begun to attract policy attention since the profile of departures of residents tends to be younger and more educated than the population of the nation as a whole and the spectre of 'brain drain' has arisen.

As was indicated earlier, however, it is necessary to consider long term as well as permanent movement since there is considerable category jumping between the two categories. In the pattern of long term outmovement from Australia a similar pattern emerges. If we break the long term departures into Australia-born and overseas-born in Table 2, this provides evidence of greater Australia-born movement out of Australia on a long term basis. Between 1998-99 and 1999-2000 there was an increase in the number of long term departures from Australia from 140,281 to 156,768 persons. The number who were Australian residents increased from 82,861 to 84,918 persons. In 1999-2000 there was a net migration loss of 5,267 through 'long term' movement among the Australia-born

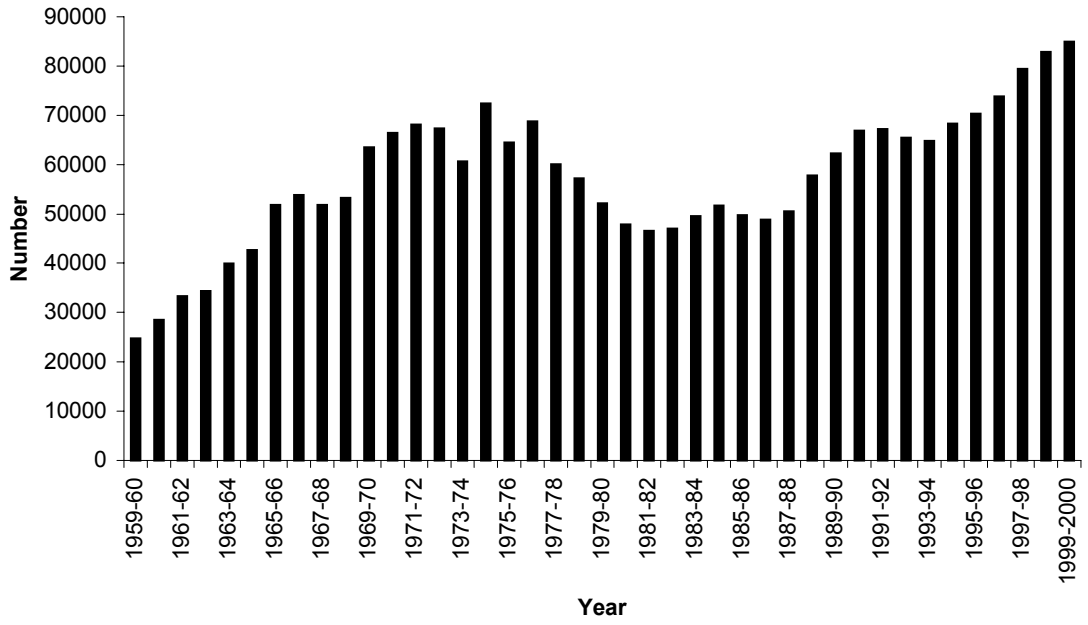
compared with a net gain of 61,348 among the overseas-born. The upturn in the numbers of Australians leaving the country on a long term basis is apparent in Figure 4.

Table 2: Australia: Long Term Movement, 1959-60 to 1999-2000
Source: DIMA *Australian Immigration Consolidated Statistics* and *Immigration Update*, various issues

	Arrivals			Departures			Net Overseas Movement		
	Australian Residents	Overseas Visitors	Total	Australian Residents	Overseas Visitors	Total	Australian Residents	Overseas Visitors	Total
1959-60	16,049	11,748	27,797	24,730	7,838	32,568	-8,681	3,910	-4,771
1960-61	16,870	13,320	30,190	28,542	11,823	40,365	-11,672	1,497	-10,175
1961-62	19,301	13,423	32,724	33,370	12,591	45,961	-14,069	832	-13,237
1962-63	21,376	13,971	35,347	34,324	13,219	47,543	-12,948	752	-12,196
1963-64	23,066	14,170	37,236	39,931	12,325	52,256	-16,865	1,845	-15,020
1964-65	24,065	16,484	40,549	42,702	13,640	56,342	-18,637	2,844	-15,793
1965-66	27,279	18,461	45,740	51,785	11,808	63,593	-24,506	6,653	-17,853
1966-67	31,161	20,078	51,239	53,750	12,707	66,457	-22,589	7,371	-15,218
1967-68	37,032	23,341	60,373	51,847	12,516	64,363	-14,815	10,825	-3,990
1968-69	37,376	24,442	61,818	53,296	13,817	67,113	-15,920	10,625	-5,295
1969-70	38,711	29,842	68,553	63,454	17,414	80,868	-24,743	12,428	-12,315
1970-71	43,554	31,225	74,779	66,463	19,928	86,391	-22,909	11,297	-11,612
1971-72	51,356	27,713	79,069	68,069	23,328	91,397	-16,713	4,385	-12,328
1972-73	58,292	26,733	85,025	67,379	23,579	90,958	-9,087	3,154	-5,933
1973-74	64,297	27,212	91,509	60,636	21,246	81,882	3,661	5,966	9,627
1974-75	60,239	23,615	83,854	72,397	24,386	96,783	-12,158	-771	-12,929
1975-76	60,224	21,687	81,911	64,475	21,528	86,003	-4,251	159	-4,092
1976-77	59,193	26,133	85,326	68,792	19,724	88,516	-9,599	6,409	-3,190
1977-78	57,311	28,043	85,354	60,099	19,194	79,293	-2,788	8,849	6,061
1978-79	60,947	34,064	95,011	57,255	21,216	78,471	3,692	12,848	16,540
1979-80	59,963	29,586	89,549	52,114	19,228	71,342	7,849	10,358	18,207
1980-81	59,871	34,220	94,091	47,848	18,778	66,626	12,023	15,442	27,465
1981-82	57,860	34,760	92,620	46,500	20,310	66,810	11,360	14,450	25,810
1982-83	48,990	30,740	79,730	47,020	25,440	72,460	1,970	5,300	7,270
1983-84	49,190	27,280	76,470	49,490	24,950	74,440	-300	2,330	2,030
1984-85	53,770	31,980	85,750	51,710	23,160	74,870	2,060	8,820	10,880
1985-86	56,560	37,250	93,810	49,690	24,670	74,360	6,870	12,580	19,450
1986-87	53,597	67,325	120,922	48,854	26,538	75,392	4,743	40,787	45,530
1987-88	54,804	43,978	98,782	50,499	28,054	78,553	4,305	15,924	20,229
1988-89	53,798	50,766	104,564	57,733	33,258	90,991	-3,935	17,508	13,573
1989-90	53,967	56,728	110,695	62,300	37,899	100,199	-8,333	18,829	10,496
1990-91	59,062	55,649	114,711	66,883	43,629	110,512	-7,821	12,020	4,199
1991-92	62,920	63,861	126,781	67,191	47,971	115,162	-4,271	15,890	11,619
1992-93	69,594	57,842	127,436	65,446	47,744	113,190	4,148	10,098	14,246
1993-94	75,600	62,000	137,600	64,786	47,921	112,707	10,814	14,079	24,893
1994-95	79,063	72,032	151,095	68,377	50,156	118,533	10,686	21,876	32,562
1995-96	79,206	84,372	163,578	70,253	54,133	124,386	8,953	30,239	39,192
1996-97	80,170	95,079	175,249	73,777	62,971	136,748	6,393	32,108	38,501
1997-98	84,358	103,756	188,114	79,422	74,872	154,294	4,936	28,884	33,820
1998-99	67,910	119,892	187,802	82,861	57,420	140,281	-14,951	62,472	47,521
1999-2000	79,651	133,198	212,849	84,918	71,850	156,768	-5,267	61,348	56,081

Figure 4: Australian Resident Long Term Departures from Australia, 1959-60 to 1999-2000

Source: DIMA *Australian Immigration Consolidated Statistics* and *Immigration Update*, various issues



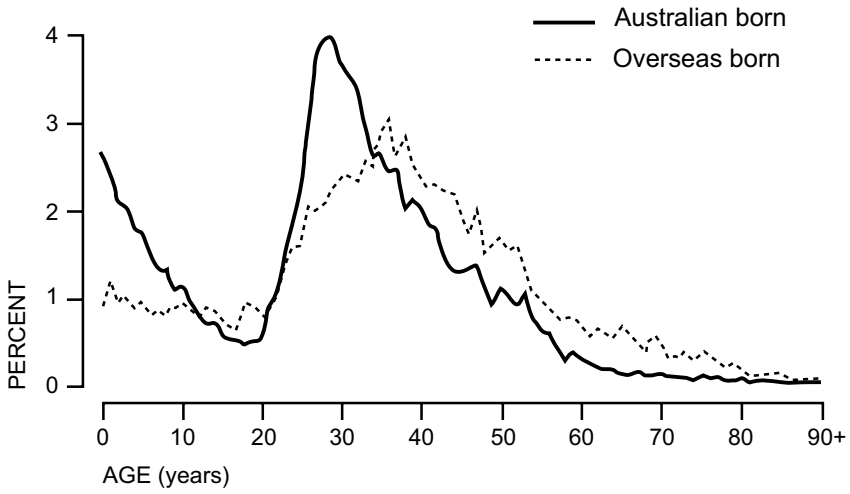
CHARACTERISTICS OF EMIGRANTS

All migration is selective in that migrants are never a representative cross-section of the populations they leave or move to and emigrants from Australia are no different. Like all migration the movement is selective by age (Hugo, 1994, 67-73). This is evident in Figure 5. There are some clear differences between the settler loss of the overseas-born and the emigration of the Australia-born. The settler loss is strongly concentrated in the young adult age group. This is in line with the fact that the majority of settler loss occurs within the first few years of arrival. Indeed, with the increasing skilling of Australia's settler gain it is likely that the rates of settler loss will increase since the tendency for settlers to leave is greater among the more highly educated and skilled. It is important to note, however, in Figure 5 that there are significant numbers of former settler emigrants among the older population.

The age structure of Australia-born emigrants is quite different to that of the settler loss. Clearly, there is a dominance of young families with a concentration in the young

adult (20-39) and school age (5-14) age groups. This reflects the fact that the bulk of Australia-born emigrants are in the early stages of the work and family life cycle.

Figure 5: Australia: Age Distribution of Australia-Born and Overseas-Born Emigrants, 1999-2000
Source: ABS, 2001



The occupation profile of permanent settler arrivals in Australia is substantially higher than that of the nation as a whole. Table 3 shows that managers, administrators and professionals make up almost half of all workers among permanent settler arrivals (49.1 percent) and this compares to 38.8 percent among the total population. On the other hand intermediate and low skill workers were 24.1 percent of permanent settlers but 43.4 percent among the total population. The table also shows the occupational profile of permanent outflows among whom managers, administrators and professionals made up 53.6 percent and intermediate and lower skilled workers made up 23.8 percent. Hence, although Australia receives a net gain of all occupational categories the occupational profile of emigrants is somewhat higher than that of the permanent arrivals. The main difference is in the highest status manager/administrator category which accounts for 18.2 percent of the emigrants but only 12 percent of the immigrants. However, it will also be noted that 61.7 percent of the emigrants were in employment before moving compared with 49.8 percent of settler arrivals.

Table 3: Australia: Percent Arrivals and Departures 1999-2000 by Occupation
Source: DIMA 2000

Occupations	Settler Arrivals		Permanent Departures		Difference
	Number	Percent	Number	Percent	
Managers & administrators	5,519	12.0	4,605	18.2	+914
Professionals	17,065	37.1	8,965	35.4	+8,100
Associate professionals	4,788	10.4	2,899	11.4	+1,889
Tradespersons	6,075	13.2	1,844	7.3	+4,231
Advanced clerical & service	1,395	3.0	990	3.9	+404
Intermediate clerical & service	5,487	11.9	3,483	13.7	+2,004
Intermediate production & transport	1,525	3.3	555	2.2	+970
Elementary clerical, sales, service	2,638	5.7	1,458	5.8	+1,180
Labourer & related workers	1,453	3.2	532	2.1	+921
Total workforce	45,945	100.0	25,351	100.0	
Total in employment		49.8		61.7	
Not in employment	4,134	4.5	569	1.4	+3,565
Not in labour force	41,228	44.7	15,079	36.7	+26,199
Not stated	965	1.0	79	0.2	+886
Total	92,272	100.0	41,078	100.0	+51,194

Another point made in the previous section was the growing significance in Australia of non-permanent movement and the fact that at any one time over 200,000 persons temporarily present in Australia have the right to work and the number actually working may be up to 400,000. This is a not insignificant element in the Australian workforce so it is important to examine the workforce characteristics of those who are on temporary visas but have the right to work in Australia. Table 4 presents information derived from passenger arrival and departure cards. One difficulty with the information is the high proportion of 'not stated' responses and a more comprehensive analysis should go to the visa application forms themselves. Nevertheless, it would seem that the occupational profiles presented in Table 4 are indicative of actual patterns. Among working holiday makers it would seem that professionals and intermediate clerical and service workers dominate. Of course, students who make up a large element of long term arrivals tend to be highly skilled, although their participation in the workforce while they are still students tends to be in unskilled areas.

Table 4: Australia: Temporary Entrants to Australia with the Right to Work by Occupation, 1999-2000
Source: Unpublished data supplied by DIMA

Occupation	Working Holiday Makers		Temporary Business Entrants	
	Number	Percent	Number	Percent
Managers/administrators	2,214	8.3	17,100	37.7
Professionals	7,652	28.8	16,270	35.8
Associate professionals	2,548	9.6	6,788	15.0
Tradespersons	3,024	11.4	1,020	2.2
Advanced clerical & service	1,214	4.6	458	1.0
Intermediate clerical & service	6,677	25.1	2,310	5.1
Intermediate product & transport	536	2.0	150	0.3
Elementary clerical, sales, service	2,106	7.9	1,038	2.3
Labourers	607	2.3	262	0.6
Total workforce	26,578	100.0	45,394	100.0
Not in workforce	15,182		18,326	
Not in employment	12,598		350	
Not stated	25,546		29,872	
Total	79,904		93,942	

As would be expected, the profile of persons entering under the Temporary Business category is somewhat higher. Indeed almost three-quarters of such entrants (73.5 percent) fall into the two highest status occupation categories of managers, administrators and professionals. This compares with 49.1 percent of permanent arrivals and 38.8 percent of the total Australian population.

EMIGRATION OF AUSTRALIAN RESIDENTS

Increasing attention has been given in recent times to the numbers of Australia-born leaving Australia on a permanent or long term basis. It has been shown in the previous section that the long term outmovement of the Australian population reached record levels in 1999-2000. It was decided to look in some detail at this movement using the Movements Data Base to focus on the movements to some of the major destination countries. An important point to make here is that the movement under study here involves only the Australia-born. It excludes overseas-born persons.

In 1999-2000, 33.1 percent of all Australians leaving the country on a permanent or long term (an anticipated absence of over a year) basis went to the United Kingdom. It will be noted that the numbers have almost doubled over the last six years (Table 5). Females outnumber males in the movement but there has been a faster increase in male outmovement than in female outmovement in recent years.

Table 5: Permanent and Long Term Outmovement of the Australia-Born Who Went to the United Kingdom, 1994-2000

Source: DIMA Movements Data Base

Year	Total	Sex Ratio (m/100f)	Percent
1994-95	14,657	71.5	28.3
1995-96	15,873	70.2	29.2
1996-97	17,812	74.5	30.9
1997-98	21,209	80.1	33.7
1998-99	25,210	79.3	33.9
1999-2000	26,493	79.0	33.1

Turning to the second most popular destination of Australia-born emigrants from Australia, Table 6 shows that there has been about a doubling in the numbers of young Australians going to the US. It is interesting, however, that this movement is less dominated by women than is the case for the migration to the UK.

A similar pattern of increased tempo of emigration is found when we look at the other major destinations of emigrants from Australia. It is interesting in the context of the debate about trans-Tasman migration to look at the movement of Australia-born persons on a long term or permanent basis to New Zealand (Table 7). It will be shown later that some of these are the Australia-born children of former New Zealand migrants to Australia – there is a significant flow of skilled Australians across the Tasman perhaps indicating that for many jobs Australians and New Zealanders form a single labour market. Females dominate in the movement although this dominance has lessened in recent years.

Table 6: Australia: Permanent and Long Term Outmovement of the Australia-Born Who Went to the United States, 1994-2000

Source: DIMA Movements Data Base

Year	Total	Sex Ratio (m/100f)	Percent
1994-95	6,495	96.3	12.5
1995-96	6,821	97.9	12.6
1996-97	7,526	105.9	13.1
1997-98	8,236	102.8	13.1
1998-99	10,164	101.7	13.7
1999-2000	11,472	96.6	14.3

Table 7: Australia: Permanent and Long Term Outmovement of the Australia-Born Who Went to New Zealand, 1994-2000

Source: DIMA Movements Data Base

Year	Total	Sex Ratio	Percent
1994-95	4,838	86.3	9.3
1995-96	5,408	89.1	10.0
1996-97	5,159	98.5	8.9
1997-98	5,125	97.0	8.2
1998-99	6,072	90.3	8.3
1999-2000	7,074	93.8	8.8

Table 8: Australia: Permanent and Long Term Outmovement of the Australia-Born to Continental Europe, 1994-2000

Source: DIMA Movements Data Base

Year	Germany	France	Other Europe
1994-95	738	473	3,963
1995-96	664	457	3,961
1996-97	713	457	4,057
1997-98	672	557	4,532
1998-99	845	630	4,985
1999-2000	904	684	5,401

The movement to other European destinations is much smaller than any of these considered so far but again the trend found a substantial increase in numbers is evident. Table 8 shows these trends.

One interesting aspect of the changed patterns of movement of the Australia-born relates to the migration on a permanent or long term basis to Asian destinations. Table 9 shows that the pattern varies between nations. The pattern of movement to Malaysia is indicative of the fact that several Asian countries suffered from the effects of the Asian financial crisis which began in 1997. This also influenced countries like Indonesia and Thailand where large numbers of Australian engineers, accountants and other highly skilled groups had migrated during the Asian-boom of the decade preceding 1997.

Table 9: Permanent and Long Term Departures of Australia-Born to Asian Destinations, 1994-2000

Source: DIMA Movements Data Base

Year	Singapore	Hong Kong	Malaysia	Japan	Other Asia	Total Asia Percent
1994-95	1,739	1,787	1,282	1,468	4,935	21.6
1995-96	1,643	1,751	1,325	1,379	5,312	20.9
1996-97	1,838	1,676	1,327	1,636	5,681	21.1
1997-98	2,166	1,622	1,267	1,889	5,906	20.4
1998-99	2,097	2,385	1,179	2,225	6,762	20.5
1999-2000	3,036	2,540	1,223	2,512	6,963	19.3

Several countries like Indonesia and Malaysia had not been able to produce sufficient numbers of people with some skills needed for their fast developing economies and had to resort to the inmigration of expatriates (Hugo, 2000; Azizah, 2000, 2001). Hence it will be noted that in Malaysia the numbers of Australia-born persons immigrating on a long term or permanent basis peaked in 1996-97 and thereafter declined although there was a recovery in 1999-2000 reflecting the fact that Malaysia by then had recovered from the effects of the crisis.

Some of the other Asian countries were less effected by the Asian financial crisis and this is reflected in the fact that the numbers of Australia-born moving to them on a permanent or long term basis increased during the 1990s. In Singapore, for example, Table 9 shows that the number of Australia-born travelling there permanently or on a long term basis almost doubled in the second half of the 1990s. In Hong Kong the numbers declined slightly during the uncertainty which surrounded the return of Hong Kong to China in 1997 but it has increased substantially in recent years. The movement to Japan has increased over the period as has that to elsewhere in Asia. The migration of Australians to Asia has contributed about one-fifth of all those who have left on a permanent and long term basis over the last 5-6 years.

Table 10: Long Term and Permanent Departures of Australia-Born to the United Kingdom and US by Occupation, 1994-2000
Source: DIMA Movements Data Base

Occupation	UK		USA	
	No.	%	No.	%
Manager/administrator	9,782	10.2	4,914	15.8
Professionals	39,341	41.0	15,063	48.3
Associate professionals	8,238	8.6	2,709	8.7
Tradespersons	7,254	7.6	1,746	5.6
Clerks/sales/service/transport	29,415	30.7	6,348	20.3
Labourers	1,931	2.0	419	1.3
Total in workforce	95,961	(79.1)	31,199	(61.4)
Not in workforce	22,879	(18.9)	18,520	(36.4)
Not employed	716	(0.6)	316	(0.6)
Not stated	1,700	(1.4)	783	(1.6)
Total	121,256	(100.0)	50,818	(100.0)

It is of importance to examine the workforce characteristics of those Australia-born who are moving to other countries on a long term or permanent basis. Table 10 shows that the movement to the two main destination countries is dominated by highly skilled groups.

Almost 60 percent of workers going to the UK, the largest single destination are drawn from the Manager, Administrative, Professional and Associate Professional categories while 72.8 percent of these going to the USA are in those occupations. This compares with 37.7 percent of all employed persons in Australia. Hence it is very much a 'brain drain' phenomena which is very selective of highly skilled groups. Moreover, it is clear from Table 11 that this selectivity characterises the flows to other destinations as well. It is especially true of the movement to Asia where there tends to be a pattern of local education systems not producing enough highly skilled people trained in a number of areas or a mismatch between the needs of the labour market and the output of the education system.

Table 11: Long Term and Permanent Departures of Australia-Born to Other Areas by Occupation, 1994-2000

Source: DIMA Movements Data Base

Country	Total Workers	Managers, Administrative, Professionals and Para Professional	
		No.	%
New Zealand	17,303	10,329	59.7
Germany	2,677	1,933	72.2
France	1,934	1,369	70.7
Other Europe	14,845	9,127	61.5
Singapore	7,876	6,566	83.4
Hong Kong	6,423	5,362	83.5
Malaysia	3,727	3,002	80.5
Japan	7,418	5,855	78.9
Other Asia	19,786	15,190	76.8
Other	35,491	24,720	69.8

Another important characteristic of the emigrants which needs to be considered is age. Table 12 shows the age-sex breakdown of Australia-born persons leaving permanently or on a long term basis for the UK and the USA. The pattern is one of an overwhelming concentration in the young adult age groups. There are some significant differences.

Table 12: Permanent and Long Term Departures of Australia-Born to the United Kingdom and the US, Age/Sex Structure

Source: DIMA Movements Data Base

	United Kingdom				USA			
Age	Males	Females	Total		Males	Females	Total	
			No.	%			No.	%
0-9	4,252	4,238	8,490	7.0	3,531	3,559	7,090	14.0
10-19	2,453	4,064	6,517	5.4	2,098	2,434	4,532	8.9
20-29	31,998	46,178	78,176	64.5	7,669	8,701	16,370	32.2
30-39	9,685	9,703	19,388	16.0	7,129	6,428	13,557	26.7
40-49	2,649	2,702	5,351	4.4	3,233	2,825	6,058	11.9
50-59	1,035	1,283	2,318	1.9	1,327	1,109	2,436	4.8
60+	479	547	1,026	0.8	383	393	776	1.5
Total	52,551	68,715	121,266	100.0	25,370	25,449	50,819	100.0

In the movement to the UK two thirds of the migrants are aged between 20 and 29 years. These are clearly part of the reciprocal movement to the Australian Working Holiday Maker Program, i.e. it involves young people on holidays who intend to return to Australia after a year or two. The pattern in the US is quite different. There is currently no Working Holiday Program with the USA so each of the people going on a long term basis need to qualify for movement under a work related criteria. It is interesting that the age structure of movement to the USA is somewhat older than that to the UK. This reflects the fact that movement to the US is overwhelming of people who are already in the workforce and are not a recent graduate. Moreover, it is interesting that many young Australian families including dependent children are moving to the US. The proportion of Australia-born aged less than 10 years in the movement to the US is twice that to the UK due to the fact that young professionals often with their families dominate among the migration to the US.

Table 13 shows the age structure of the movement of Australia-born on a permanent or long term basis to the other major destinations. It shows that around half or more of movers are aged between 20 and 39. There are some interesting variations around this theme. The lowest proportion in this age group go to New Zealand. This reflects the

fact that 28.2 percent of the Australia-born moving to New Zealand are aged 0-9. This reflects the fact that many of these children have New Zealand-born parents who were returning to their home country.

Table 13: Permanent and Long Term Departures of Australia-Born to Other Areas by Age Structure

Source: DIMA Movements Data Base

Destination	Percent Aged 20-29	Percent Aged 30-39
New Zealand	23.6	20.3
Germany	36.5	24.6
France	31.6	25.4
Other Europe	34.5	21.2
Singapore	20.1	27.5
Hong Kong	18.1	26.2
Malaysia	12.3	24.2
Japan	45.6	24.4
Other Asia	15.2	23.8
Other	25.4	21.9

Table 14: Permanent and Long Term Departures of Australia-Born to Selected Countries Aged Between 40 and 49 Years

Source: DIMA Movements Data Base

Destination	Number	Percent
Singapore	2,012	15.2
Hong Kong	1,522	12.9
Malaysia	1,371	18.0
Japan	871	7.8
Other Asia	6,660	18.0
UK	5,351	4.4
USA	6,058	11.9

An interesting trend is evident in the movement to Asia. It is apparent that the age profile of the Australia-born moving on a permanent or long term basis to Asia is older that the

movement to other areas. In the movement of the Australia-born on a long term or permanent basis to the UK only 4.7 percent are aged between 40 and 49. However, Table 14 shows that the movement to most Asian destinations includes very high proportions aged between 40 and 49 years, especially when compared with the movement to the UK. The only exception is Japan where there is also a significant Working Holiday Movement.

THE CASE OF INFORMATION TECHNOLOGY WORKERS

Although there have been significant recent changes in the global IT labour market, Australia still experiences labour shortages in this area and this is seen as a constraint to the growth of competitiveness of industry in Australia and to the emerging information economy. Occupations involved in IT and T in Australia include the following (NOIE, 1998, 3):

- Computing professionals
- Information technology managers
- Engineering technologists
- Technical sales representatives (information/communication)
- Electrical engineering associate professionals
- Computing support technicians
- Electronic/office equipment tradespersons
- Communications tradespersons

The current shortage is estimated to be around 30,000 jobs. Birrell *et al.* (2000) have shown that despite rapid increases in both commencements and completions in the IT training area they do not go close to meeting current needs.

Moreover, Birrell *et al*. (2000) argue that these figures are somewhat misleading in that a substantial proportion of the IT students in Australian universities are in fact overseas students. In mid 1999 the government reversed its former policy that overseas students were required to leave the country on graduation for at least two years before applying for residence. However, after mid-1999 overseas full fee paying students who

graduate in IT and some other professional fields in demand in Australia have been encouraged to apply for permanent residence. Birrell *et al*. (2000, 81) report that in 1999-2000:

- There were 1,153 IT professionals who applied for settlement in Australia under the two points assessed categories (Independent and Skilled Australian Linked categories).
- Of these, 708 received bonus points allocated for having Australian qualifications – 188 from India, 92 from Hong Kong, 83 from Malaysia and most of the rest from East and Southeast Asian countries – slightly less than half being recent graduates.

Hence it appears that only a small proportion of the overseas IT students are taking advantage of the new regulations. Birrell *et al*. (2000) also argue that the official IT enrolments in Tables 15 and 16 may exaggerate the degree of growth since a 'rebadging' of courses occurred in Australian universities in the 1990s. In sum, however, it is clear that the university system is not training sufficient graduates to meet the increasing demand for IT professionals.

Table 15: Number of Course Completions[a] in IT[b] by Local and Full-Fee Paying Overseas Students, 1989-93 and 1993-98

Source: Birrell *et al*., 2000, 76

	1989	1993	1998	Growth 1989-93	Share of Growth (%)	Growth 1993-98	Share of Growth (%)
Overseas	208	978	2,578	770	33.3	1,600	64.1
Local	2,588	4,110	5,007	1,522	66.4	897	35.9
Total	2,796	5,088	7,585	2,292	100.0	2,497	100.0

[a] Includes undergraduate and postgraduate completions

[b] Includes students enrolled in courses reported by universities as field of study 0902 Computer Science, Information Systems and field of study 040502 Business Data Processing.

Accordingly considerable emphasis is being placed on international migration to meet the shortfall in IT professionals. In 1999-2000, 54.3 percent of the 92,272 settler

arrivals in Australia were in the workforce prior to migration. The top three individual occupations were general managers (1,943 persons), computer professionals (1,778) and accountants (1,694). The computer professionals attracted to Australia as settlers almost all came under the two points tested skill categories. The numbers of computing professionals coming to Australia under the Temporary Residence Business visas in 1999-2000 was significantly greater than those coming permanently (4,411 persons). However, while 71.3 percent of all permanent and long term temporary computer professionals arriving in Australia were in the long term temporary category this was the case for 43 percent of all IT and T people (DIMA, 2000a, 49).

Table 16: Commencements in IT in Science, IT and Business Courses, 1990-99
Source: Birrell *et al*., 2000, 77

	1990	1994	1995	1996	1997	1998	1999	Growth 1990-99	
								No.	%
Overseas	1,084	2,483	2,317	2,549	3,435	4,080	5,932	4,848	447.2
Local	9,060	8,696	9,502	10,643	11,039	11,274	13,531	4,471	49.3
Total	10,144	11,179	11,819	13,192	14,474	15,354	19,463	9,319	91.9

Assessing the patterns of migration of people with IT and T skills to and from Australia is a little difficult with the data available since defining the category of workers is somewhat problematical. The data the NOIE (1998) uses to define IT and T occupations among persons leaving and arriving in Australia are different to those used by DIMA to define the sector. Accordingly the data provided in Table 17 involve two definitions of IT and T workers. The NOIE definition is a wider definition than that adopted in recent years within DIMA. Nevertheless, there are some important trends which can be discerned in the patterns of long term and permanent movement of IT and T workers to and from Australia:

- There has been a substantial increase in the inflow of people with IT and T skills into Australia over the last five years.

Table 17: Australia: Arrival and Departure of Permanent and Long Term Migrants with IT and T Occupations, 1995-2000

Source: DIMA unpublished data

	Arrivals		Departures		Net Gain	
Year	Wider Definition[1]	Narrow Definition[2]	Wider Definition	Narrow Definition	Wider Definition	Narrow Definition
1995-96	5,946		3,318		2,628	
1996-97	6,062		3,912		2,150	
1997-98	6,189	4,708	4,477	3,743	1,712	965
1998-99		5,507		3,934		1,573
1999-2000		7,007		4,227		2,780

1 ASCO 1 definition includes data processing managers, electrical and electronics engineers, computing professionals, electronic engineering technicians, communications equipment trades, office equipment computer services and sales representatives.

2 ASCO 2 definition is more restrictive and includes information technology managers, computing professionals and computing supply technicians.

- It will also be noted that the outflow has also been increasing. This reflects a high degree of *turnover* of IT and T workforce internationally.
- What will also be noted is that there has been a substantial increase in *net* migration gain in recent years.

Migration agents have been active in recruiting IT personnel for Australia from countries like India and the impact of this is evident in the increased inflow of IT professionals.

More insights can be gained from examining the involvement of IT professionals in different types of movement to and from Australia. Table 18 shows the breakdown between permanent and long term movement in IT professions between 1997-98 and 1999-2000. With respect to permanent movement Australia is experiencing a gain of IT professionals although there is also a significant permanent outmovement. Nevertheless, it is evident that there was a significant increase in net migration gain of IT professionals in the last year. It will be noted that while in 1997-98 all of the net gain of IT professionals was made up of permanent arrivals by 1999-2000 they made up only half of the net gain. Hence long term movements of IT professionals have increased in significance in the last

four years and been an important factor in the growth of net gains of IT professionals from migration.

Table 18: Australia: Permanent and Long Term Arrivals and Departures of IT Personnel, 1997/98 to 1999-2000

Source: DIMA unpublished data

				Percent Change	
	1997-98	1998-99	1999-2000	1997-98 to 1998-99	1998-99 to 1999-2000
Permanent arrivals	1,325	1,563	2,078	+18.0	+32.9
Permanent departures	593	765	700	+29.0	-8.5
Net permanent	732	798	1,378	+9.0	+72.7
L/T resident arrivals	1,823	1,361	1,896	-25.3	+39.3
L/T resident departures	2,277	2,372	2,302	+4.2	-3.0
Net L/T residents	-454	-1,011	-406	-122.7	+59.8
L/T visitor arrivals	3,148	2,583	3,033	-17.9	+17.4
L/T visitor departures	2,870	797	1,225	-72.2	+53.7
Net L/T visitors	278	1,783	1,808	+541.4	+1.4
Total arrivals	4,708	5,507	7,007	+17.0	+27.2
Total departures	3,743	3,934	4,227	+5.1	+7.4
Total net	556	1,573	2,780	+182.9	+76.7

Note: L/T = Long term

The changes in patterns of long term migration of IT professionals in Table 18 are in line with an overall increase in the significance of non-permanent movement of migrant workers into Australia as discussed earlier. It is interesting, however, to look separately at the long term migration of Australian residents and visitors. It will be noted that there is, in fact, a net loss of Australian residents who are IT professionals through long term movement. On the other hand, there is a significant in-movement of Australian residents who are IT professionals suggesting that many of the Australians with IT skills going overseas to work return to the country. It is apparent that the net gain of overseas visitors with IT skills who intend to stay in Australia for a year or more but eventually will leave the country has increased in recent years.

Overall there has been an upswing in IT professionals moving to Australia on a long term or permanent basis. There also has been a significant outmovement of the group reflecting a lot of turnover in the group which involves both Australian residents and foreigners. It would seem, however, that the influx of IT professionals is still not sufficient to make up the shortfall between the demand and the output of training institutions. It is clear that there is a pressing need in Australia to increase the output of IT professionals from educational institutions.

INITIAL FINDINGS FROM A SURVEY OF AUSTRALIANS OVERSEAS

In order to investigate the emigration of Australian citizens, it was decided to undertake a questionnaire survey of Australians resident overseas. The initial difficulty in undertaking such a study is developing an adequate sampling frame. There is no comprehensive listing of Australians living overseas available. A number of possibilities were examined and a dual strategy was adopted. In particular, the survey was aimed at highly skilled emigrants and this was borne in mind in adopting the research strategy.

The first part of the research strategy was to approach the alumni organisations of a sample of Australian universities to represent states and regional areas. The participating universities are presented in Table 19. Arrangements were made with the participating universities to distribute the questionnaires[2] with a covering letter to a sample of their members who could be identified as both Australia-born/citizens and living overseas. Where such an identification was not possible, questionnaires were sent to a sample of their overseas resident membership. Recipients of these questionnaires have been given the option of returning completed questionnaires either by reply paid envelope, fax or going online and completing the questionnaire electronically. The process of sending out the questionnaires began in February 2002 and is ongoing. The final cut-off for receiving questionnaires will be June 2002.

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[2] 5,000 copies of the questionnaire were printed in late 2002. In addition, an online version of the questionnaire was developed, and this can be viewed at http://www.gisca.adelaide.edu.au/survey/

Table 19: Australian Universities Alumni Associations Distributing the Emigration Questionnaire

	Number of Questionnaires Despatched
Charles Sturt	250
Edith Cowan	310
Monash	500
QUT	350
Southern Cross	20
University of Adelaide	320
Tasmania	200
University of South Australia	125
UNSW	350
Flinders University	350
New England	791
UWA	401
Sydney	500

A second part of the strategy has involved a snowball technique whereby a number of relevant groups have agreed to publicise the survey on their websites/newsletters. These have included a brief statement of the project, and an invitation for Australia-born emigrants, or Australian citizens currently resident overseas, to complete the questionnaire. A link has been provided for interested persons to access the online questionnaire, complete it and submit it. This form of assistance has been provided by the following Alumni Associations:

- Melbourne University
- Edith Cowan
- Charles Sturt
- QUT

We have also negotiated assistance in contacting the target group with Southern Cross Group and Australians Abroad. Both these expatriate organisations have agreed to

advise their membership about the project, through their electronic newsletters, and have urged them to complete the online questionnaire through the link provided.

All questionnaires have not yet been distributed and at the time of writing substantial numbers are being received daily. The number of postal questionnaires received was 560 and the number of web based responses was over 800. Hence response rates well in excess of 40 percent are anticipated and more than 2,000 individual responses. Below are some of the initial data derived from an analysis of 379 of the postal questionnaires received. Of these, 58.5 percent were male, 20.6 percent were aged 20-29, 36.5 percent were aged between 30-39 and 19.3 percent between 40 and 49. Three quarters were employed full-time and 12.7 percent employed part-time with less than 1 percent being unemployed at the time of interview. Some 90 percent were professionals reflecting the selective nature of the sample frame. All hold a university qualification. The regions of current residence represented are shown in Table 20 with the UK and USA-Canada being dominant and Asian destinations being underrepresented compared with the MDB data examined earlier in this paper. As would be expected, the sample represent a high income group and Table 21 indicates that half earned more than A$100,000 in the last year.

Table 20: Australians Overseas Preliminary Sample: Country of Residence Overseas

Source: Survey, 2002

	Number	Percent
UK-Ireland	156	41.2
USA-Canada	106	28.0
Europe	34	9.0
NZ	24	6.3
Africa	3	.8
Asia	43	11.3
Middle East	6	1.6
PNG-Pacific Islands	6	1.6
Total	378	100.0

Table 21: Australians Overseas Preliminary Sample: Current Annual Income (Estimated in A$)

Source: Survey, 2002

	Number	Percent
Less than $25,000	47	12.7
$25,000-49,999	48	13.0
$50,000-74,999	50	13.5
$75,000-99,999	56	15.1
$100,000-124,999	30	8.1
$125,000-149,999	16	4.3
$150,000-174,999	19	5.1
$175,000-199,999	21	5.7
$200,000 or more	83	22.4
Total	370	100.0

It is interesting that 78.5 percent of the sample indicated that they 'still call Australia home' and only 17.7 percent indicated that they definitely did not regard it as home. Moreover, the fact that the bulk of the movement is intended to be circular is evident with 50.8 percent of the sample reporting that they intended to return to Australia, while 30.6 percent were undecided as to whether they would return to Australia. Of those planning to return home, 59.8 percent intended to stay away longer than two more years.

The reasons given by respondents for moving overseas are presented in Table 22 and it is clear that economic motivations are dominant with higher income, employment transfer, gaining employment experience, professional development, promotion etc. being the main reasons given for moving. It is interesting in this context to contrast the reasons given by the respondents who indicated that they have definite plans to return home to Australia. Table 23 shows that these work-related factors do not loom large among the reasons given for returning. It is factors like lifestyle and family factors which are dominant in the return. The group who indicated they have no intentions of returning back to Australia or were undecided were asked why they did not plan to return. Table 24 shows that again it is the economic and employment factors which are encouraging people

to stay overseas. It is clear, too, where the Australian has a partner who is not Australian that they are less likely to wish to return to Australia.

Table 22: Australians Overseas Preliminary Sample: Reasons Given by Respondents for Leaving Australia to Live Overseas

Source: Survey, 2002

Reasons	Percent of Response
Better employment opportunities	39.1
Professional development	36.4
Higher income	28.2
Promotion/career advancement	25.3
Marriage/partnership	21.1
Overseas job transfer	19.3
Lifestyle	17.4
Education/study	16.9
Partner's employment	14.0
Close family/friends	7.1
To establish, relocate or expand business	2.9
Separation/divorce	1.8

Table 23: Australians Overseas Preliminary Sample: Main Reasons for Planning to Return to Australia

Source: Survey, 2002

Reasons for Returning	Percent of Response
Lifestyle	88.4
Family	76.3
Work	20.0
Education	12.1

Some 79.9 percent of respondents thought their presence overseas had benefits for Australia which is interesting from the perspective of policy. There is certainly a perception that Australians based overseas have the potential to benefit Australia.

Table 24: Australians Overseas Preliminary Sample: Reasons for Not Returning to Australia to Live

Source: Survey, 2002

Reasons for Not Returning Ranked by Popularity Response	Percent of Response
Employment opportunities	44.3
Established in current location	41.1
Career and promotion opportunities	38.4
Higher income	35.7
Marriage/partnership keeps me here	35.1
Lifestyle more attractive here	29.7
Partner's employment	27.0
Family/friends here	26.5
Children grown up here	22.2
No equivalent jobs in Australia	18.9
More favourable personal income/tax regime	17.3
Business opportunities	14.1
Cost of relocating back to Australia	13.0
More favourable business tax regime	6.5
Better employer-supported or work-based training	1.6
Custody of children	1.6

Note: Respondents stating 'no' or 'undecided' about returning to Australia to live.

An editorial in *The Australian* (11 August, 2001), for example, stated that:

> 'Expatriates have helped boost the value of our business and professional services exports to $1.5 billion in 1999. They are our foot in the door to the world's most dynamic markets, a conduit for ideas and trends. Without them, Australia would be more insular and inward-looking, left behind by forces driving globalisation and denied its benefits. Expats are also our ambassadors-at-large. Their achievements – whether in business, academia, the arts or sport – strengthen our reputation as a diverse nation with an advanced economy. They are, in fact, an under-used national resource'.

Table 25 indicates that the respondents agreed that this was the case.

Table 25: Australians Overseas Preliminary Sample: Reasons Given by Respondents Who Thought Their Presence Overseas Had Benefits for Australia

Source: Survey, 2002

Benefits to Australia	Percent of Response
Learning skills transferable back to Australia	63.6
Creating goodwill towards Australia	63.0
Existing contacts useful for other Australians	56.6
Linking two countries together by establishing roots/family in both	50.2
Creating business/trading links with Australian companies	25.3

BRAIN DRAIN, BRAIN GAIN OR BRAIN CIRCULATION?

The present paper is a progress report on an ongoing study but in this section we raise some preliminary comments on the possibility of Australia developing a policy relating to emigration. It is apparent that Australia has experienced, and continues to experience, a net gain of highly skilled workers through international migration. *Indeed, the introduction of a liberalised temporary worker entry policy has meant that the intake of skilled workers into Australia has greatly increased*. The number of person years of skilled workers added to the Australian labour market by non-permanent migration is substantially greater than that added through traditional settlement migration. Yet prior to the mid 1990s this form of international migration provided only a miniscule amount of skilled labour to the national labour market. The introduction of new categories of temporary labour movement has thus added substantially to the brain gain experienced by the country. In net terms there can be no doubt that Australia continues to experience a substantial 'brain gain'.

On the other hand, there can equally be no doubt that the movement of skilled workers out of the nation has increased over the same period. One element of this has been the inevitable outmovement of the skilled workers entering Australia under temporary visas. In passing it should be mentioned, however, that significant numbers of skilled workers who are entering Australia under temporary visas (students, temporary business migrants etc.) are seeking to become permanent settlers. In 1999-2000, for

example, 13.1 percent of persons accepted in Australia for permanent settlement in the skill category were 'onshore applicants' who had entered Australia on a temporary visa. Moreover, changes to immigrant regulations in recent years have favoured this. For example, in 1999 extra points were given to applicants for immigration who had an Australian qualification, thus favouring students staying on in Australia after completing study in the country. In 2001 this was made even easier for Information Technology graduates who did not need a sponsor or to have their qualifications tested for acceptance in the Skilled Migration Program. In Australia there has, in the past, been a pattern of most students completing studies in Australia returning to their home country, although some may subsequently seek to settle in Australia. This contrasts with the United States where the majority of new graduates stay on and seek to reside in the country. For example, of 13,878 foreign Science and Engineering PhD graduates in United States universities in 1990-91, some 47 percent were working in the US in 1995. The proportion remaining to work varied between 88 percent for Chinese students, 79 percent for Indian students and 59 percent for English students down to 11 percent for South Koreans and 13 percent for Japanese (OECD, 2001, 21). The move of Australia in this direction is evident in the fact that in 2000-01 there was a 30.7 percent increase in the numbers of persons granted permanent residence in Australia after applying onshore (22,660 persons). These made up 28.1 percent of the grants of residence under the inmigration program (DIMIA, 2002a, 24). The Minister has estimated that around one in ten persons entering Australia as skilled temporary entrants changed to permanent residence under the migration program (DIMIA, 2002b). Hence the new paradigm of Australian immigration which involves a substantial inmovement of workers on a temporary basis has two components:

(a) A group of circulating high skill temporary residents.

(b) A group who enter Australia on a temporary visa as part of a strategy to settle permanently in Australia.

Australia is one of the five[3] major countries of destination of overseas students. To link study in Australia as a possible preamble to immigration and a possible means of entering Australia as an immigrant is a relatively new phenomenon. It raises several issues, one of which relates to the countries of origin of the students. The traditional brain drain argument is that the loss of highly skilled people such as those trained in countries like Australia deprives countries of the much needed human resources to facilitate development. Moreover, the countries have often made a substantial investment in the education of those students which means that less developed nations are subsidising the prosperity of more developed nations. Over a long period there has been a strong body of opinion in Australia that overseas students should return to their home countries to use their training to progress the development processes at home. A novel suggestion has come in the 2001 *Human Development Report* (United Nations, 2002) that the richest countries and companies should be charged two months' salary as an 'exit fee' for each worker from developing countries (*Migrant News,* January 2002).

While these arguments no doubt in many cases still apply, research has indicated that the simplistic brain drain arguments do not fit all cases. Indeed, in some cases it has been shown that highly skilled graduates can contribute more to the development of their home country by working in a more developed country than by staying home. This is partly due to the fact that skilled labour markets in the home country may be underdeveloped so that full use may not be made of those skills. Moreover, in some cases the Indian information technology workers in Silicon Valley are an example. It has been shown that skilled people in the diaspora can add significantly to the home economy by:

- Sending remittances to the home country which can improve the balance of payments situation. Indeed, in several Asian nations such remittances are larger earners of foreign currency than any single good trade.
- Encouraging investment of their MDC based companies in their home area.

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[3] In 1998 Australia accounted for 8 percent of all overseas students in OECD nations (OECD 2001b, 28).

- Eventually returning to the home nation, not only with enhanced skills and wealth to invest but also the business linkages to facilitate the development of industry at home.

Hence the argument about students staying on in the MDCs where they study is not a simple one. Nevertheless, it is an area of much needed research in the Australian context.

It is interesting that currently there are 61,224 persons on bridging visas in Australia (DIMA, 2000). Not all of these people are former temporary migrants awaiting determination as to whether they can gain permanent residence. For example, people who overstay their visas can often be put on a bridging visa while they prepare to return to the home country. Nevertheless, there has been an upturn in the numbers of temporary visa holders applying for entry to Australia under the 'skill migration' category.

The increase in the number of Australians going overseas on a long term or permanent basis has certainly raised the level of public discussion about an 'Australian brain drain'. For example, the federal government's 29 January 2001 statement *Backing Australia's Ability: An Innovation Action Plan for the Future* had a number of initiatives to attract back and retain leading Australian researchers. There has been expressions of concern from some professional groups about the loss of young skilled people overseas. The research undertaken so far in the project reported on in this volume suggests that the upturn in 'permanent' and 'long term' emigration of skilled Australians comprises the following groups:

- Recent Australian graduates who are moving overseas to work on an extended holiday basis – often through the Working Holiday Maker (WHM) Program. This is especially the case with respect to the United Kingdom with which Australia has a reciprocal WHM Program.
- Other recent graduates are seeking to work overseas to gain experience and progress in their careers in international labour markets.
- Some slightly older skilled workers are also going overseas for the same reasons and others have been transferred by their multi-national company employers.

These latter two groups especially include many skilled young Australians going to the United States.

- Another group, slightly older again, are moving out, especially to Asian destinations where there are well paid, high skill job opportunities due to the inability of these nations' education systems to keep up with the rapidly increasing demands of the rapidly expanding new economy. While this demand was reduced somewhat by the onset of the Asian Economic Crisis in some countries, especially Indonesia, demand has continued and increased in places like Singapore.[4]

The upswing in outmovement of Australia-born young people with skills is a function of:

- The longstanding tradition of young Australians travelling overseas on extended working holidays. Such a practice has become more possible than previously through such programs as the WHM Program but also through processes of globalisation which have put overseas travel within the reach of more Australians.
- The new element, however, is the internationalisation of labour markets which means that young skilled Australians are looking for jobs in labour markets which extend beyond Australia's boundaries. In addition, more who get jobs in Australia do so with employers who are themselves multi-nationals or have links with companies in other countries that facilitate the transfer of Australian staff.

There are two ways of looking at this development. One is to say that this represents a significant loss to Australia and a lack of return on community investment in the education of young people. Such reactions would argue for policies which attempt to keep young people in Australia. An alternative approach is one which *accepts* that there will be a significant outmovement of young Australians for both of the reasons mentioned above. However, this approach should not accept that all of these skilled Australia-born emigrants are lost to Australia. A major priority would be to ensure that a substantial

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[4] Singapore is now one of the few nations in the world which has a smaller proportion of its population made up of overseas-born persons than Australia. Yap (2001) shows that at the 2000 census in Singapore, 26 percent of the resident population were foreign-born.

proportion of these emigrants are in fact *circulators* rather than emigrants. If the majority return to Australia after spending a period working overseas, their value to Australia will be even greater than if they stayed in Australia. This is because:

- They will return more experienced than when they left and in a globalising world the *international* experience will be of value to their Australian employers seeking to compete in international markets.
- They will have substantial overseas networks and contacts which will assist their Australian employers in penetrating overseas markets.
- They may bring back with them capital as investment from their larger overseas employers. This has certainly been the case in the Indian information technology industry.

Moreover, while they are still overseas they can still be contributing to development within Australia:

- By remitting sums back to Australia.
- By serving as bridgeheads of Australian businesses in the destination nations. An example here is how Australian mining engineers in Asia have been instrumental in making Australian mining and mining supplies companies paramount in the region.

The example of Ireland over the last two decades is instructive here. In the 1980s Ireland's economy was one of the most depressed in Europe, with one in three graduates leaving the country upon graduation (Barrett, 2001). However, the economic upturn in the 1990s has seen a major and unprecedented immigration to the country of whom more than half are the Irish people who left in the 1980s (Barrett, 2001). Australia's outmovement of new graduates is much smaller than was Ireland's in the 1980s. Indeed, some 5.6 percent of 1998 graduates from Australian universities were overseas a year later (Hugo, Rudd and Harris, 2001).

AN AUSTRALIAN POLICY ON EMIGRATION?

For the entire post-World War II period there have been clearly articulated and substantial national policies and programs relating to immigration and settlement in Australia. These have been the subject of considerable public debate and have undergone substantial change over that period. This has been in line with Australia being one of the world's major immigration countries over that period. However, Australia has also been one of the world's most significant emigration countries consistently over this period (Hugo, 1994) but there has been no development of a clear national policy on emigration and little public debate about it. Certainly the issue of 'settler loss' has attracted considerable attention from time to time but it seems that levels in Australia are similar to or lower than those in comparable countries (Hugo, 1994). The reasons for settler loss are that the bulk of overseas-born emigrants do not leave for economic reasons. Among this group family related reasons, homesickness and retirement are important reasons for leaving Australia. An exception has been the New Zealanders whose migration to and from Australia 'varies according to the differences in relative real incomes and employment opportunities between the two countries (Struik and Ward, 1992; Ward and Young 2000). The policy implications of the patterns of settler loss are to continually improve post-arrival services which assist economic and social adjustment to Australia. Hence English language training is a crucial element since it greatly influences the degree of success in the labour market. However, it is clear there will be a return flow of former settlers regardless of the economic climate and the effects made to assist adjustment to Australia. Moreover, given the recent increasingly economic focus of immigration to Australia, we can expect a higher level of settler loss in the future. This is due to a greater proportion of immigrants being influenced, like the New Zealanders, by trends in the economy. Also, however, they will be influenced by the operation of international labour markets such that more settlers (like their skilled Australia-born counterparts) will operate in international labour markets and as a result move between countries when they change jobs.

One group among the settler loss which may be of concern is the substantial numbers of returnees to some Asian nations which in recent times have sent large numbers of immigrant settlers to Australia. These include especially Hong Kong with 1,600 emigrants in 1999-2000 – an emigration rate of 31 per 1,000[5], China with 1,800 (11 per 1,000), Indonesia with 400 (7 per 1,000). This may, in fact, represent the backflow of some business migrants from these countries. Business migrants are those who gained entry to Australia on the basis of investing a minimum level of funds in a business in Australia.[6] While DIMA surveys indicate that the Business Migration Program has been largely successful (DIMA, 1999), field studies (e.g. Nonini, 2001) tend to indicate that some business people from Asia (especially Hong Kong, Taiwan etc.) have found it difficult to make the transfer of their business activity from the Asian to the Australian context. This is partly associated with a lack of local knowledge and networks but it also is related to the very different business and regulatory environment to that which they are used to. The numbers of these returning business migrants are still relatively small but they do suggest that there is a need to study in depth this backflow since it may have some implications for the future retention of Asian business migrants in Australia. It may mean that more intensive programs of providing information and advice to business migrants to overcome problems of adjusting to the Australian business environment are needed.

An earlier study (Hugo, 1994) reported in some detail on the phenomenon of 'astronauting' among some Asian settlers, especially those to Malaysia, Hong Kong and Taiwan. This is the type of movement which involves the settler keeping their business activities in the home country, settling their family in Australia and then themselves regularly circulating back to their home country to maintain business. While there is some research into the phenomenon (Pe-Pua *et al.*, 1996) in Australia, knowledge of it is still incomplete. In the earlier study it was argued that astronauting could be viewed positively

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[5] Calculated as the number of permanent departures during 1999-2000 per 1,000 estimated population in 1999 (ABS 2001, 23).

[6] Business Skills (Migrant) Class settlement in Australia began in 1992 and involves a structured selection test which measures the business and other attributes of applicants. Attributes assessed include turnover, labour cost and total business assets in the origin country; financial commitment to business, age, English language ability and net assets available for transfer.

in the sense that it is unrealistic to expect that entrepreneurs can immediately transfer all of their business activity from one country to another. Inevitably it will be an extended transition in many cases. It adds to the development of business linkages between Asia's growing economies and Australia

On the other hand, to what extent astronauting is delaying business migrants being committed to investing in Australian businesses and to what extent it could be a prelude to return migration needs to be addressed in research.

Much of the attention here has been focused on the increased outmovement of Australia-born persons on a long term or permanent basis. It needs to be reiterated that *Australia is not experiencing a net brain drain*. As previous studies (e.g. Hugo, 1994; Smith, 1996); Lewis and Stromback, 1996) have shown immigrants to Australia in all skill groups outnumber those leaving the country. Indeed, the present study has shown that net gains of skilled persons have increased in recent years. Certainly one has to be careful of differences between the incoming and outgoing flows in levels and types of expertise, training etc. Undoubtedly at present there is occurring a net outmigration of Australia-born in particular skill areas. It was shown here, for example, that while Australia is reaching a net gain of people with IT skills, a net loss of Australia-born with these skills was reached. Smith (1996) has shown that this pattern has long existed for engineers. There has been considerable research documenting the difficulties of skilled immigrants from non-English-speaking backgrounds in adjusting to the Australian context. Hawthorne (1994), for example, identifies the following barriers to engineers from such backgrounds gaining jobs in their areas of expertise:

- Lack of experience in the Australian context which is often required by employers.
- Inadequate English language ability.
- Lack of knowledge of networks and appropriate strategies for jobseeking.
- Different technological requirements in the Australian context.
- Cross-cultural issues.

Nevertheless, despite these issues, Australia cannot be portrayed as experiencing a brain drain. Indeed, it is experiencing an overall net brain gain and a substantial 'brain circulation' in line with many other countries.

Does this mean that there should be no policy concern whatsoever about the emigration of the Australia-born? It is the argument here that this is not the case, although there is a need of more detailed investigation into the behaviour and intentions of the Australia-born emigrants. In a world where it is increasingly the case where national prosperity is strongly shaped by innovation and the timely and appropriate application for innovation, human resources are crucially important to the national economy. There is an increasing amount of international competition for the best qualified people in the new economy. All OECD nations and many countries outside it have specific policies to attract international talent in areas such as information technology, management, engineering, research and so on. Hence Australia is competing with an increasingly large number of countries for a limited pool of talent. Even countries which have long had strong anti-immigration policies like several European nations and Japan now are striving to attract such migrants.

In such a competitive context Australia simply cannot afford to ignore its homegrown talent in the international pool of skilled labour. This does not mean restricting them from taking up jobs in countries other than Australia. By all means, we need to provide high quality opportunities within Australia for skilled new graduates who wish to stay in the country. On the other hand, there is much to be gained from young Australian, recent graduates especially, gaining experience working in other nations provided that the *majority of them return to Australia eventually*. In the face of internationalisation of skilled labour markets it is futile and doesn't make economic sense for Australia to fight against its young people who wish to participate in those markets doing so. Indeed, it is becoming part of the *rites de passage* of skilled young people to spend a period working overseas. The key is to have policies in place which:

- Maximise the advantage which Australia can take of housing some of its skilled workers in highly paid and often pivotal positions in companies in overseas nations.
- Ensuring that the way is open for them to return to Australia at a later stage.

Regarding the first set of policies, a number of points can be made. India's investment boom of the 1990s was partly fuelled by remittances sent home by the Indian diaspora (*Far Eastern Economic Review,* 26 January 1995, 51). However, this massive foreign capital inflow did not just happen. Indians overseas were offered favourable tax advantages, ready access to foreign currency etc. (Athukorala, n.d.) which persuaded millions of highly paid Indians overseas to save their money in Indian banks. Given the high earning capacity of the highly skilled group, there may be ways in which the Australian government can encourage such a pattern among Australian skilled workers overseas. Secondly, several nations have made strategic use of their diaspora communities as bridgeheads for their homegrown companies gaining access to markets in the destination countries. The Korean use of Korean migrants in the USA, especially in California, to introduce Korean made electronic, automotive and whitegood products is well known. However, in Australia we have a good example of how this can operate with the Australian mining industry. The Australian mining industry and Australian engineers are highly active in the Southeast Asian region. This is built upon successful mining activity in Australia. Australians are strategically placed in some of the largest mining undertakings in the region. This includes not only Australian companies but also Australian engineers working for foreign companies. They are strongly disposed toward using other Australian companies for services since they often are strongly networked to them. The role of policy here is to identify strategic areas where such bridgeheading is possible and to develop ways in which the networking between Australians in key positions overseas and relevant Australian connections can be enhanced. Perhaps these types of development should not be left for chance and ways considered to facilitate them through policy.

Turning to consideration of return migration, it is useful to bear in mind that much of Ireland's economic boom of the 1990s has been built by Irish returnees who emigrated in the 1980s. Returnees bring with them the greater breadth and depth of experience that working overseas gives them. Moreover, they return with extensive international networks which can assist in their Australian employers developing contacts with overseas markets. Indeed, in many cases they will be more valuable as Australian employees as returnees than would have been the case if they had remained for their entire careers in Australia.

The question then arises as to how such skilled Australians can be lured back. Of course, the availability of appropriate, well renumerated jobs are a crucial element so the economic situation is going to play a role. This can, of course, be assisted by governments and a number of Asian nations have had successful programs to lure back highly skilled nationals with specific skills. In recent times Taiwan has been most successful in this (Luo and Wang, 2001) developing a special Technology Park to accommodate handpicked returnees to kickstart the development of new industries, especially in information technology. Such policies would seem to have a role to play in particular strategic areas of needed skilled human resources.

In attracting back skilled people who originally left Australia as young recent graduates or people with only limited years of work experience, there are a number of areas to bear in mind. There is little point in attempting to lure back young people in the earliest stages of their careers who are at a stage in the lifecycle where they wish to travel and experience life in another country. However, once they begin to 'settle down' and form families there are some major attractions which Australia offers to them. These include the presence of family and friends – the grandparents factor is an important attraction. In addition there is often a desire for them to ensure that their children are brought up as Australians in Australia. These ideas need detailed testing empirically with controlled surveys of Australians overseas before policies and programs are developed but the idea of targeting young skilled people with around 10 years overseas work experience

as candidates for return would appear to be a feasible strategy to attract back people with particular needed skills.

A crucial question here relates to how such potential returnees can be identified. Increasingly, it could be argued that Australia investigate maintaining registers of skilled workers overseas to facilitate programs targeted at bringing back people with particular skills and expertise. Indeed, many Asian countries have kept such registers of their graduates working overseas and worked through their embassies to maintain contact with them. This involves newsletters and organising social occasions. With the current levels of information technology available, however, a number of possibilities suggest themselves. One with a great deal of potential is the alumni lists maintained by Australia's tertiary institutions. While in the past many of these have been poorly organised and maintained, this has changed with the realisation in universities that alumni can be the source of future students and funds. Accordingly, most universities now maintain well constructed electronic data bases on their alumni. These could be used to set up networks, perhaps even using the internet. The development of attractive and informative websites, regular networking among Australians in particular overseas cities etc. are all possibilities which can be investigated. It is clear other nations are contemplating doing this. As indicated elsewhere, the United States plans a special census of its overseas citizens in 2003 and by 2001 it intends for its regular census to include not only all of the residents in the US but also all of its citizens abroad. This reflects an attitude of wishing the census to capture the total national human resources and Australia should be contemplating a similar system. Other systems include the registration of Australians overseas with their nearest consulate or embassy and the development of a central system for such registers using state of the art information technology. It needs to be made clear that being on such lists should be voluntary and it needs to be made worthwhile for the Australians overseas to be on the list. The regular dissemination of a magazine, invitations to social events overseas, regular circulars about job and housing opportunities etc. could be included. The point is that these skilled labour markets are becoming increasingly competitive and Australia needs to have a range of policies to

ensure constraints are not placed on development by lack of skilled workers and Australia places itself as strategically as it possibly can to foster the innovation which derives the new economy. International migration must never be seen as a substitute for having the highest quality eduction and training systems which are flexible enough to change to meet the labour demands of a rapidly changing economy but also to foster the innovation and research excellence which are so critical to maintaining national prosperity.

In an earlier report (Hugo, 1994) put forward the argument that migration from Australia to Asian nations possibly had a number of beneficial aspects, especially if Australia was to continue to seek to embed its economy in Asia. In 1957, 51 percent of Australia's exports were to Europe and 21 percent to Asia. By 1995 the proportion had shifted to 12 and 65 percent respectively and in 1999 to 12 and 57 percent (McGurn, 1996, 63). Over the same period the proportion of Australia's permanent immigrants coming from Asia increased from 2.6 percent in 1959-60 to 33.7 percent in 1999-2000, while those from Europe fell from 91.7 percent to 20.4 percent. However, Australia cannot expect to be a full participant in the Asian economy if it only sees Asia as a source of skilled migrants and a massive export market. Movement of people, both nationals of Asian countries and Australians, in both directions is also required. Lewis and Stromback (1996, 53) also argue that Australia should encourage skilled migration to Asia. They argue that there is the need for an emigration policy which encourages more Australians to engage with Asia at a personal level.

CONCLUSION

In the contemporary global situation national prosperity is highly dependent on innovation and the quality of a country's human resources. Accordingly, there is now unprecedented interest among nations in attracting highly skilled workers as permanent or temporary settlers. All of the OECD nations and many outside the organisation now have active immigration policies to attract highly skilled workers. However, in the rush to attract immigrants the issue of attraction of skilled nationals must not be totally overlooked. It is glib to simply state that Australia has a net brain gain so that one can

ignore the outflow of skilled young Australians as a simple function of globalisaiton. Why can't the nation achieve the double bonus of attracting foreign skilled people while also retaining the best of our own talent? In considering such a policy we should not attempt to block the flow of young talent overseas. Indeed, the stock of skilled Australians overseas could be a major national asset and it may be possible to develop policies to develop and maximise this asset. Yet it is clear from our work that many Australians overseas are keen to eventually return to their home country and there may also be policies which can facilitate this process. The possibility of Australia developing an emigration policy which is integrated with immigration policy and wider economic, social and human resources policies needs to be given urgent consideration.

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QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(50) Output 1.1: Non-Humanitarian Entry and Stay

Senator Sherry (L&C 317) asked for a list of visa categories to which the superannuation legislation applies, the number of persons in each visa category, the countries from which they have come, and presumably are returning to, and the average length of stay in Australia for each of those visa categories.

Answer:

Table 1 shows the visa subclasses covered by changes to the Superannuation Industry (Supervision) Regulations 1994 and the Retirement Savings Accounts Regulations 1997. The table shows the number of visas granted in the last six years against the visa subclass and estimated average periods of stay for each visa subclass.

Table 2 shows the nationalities and the number of visas granted over the same six year period where the number of temporary entry visas granted exceeds 500 visas in the period.

Table 1

Visa Categories (subclasses) to which superannuation legislation applies and the number of grants (Persons) in program years Offshore and Onshore

Subclass	199697	199798	199899	199900	200001	200102 to 31 May	Estimated Average Period of Stay (a)
303 Emergency Temporary						3	3 weeks
309 Spouse (Provisional)	1,789	8,392	10,604	11,117	10,962	12,347	2 years (b)
310 Interdependency (Provisional)	2	49	78	84	101	133	2 years (b)
410 Retirement	830	976	1,457	1,622	2,058	2,409	4 years
411 Exchange	3,179	2,948	3,003	2,448	2,038	1,651	8 months
412 Independent Executive	204	1	6				n/a
413 Executive	965	5	1				n/a
414 Specialist	1,637	5	5				n/a
415 Foreign Government Agency	430	318	257	283	387	341	3 years
416 Special Program	1,625	1,709	1,566	1,908	3,047	3,082	6 months
417 Working Holiday	54,357	57,004	64,973	74,467	76,556	79,694	4 months
418 Educational	1,753	1,939	1,800	1,701	1,727	1,681	1 year
419 Visiting Academic	3,511	3,678	3,366	3,327	3,537	3,420	4 months
420 Entertainment	7,427	8,319	7,748	8,098	8,814	7,999	1 month
421 Sport	2,366	2,231	5,174	8,448	6,398	3,775	2 months
422 Medical Practitioner	1,710	1,924	2,059	2,515	3,432	3,604	1 year
423 Media and Film Staff	222	421	560	607	506	437	2 weeks
424 Public Lecturer	37	20	27	34	27	27	3 weeks
425 Family Relationship	153	115	110	86	94	50	1 year
426 Domestic Worker (Diplomatic)	138	119	141	111	140	109	2 years
427 Domestic Worker (Executive)	11	21	34	19	40	32	2 years
428 Religious Worker	1,485	1,405	1,612	1,240	1,545	1,369	8 months
430 Supported Dependant	377	603	272	198	233	238	1 year
432 Expatriate	60	66	45	66	54	37	1 year
442 Occupational Trainee	6,113	6,606	6,691	7,138	6,641	5,634	5 months
448 Kosovar Safe Haven			3,923	1,813	156		n/a
449 Humanitarian Stay						13	3 years
450 Resolution of Status		4	1,808	137	24		n/a
456 Business Short Stay	275,996	131,291	104,882	114,052	124,121	124,473	2 months
457 Business Long Stay	22,632	33,584	33,165	35,006	40,136	34,579	10 months
459 Sponsored Visitor					10	18	3 months
497 Graduate Skilled						4,053	3 months
560 Student	113,562	108,805	116,987	150,921	191,458	19,410	6 months
562 Iranian Student	24	11	24	30	45	20	8 months
563 Iranian Student Dependent	40	14	15	61	79	40	8 months
565 ELICOS Trainee student						1	n/a
570 Independent ELICOS						26,081	3 months
571 Schools Sector						12,668	2 years
572 Vocational Education Sector						28,951	8 months
573 Higher Education Sector						56,532	2 years
574 Masters and Doctorate						29,242	2 years
575 Non-Award Foundation						4,718	1 year
576 Ausaid or Defence Sponsored						4,998	1 year
660 Tourist	1						n/a
670 Tourist Short Stay	7	1					n/a
672 Business Short Stay	5	4					n/a
673 Close Family Visitor	20	1					n/a
674 Other Visitor	1						n/a
675 Medical Treatment	4,329	3,344	3,973	4,107	4,028	3,584	1 month
676 Tourist Short Stay	2,175,780	824,729	505,187	351,929	391,680	341,080	3 weeks
679 Sponsored Family Visitor					7,306	6,905	4 months
680 Tourist Long Stay	3		2				n/a
683 Close Family Visitor Long Stay	7	4					n/a
684 Other Visitor Long Stay			1				n/a
685 Medical Treatment Long Stay	885	862	940	1,046	1,188	880	5 months
686 Tourist Long Stay	106,769	99,832	103,932	102,958	90,865	69,048	9 months
771 Transit	20,280	19,493	23,097	25,617	30,881	31,399	2 days
786 Temporary Humanitarian						6	3 years
820 Spouse Extended Eligibility)		9,184	9,680	11,445	15,493	15,832	2 years (b)
822 Family Extended Eligibility		14	8				n/a
823 Economic Extended Eligibility		1	6				n/a
826 Interdependency		275	203	217	399	430	2 years (b)
850 Resolution of Status		510	3,326	622	121		n/a
956 Electronic Travel Authority Business	6,346	51,445	56,474	58,287	46,738	31,273	2 weeks
976 Electronic Travel Authority Visitor	535,231	1,893,418	2,248,275	2,597,107	2,838,699	2,466,040	2 months
977 Electronic Travel Authority Short	4,144	35,137	48,695	63,746	92,416	84,002	1 month
995 Diplomatic	2,516	2,493	2,248	2,303	2,273	2,106	2 years
Total	3,358,959	3,313,330	3,378,440	3,646,921	4,006,453	3,526,454	

Note:

(a) Average length of stay has been estimated based on a sample of 2001/02 data having regard to length of visas issued.

(b) These visas are provisional migrant visas. Most holders of these visas become permanent residents.

(c) The overwhelming majority of the holders of short stay visas (especially visitor visas and electronic travel authorities) do not have work rights and will not have accrued superannuation in Australia.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(51) Output 1.1: Non-Humanitarian Entry and Stay

Senator Sherry (L&C 335) asked, " In relation to subclass 457 sponsors, what is the level of breach that you have been able to detect?"

Answer:

As a result of regular monitoring of 3850 employers and investigation of allegations received, during the 23 months between July 2000 and May 2002, the Department recorded serious breaches by 24 sponsoring employers involving 63 temporary long stay business (subclass 457) visa holders.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(52) Output 1.1: Non-Humanitarian Entry and Stay

Senator Sherry (L&C 335/336) asked, "Provide comprehensive information on the kinds of breaches encountered."

Answer:

The following breaches were encountered:

- Underpayment (below award or below agreed amounts)
- Taxation offences
- Excessive working hours
- Failure to provide superannuation
- Non-payment of overtime, penalties or other agreed payments
- Provision of substandard accommodation
- Demands for excessive payments or bonds in regard to accommodation
- Breaches of Occupational Health and Safety standards
- Unfair dismissal
- intimidation

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(53) Output 1.1: Non-Humanitarian Entry and Stay

Senator McKiernan (L&C 403) asked for information on the artist who has been in Australia for four years on a 457 visa working on a church painting icons and frescos.

Answer:

The temporary worker in question first entered Australia in 1997 as a visitor. He extended his visitor visa twice before being granted a subclass 457 (temporary business entry) visa on 10 March 1998. This was based on a sponsorship to work as an artist to paint icons and frescos in a church.

He was granted further subclass 457 visas on 1 February 2000 and 3 October 2000. The last visa was valid for one year.

On 13 August 2001 he applied for a Distinguished Talent permanent visa. Processing of this application is well advanced and is expected to be finalised when his family overseas provide the necessary evidence that they satisfy health and character requirements.

He ceased employment with his sponsor in November 2001 but has subsequently worked for other employers, consistent with his bridging visa (since he has an application pending) which gives him unlimited work rights.

On 20 December 2001 the sponsor was sent a monitoring form as part of its regular monitoring activities.

On 10 January 2002 information was received that the worker had not been happy with the treatment he had received from his sponsor although no allegation of misconduct or maltreatment was made at this time.

In January and February 2002 allegations were received that the sponsor had been withholding an amount of money for tax purposes. It was further alleged the temporary worker had been underpaid and the sponsor had attempted to falsify documentation and information in relation to the monitoring return being prepared by coercing the temporary worker into making certain statements in relation to payment arrangements.

In February 2002 DIMIA received an incomplete and unsigned monitoring form from the sponsor.

In view of the range of allegations received and since employment with the sponsor had ceased, it was decided to gather further information before interviewing the temporary worker and the sponsor.

The temporary worker was interviewed by departmental officers on 31 May 2002 at which time he elaborated on the allegations made previously. The sponsor was interviewed on 5 June 2002. While the sponsor rebutted a number of allegations, it is clear that there were serious breaches of sponsorship undertakings. The temporary worker was not properly remunerated and there is evidence that suggests breaches of industrial relations, taxation and workplace (occupational health and safety) laws.

Based on the information obtained the case has been referred to the Department of Employment and Workplace Relations, the NSW Department of Industrial Relations and the Australian Taxation Office to formally investigate breaches of their legislation.

The investigations are ongoing and the Department continues to liaise with the relevant agencies.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(54) Output 1.1: Non-Humanitarian Entry and Stay

Senator McKiernan (L&C 433) asked, "What are the projections for the numbers of persons who will come in through the business skills category in the coming financial year who would need to access the AMEP program – persons who would not have functional English?"

Answer:

It is projected that around 1,300 migrants in the business skills category will not have a functional level of English.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(55) Output 1.1: Non-Humanitarian Entry and Stay

Senator Harradine asked, 'In view of the Government's decision last year to waive the x-ray requirement and simplify the health checks of European exchange students coming to Australia for a period of six months or less, does the government intend to extend the same concessions to students of good character from India and other 'category four' countries?'

Answer:

It is important to distinguish health assessment requirement for temporary visa applicants, including students, from assessments relating to their bona fides as students or other temporary entrants, and their good character in relation to penal matters. Changes to the student visa architecture were made recently, but entirely separately from those relating to health assessments for all temporary entrants which are described below.

In July 2001 more than 20 recommendations of a Review of Health Processing for Temporary Entry to Australia were implemented to ensure that the level of health checking requirements better matched the level of public health risks presented by applicants who have been living in different parts of the world. Using World Health Organization (WHO) tuberculosis statistics, countries of the world were divided into four, representing: a group equal to or lower than Australia in terms of the rate of tuberculosis (low risk); a group experiencing not more than about twice Australia's rate of tuberculosis (medium risk); those up to ten times Australia's rate (high risk); and, those more than ten times Australia's rates (very high risk). The attached table groups the countries of the world according to their tuberculosis environment. A further stratification of public health risk is presented by length of stay and in some fields of intended activity –thus, the shorter the length of stay, the less routine health assessment is required, but where there is special health significance such as, entry to a health care facility in Australia, including nursing homes and creches, a higher level of routine screening is required.

The Review was conducted in consultation with the then Department of Health and Aged Care. An important finding was that for low health risk countries, in view of the very low level of risk presented, coupled with the health insurance typically carried by visa applicants from those countries, routine screening is unnecessary no matter what period of temporary stay is intended. Thus, visa applicants from low health risk countries are not routinely subject to formal medical or radiological examination. Exceptions to this include where a health condition is declared as part of the detailed questionnaire completed by applicants, or where there is an intention to enter a health care facility.

Applicants from medium health risk environments also need not undergo formal medical or radiological examinations unless their period of stay exceeds twelve months.

Applicants from high health risk environments are required to undertake both medical and x-ray if entering a classroom situation for more than three months, but otherwise, these are only required if a stay of more than twelve months is intended.

Applicants from very high health risk countries are required to undergo a higher level of health examination. Applicants who may have the citizenship of a lower health risk country but who have lived in a higher health risk country (or countries) for more than 3 consecutive months in the last 5 years, are also required to undergo a higher level of health examination. Applicants from very high health risk environments are required to undergo a chest x-ray if intending a stay of greater than three months. Applicants from very high health risk environments are required to undertake both medical and x-ray if entering a classroom situation for more than four weeks, but otherwise, these are only required if a stay of more than twelve months is intended.

A review of the health risk rating of the countries is to be undertaken every two years, using revised WHO data. Although some countries' ratings may change, it is unlikely that India will overcome the significant tuberculosis problems besetting its population at the next review, in approximately twelve months time. Only when that occurs will greater x-ray-free entry be possible from India or other countries currently experiencing high and very high tuberculosis rates. Any change will be separate to considerations of student bona fides and/or character.

It should be noted that despite the high rate of interaction with people from high health risk countries, Australia has been able to maintain a very low rate of tuberculosis. Australia's rigorous health screening requirements have contributed to this.

Summary of health examination framework

(not for provisional visas leading to a grant of a permanent visa)

Country – Level of Risk (citizenship or three months stay in last five years) Highest risk applies	Stay of up to and including 3 months	Stay of greater than 3 months, up to and including 12 months	Stay of greater than 12 months
Low Iceland, Monaco, Norway, San Marino, Sweden (Australia)	• no formal health examination required unless special significance* applies	• no formal health examination unless special significance* applies	• no formal health examination unless special significance* applies • health insurance for your period of stay
Medium Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Puerto Rico, Switzerland, United Kingdom, United States of America, Vatican City	• no formal health examination required unless special significance* applies	• no formal health examination unless special significance* applies	You will be required to undergo: • a medical examination and • a chest x-ray. Note: If you are an applicant for a 457 visa, you will be required to undergo a chest x-ray only, unless your health is of special significance*, or you are likely to enter a classroom situation for a stay of greater than 12 months in which case a medical examination will also be required.
High Algeria, Andorra, Bahrain, Czech Republic, Egypt, Fiji, Hungary, Iran, Japan, Jordan, Kuwait, Lebanon, Libya, Mauritius, Oman, Palestinian Territories, Poland, Qatar, Saudi Arabia, Seychelles, Slovakia, Spain, Syria, Tunisia, Turkey, United Arab Emirates	• no formal health examination required unless special significance* applies	• no formal health examination required unless special significance* applies OR • if you are likely to enter a classroom situation, in which case a medical examination and a chest x-ray will be required.	You will be required to undergo: • a medical examination and • a chest x-ray. Note: As per 457 visa above, but note that entry to a classroom will require a chest x-ray and a medical examination for a stay of greater than 3 months.
Very high risk All countries not listed above including: Argentina, Bangladesh, Brazil, Chile, China, Federal Republic of Yugoslavia, Hong Kong, India, Indonesia, Korea, Malaysia, Pakistan, Papua New Guinea, Philippines, Portugal, Russia, Singapore, Sri Lanka, South Africa, Vietnam, Zimbabwe	• no formal health examination required unless your health is considered to be of special significance* OR • if you are likely to enter a classroom situation for more than four weeks, in which case a medical examination and a chest x-ray, will be required.	• you will be required to undergo a chest x-ray, • a medical examination and a chest x-ray will be required if you are likely to enter a classroom situation for more than four weeks; • any additional relevant special significance* requirements must be met.	You will be required to undergo: • a medical examination and • a chest x-ray. Note: As per 457 visa above unless likely to enter a classroom situation for more than four weeks, in which case you require a chest x-ray and a medical examination.

* Your health may be of "special significance" and you may be required to undergo a chest x-ray and/or medical examination if:

- you are likely to enter a pharmaceutical laboratory, hospital or health care area (including nursing homes) for any reason. In this case an x-ray is minimum requirement regardless of length of stay. Low and medium risk country inhabitants may make short visits to patients in Australia without x-ray screening;
- you are likely to be engaged or enrolled in an Australian childcare centre (including preschools or creches) either as an employee or trainee. In this case an x-ray is minimum requirement regardless of length of stay;
- you are 70 years or older. A medical pro-forma (available from the Australian visa office) to be completed by your doctor for stay of up to the periods listed above;
- you are a parent with a "queued" migration application. A medical and x-ray is required for stay greater than 6 months; or
- there are any indications that you might not meet the health requirement regardless of length of stay.

For student visas - principal and secondary applicants are to undergo the same medical assessment unless special significance applies.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(56) Output 1.1: Non-Humanitarian Entry and Stay

Senator Harradine asked:

Currently there is a requirement that the families of students from category four countries demonstrate in advance that they hold sufficient funds to meet the cost of their children's studies. Is there any evidence that this requirement effectively deters students from defaulting and remaining in Australia as illegal immigrants?

Answer:

In the consultations leading to the introduction of the new student visa arrangements, State Government representatives expressed concerns that, in their experience, there had been an increase in the number of overseas students defaulting on the payment of school fees for their accompanying school-aged dependants. The requirement that student visa applicants demonstrate that they have sufficient funds to pay fees for their school-aged dependants is designed to help reduce the incidence of defaulting on these fees. It was not designed to address issues relating to student visa holders overstaying their visa validity.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(57) Output 1.1: Non-Humanitarian Entry and Stay

Senator Harradine asked:

Will the government consider more flexible ways of issuing student visas primarily on the basis of merit, character and academic potential, rather than on the basis of race/country of origin as appears to be the case at present?

Answer:

Student visas are not granted to applicants on the basis of race.

The student visa reforms were introduced to facilitate growth in the Australian overseas education industry while providing objective criteria and integrity measures to limit undesirable outcomes. The reforms were developed, following extensive consultation with industry, to increase transparency and consistency in decisions and provide students and other key stakeholders with greater confidence in the outcomes of student visa applications. The new approach also seeks, through the use of differential risk assessment levels in place of the former gazetted/non-gazetted country regime, to provide objective criteria specific to the quantified immigration risk posed by students from different countries and in different education sectors. The risk assessments are subject to regular monitoring and adjustment as appropriate.

The assessment of the academic ability of a student is largely a matter for the education provider. It has not been considered appropriate that DIMIA make assessment on such matters, as it would lead to greater subjectivity and inconsistency. Such matters have largely been considered a matter for DIMIA only where the student has a demonstrated history of poor academic performance, which would make a decision-maker doubt whether the student has a genuine intention to study.

In accordance with migration legislation, it is also a requirement that all student visa holders are of good character.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(58) Output 1.1: Non-Humanitarian Entry and Stay

Senator Harradine asked:

In view of the difficulties Australian universities face in recruiting students from India, will the government consider ways of streamlining the application process and ensuring that an effective appeals process exists for students whose applications appear to have been unfairly rejected?"

Answer:

The Government strongly supports growth in the overseas student program from all parts of the world. At the same time, the Government seeks to minimise abuse of the overseas student program by matching visa criteria and evidentiary requirements to the objectively determined level of immigration risk. Due to a relatively high level of visa non-compliance by students from India during 1999-00, a high risk rating applies to applicants from India.

Despite this, student visa grants for Subclasses 573 (Higher Education) and 574 (Masters and Doctorate) from India show very strong growth.

In 2001-02 to the end of March, overseas student visa grants to applicants from India in the Higher Education and the Masters and Doctorate sectors increased by 29% (a total of 1,995 visas were granted), when compared with the same period last financial year (when a total of 1,548 visas were granted in the same period).

The student visa risk rating of countries and education sectors will be regularly reviewed. Streamlining of student visa processing for students from India could most readily be introduced if there is a reduction in the level of non-compliance by Indian students.

Under the *Migration Act 1958* (the Act), the following onshore decisions are reviewable by the Migration Review Tribunal (MRT):

- decisions to refuse to grant a student visa while the visa applicant is onshore;
- certain decisions to cancel a student visa while the visa holder is onshore; and
- decisions not to revoke the automatic cancellation of a student visa while the former visa holder is onshore.

In general, for offshore visa applicants, the Act only provides review rights for those applicants who have close links with Australia. Offshore applicants do however have the option of re-applying for visas, particularly if there is additional evidence or information they can provide to support their applications.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(59) Output 1.1: Non-Humanitarian Entry and Stay

Senator Harradine asked whether the Australian Immigration Office in New Delhi is sufficiently well staffed to handle the volume of applications it receives from Indian students wishing to study in Australia.

Answer:

In 1991-92 the agreed staffing levels at the New Delhi post were 3 Australia based officers and 11.5 locally engaged staff. By 1997-98 this had increased to 5 Australia based officers and 21 locally engaged staff and for the current financial year there are 8 Australia based officers and 26.5 locally engaged staff. It is also relevant that, over the past three years, the Department has instituted processing in Australia of some offshore applications. The result of this is that resources at posts, including in India, have been freed up to concentrate on the other caseloads, including students.

The current regional security situation in the subcontinent has meant that operations at the New Delhi post have been substantially downsized, with three Australian staff remaining at the visa office. The safety of staff takes precedence over processing requirements. While we do not know how long this situation will continue, DIMIA has made efforts, both in India and in Australia, to ensure that student bodies and agents are aware of the situation.

Efforts are being made to keep processing going, but 'normal' processing cannot be expected under the circumstances. One of the staff remaining at post is the Senior Migration Officer (SMO) responsible for the student visa program in India. This has meant that the visa office has continued to accept new student visa applications, and processing of existing applications has continued to take place. Given the current circumstances, the post has received consistently positive feedback on its flexibility and responsiveness in the processing of student visas, including from the largest student agent in India, IDP.

The number of staff involved in student visa processing has not changed despite the overall reduction in DIMIA staffing levels in India due to the current regional security situation. The decision was taken to give priority to student visa processing for the remainder of the peak processing period.

Currently the profile of staff working on student visa processing is as follows:

1 x SMO, 1 x expatriate officer, 1 x Locally Engaged Employee (LEE) 7, 4 x LEE 6, 2.5 LEE 5.

In addition, an SMO from New Delhi who has been temporarily relocated to Bangkok as part of the draw down of Australian-based staff from India and Pakistan, is working on student applications transferred from New Delhi. This is in accordance with previous New Delhi post practice where an additional Australian-based resource has assisted with student visa processing during peak periods.

Possibly the most objective way of assessing the levels of staffing is to consider the processing times of student visa applications. Noting that times can be expanded by factors such as delays in obtaining medical and/or character clearance, or incomplete applications being submitted, the average processing times for student visas in India have been very good, as is demonstrated in the following table:

Subclass	**Median processing time from time of lodgment to time of decision from July 2001 to end of April 2002**
560 (Student)*	67 days
570 (Independent ELICOS)	35 days
571 (Schools)	57 days
572 (Vocational Education & Training)	34 days
573 (Higher Education)	40 days
574 (Masters and Doctorate)	42 days
575 (Non-Award Foundation/Other)	38 days
576 (Ausaid or Defence)	18 days

* Student visa applications lodged prior to 1 July 2001 were processed under subclass 560.

Processing of the student visa caseload from India is a major challenge. While DIMIA receives applications from many high quality student applicants, we also encounter considerable levels of fraud as well as unscrupulous education agents. Strategies to enable the Department to better manage the student caseload from India continue to be developed.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(60) Output 1.2: Refugee and Humanitarian Entry and Stay

Senator Bartlett (L&C 321) asked 'Have you got any statistics of the numbers of people who have engaged in any sort of paid work whilst on the visas and also statistics on the usage of health services?'

Answer:

The Department of Immigration and Multicultural and Indigenous Affairs does not possess statistics on the number of Temporary Protection Visa (TPV) holders who have engaged in any sort of paid work, or TPV holders' use of health services.

TPV holders are not required to report to the Department on such matters.

The Department has granted 8,441 TPVs to 14 June 2002, and of those visa holders, Centrelink data shows that 4,741 principal applicants were receiving special benefits. The remaining 3,700 visa holders are either dependants of another applicant, have gained employment, or are supporting themselves through other means.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(61) Output 1.2: Refugee and Humanitarian Entry and Stay

Senator Bartlett (L&C 322) asked:

Has any action been taken to make sure that the officer at Islamabad and also officers at the other posts are not applying the incorrect interpretation that people who had arrived here initially in an unauthorised way were getting a lower priority than others under the family reunion program.

Answer:

All humanitarian processing posts, including Islamabad, are processing their Special Humanitarian Program (SHP) caseload, of which split family is a component, in chronological order.

At 31 May 2002, there were 949 applicants in the split family pipeline, representing 25% reduction from 1263 at the beginning of the program year.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(62) Output 1.2: Refugee and Humanitarian Entry and Stay

Senator Cooney (L&C 325) asked for a copy of the UNHCR Global Consultations material.

Answer:

The stated aim of UNHCR's *Global Consultations on International Protection* is to promote " the full and effective implementation of the *Refugees Convention* and to develop complementary new approaches, tools and standards to ensure the availability of international protection where Convention coverage needs to be buttressed" . The Global Consultations process commenced late 2000 and comprises three parallel " tracks" .

The first, or 'political', track sought to strengthen the commitment of States to respect the centrality of the *Refugees Convention* in the international refugee protection system. A *Ministerial Meeting of States' Parties to the 1951 Convention and 1967 Protocol relating to the Status of Refugees* was held in December 2001.

The second, or 'legal', track consisted of four Expert Roundtables on specific aspects of the interpretation of the *Refugees Convention*. Australia participated in the discussions on membership of a particular social group, gender-related persecution, internal protection/relocation/flight alternative, illegal entry and family unity.

The third, or 'practical', track was structured around a number of protection policy matters, including issues not adequately covered by the *Refugees Convention*. During 2001 and 2002, discussions were held within the framework of UNHCR's Executive Committee, considering themes on protection of refugees in mass influx situations, protection of refugees in the context of individual asylum systems, the search for protection-based solutions and protection for refugee women and refugee children.

Attached are the *Declaration of State Parties* from the 12 December 2001 Ministerial Meeting of State Parties to the 1951 Convention and 1967 Protocol relating to the Status of Refugees, the summary conclusions of the 'second track' Global Consultations Expert Roundtables, and reports of the 'third track' Global Consultations on International Protection.

Further information on the Global Consultations process can be found at the UNHCR website on http://www.unhcr.ch/cgi-

bin/texis/vtx/global-consultations.

Ministerial Meeting of States Parties
to the 1951 Convention
and/or its 1967 Protocol
relating to the status of refugees

12-13 December 2001

Distr.
GENERAL

HCR/MMSP/2001/09
16 January 2002

Original: ENGLISH

DECLARATION OF STATES PARTIES TO THE 1951 CONVENTION AND OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES[1]

Preamble

We, representatives of States Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol, assembled in the first meeting of States Parties in Geneva on 12 and 13 December 2001 at the invitation of the Government of Switzerland and the United Nations High Commissioner for Refugees (UNHCR),

1. Cognizant of the fact that the year 2001 marks the 50th anniversary of the 1951 Geneva Convention relating to the Status of Refugees,

2. Recognizing the enduring importance of the 1951 Convention, as the primary refugee protection instrument which, as amended by its 1967 Protocol, sets out rights, including human rights, and minimum standards of treatment that apply to persons falling within its scope,

3. Recognizing the importance of other human rights and regional refugee protection instruments, including the 1969 Organisation of African Unity (OAU) Convention governing the Specific Aspects of the Refugee Problem in Africa and the 1984 Cartagena Declaration, and recognizing also the importance of the common European asylum system developed since the 1999 Tampere European Council Conclusions, as well as the Programme of Action of the 1996 Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States,

4. Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of *non-refoulement*, whose applicability is embedded in customary international law,

5. Commending the positive and constructive role played by refugee-hosting countries and recognizing at the same time the heavy burden borne by some, particularly developing countries and countries with economies in transition, as well as the protracted nature of many refugee situations and the absence of timely and safe solutions,

[1] As adopted on 13 December 2001 in Geneva at the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees

6. Taking note of complex features of the evolving environment in which refugee protection has to be provided, including the nature of armed conflict, ongoing violations of human rights and international humanitarian law, current patterns of displacement, mixed population flows, the high costs of hosting large numbers of refugees and asylum-seekers and of maintaining asylum systems, the growth of associated trafficking and smuggling of persons, the problems of safeguarding asylum systems against abuse and of excluding and returning those not entitled to or in need of international protection, as well as the lack of resolution of long-standing refugee situations,

7. Reaffirming that the 1951 Convention, as amended by the 1967 Protocol, has a central place in the international refugee protection regime, and believing also that this regime should be developed further, as appropriate, in a way that complements and strengthens the 1951 Convention and its Protocol,

8. Stressing that respect by States for their protection responsibilities towards refugees is strengthened by international solidarity involving all members of the international community and that the refugee protection regime is enhanced through committed international cooperation in a spirit of solidarity and effective responsibility and burden-sharing among all States,

Operative Paragraphs

1. Solemnly reaffirm our commitment to implement our obligations under the 1951 Convention and/or its 1967 Protocol fully and effectively in accordance with the object and purpose of these instruments;

2. Reaffirm our continued commitment, in recognition of the social and humanitarian nature of the problem of refugees, to upholding the values and principles embodied in these instruments, which are consistent with Article 14 of the Universal Declaration of Human Rights, and which require respect for the rights and freedoms of refugees, international cooperation to resolve their plight, and action to address the causes of refugee movements, as well as to prevent them, *inter alia*, through the promotion of peace, stability and dialogue, from becoming a source of tension between States;

3. Recognize the importance of promoting universal adherence to the 1951 Convention and/or its 1967 Protocol, while acknowledging that there are countries of asylum which have not yet acceded to these instruments and which do continue generously to host large numbers of refugees;

4. Encourage all States that have not yet done so to accede to the 1951 Convention and/or its 1967 Protocol, as far as possible without reservation;

5. Also encourage States Parties maintaining the geographical limitation or other reservations to consider withdrawing them;

6. Call upon all States, consistent with applicable international standards, to take or continue to take measures to strengthen asylum and render protection more effective including through the adoption and implementation of national refugee legislation and procedures for the determination of refugee status and for the treatment of asylum-seekers and

refugees, giving special attention to vulnerable groups and individuals with special needs, including women, children and the elderly;

7. Call upon States to continue their efforts aimed at ensuring the integrity of the asylum institution, *inter alia*, by means of carefully applying Articles 1F and 33 (2) of the 1951 Convention, in particular in light of new threats and challenges;

8. Reaffirm the fundamental importance of UNHCR as the multilateral institution with the mandate to provide international protection to refugees and to promote durable solutions, and recall our obligations as State Parties to cooperate with UNHCR in the exercise of its functions;

9. Urge all States to consider ways that may be required to strengthen the implementation of the 1951 Convention and/or 1967 Protocol and to ensure closer cooperation between States parties and UNHCR to facilitate UNHCR's duty of supervising the application of the provisions of these instruments;

10. Urge all States to respond promptly, predictably and adequately to funding appeals issued by UNHCR so as to ensure that the needs of persons under the mandate of the Office of the High Commissioner are fully met;

11. Recognize the valuable contributions made by many non-governmental organizations to the well-being of asylum-seekers and refugees in their reception, counselling and care, in finding durable solutions based on full respect of refugees, and in assisting States and UNHCR to maintain the integrity of the international refugee protection regime, notably through advocacy, as well as public awareness and information activities aimed at combating racism, racial discrimination, xenophobia and related intolerance, and gaining public support for refugees;

12. Commit ourselves to providing, within the framework of international solidarity and burden-sharing, better refugee protection through comprehensive strategies, notably regionally and internationally, in order to build capacity, in particular in developing countries and countries with economies in transition, especially those which are hosting large-scale influxes or protracted refugee situations, and to strengthening response mechanisms, so as to ensure that refugees have access to safer and better conditions of stay and timely solutions to their problems;

13. Recognize that prevention is the best way to avoid refugee situations and emphasize that the ultimate goal of international protection is to achieve a durable solution for refugees, consistent with the principle of *non-refoulement*, and commend States that continue to facilitate these solutions, notably voluntary repatriation and, where appropriate and feasible, local integration and resettlement, while recognizing that voluntary repatriation in conditions of safety and dignity remains the preferred solution for refugees;

14. Extend our gratitude to the Government and people of Switzerland for generously hosting the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.

GLOBAL CONSULTATIONS ON
INTERNATIONAL PROTECTION

EG/GC/01/8/Rev.1
28 June 2001

2nd Meeting

Original: ENGLISH

GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION: REPORT OF THE FIRST MEETING IN THE THIRD TRACK

I. INTRODUCTION

1. The first substantial meeting of the third track of the Global Consultations on International Protection on 8 and 9 March 2001 was chaired by the Rapporteur of the Executive Committee, Mr. Haiko Alfeld (South Africa). Opening the meeting, he noted the enormous interest generated by the Global Consultations, as witnessed by the broad geographical representation and the presence of a large number of NGOs. He called for an interactive and constructive dialogue on the important issues before the meeting. After a short welcoming statement by the Assistant High Commissioner, the Director of International Protection addressed the meeting. She described it as beginning the process to re-consolidate support around the foundation principles of refugee protection and to set the protection agenda for the future. She briefly outlined the four subjects for discussion under the theme of the protection of refugees in situations of mass influx (see below).

2. The ensuing debate under all four topics of the theme was participatory and broad ranging. A large number of issues were discussed and a broad array of opinions and perspectives canvassed. Delegations expressed their appreciation for the timeliness and importance of the Global Consultations.

II. ADOPTION OF THE AGENDA

3. The agenda (EC/GC/01/3) was adopted without amendment.

III. PROTECTION OF REFUGEES IN MASS INFLUX SITUATIONS

A. Overall Protection Framework

4. The Chief of the Standards and Legal Advice Section of the Department of International Protection introduced the background note on “Protection of Refugees in Mass Influx Situations: Overall Protection Framework” (EC/GC/01/4).

5. With 43 interventions, there was unprecedented participation on this complex topic. The overwhelming nature of protection needs in mass influx situations was repeatedly underlined. There was broad recognition of the primacy and centrality of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol in the international refugee protection regime, including in situations of mass influx. Absolute respect for the right to seek asylum and the principle of *non-refoulement* was underlined. Many delegations stressed the importance of the full and inclusive application of the Convention as the basis for discussions in the Global Consultations. The applicability of complementary regional refugee instruments, particularly the 1969 OAU Refugee Convention and 1984 Cartagena Declaration, was recalled. Several delegations also referred to the relevance of Executive Committee conclusions, especially those relating to large-scale influx, in particular Conclusion No. 22 (XXXII). The applicability of human rights instruments and international humanitarian law in ensuring refugee protection in situations of mass influx was noted as other important sources for standards of treatment. In addition, the link between protection and assistance was underlined by several delegations.

6. Many delegations also stressed the importance of addressing the root causes of mass flows. Conflict prevention, early warning, development cooperation, poverty eradication, human rights

promotion, and the economic dimension of displacement were mentioned as the main measures to be considered in this regard. There was also widespread support for more attention to be given to finding durable solutions in protracted situations.

7. Many delegations emphasized the need for a strengthened role for UNHCR in mass influx situations, including rapid operational presence, full and unhindered access, and a strong monitoring and intervention role.

8. Given the complexity and diversity of mass influxes, which were by their very nature mixed in character, some States noted the need for additional measures and more comprehensive approaches to address such situations. Other issues raised included the importance of providing support to host communities to help reduce hostility towards refugees and the question of addressing protection needs within the country of origin. Many delegations drew attention to the need for a more equitable distribution of the responsibility for protecting refugees. Several host countries stressed the need for support in shouldering the burden through the provision of financial and technical support, as well as efforts to build local capacity.

1. *Prima facie* determination on a group basis

9. Most delegations recognized the value of *prima facie* recognition of refugee status on a group basis in mass influx situations. African delegations drew attention to the abundant experience on their continent and to the lessons that could be drawn, while others mentioned the difficulty of implementing such a response in countries with highly developed systems focusing on individual recognition of refugee status.

10. Several States felt that individual processing to identify and exclude persons not deserving of international protection under the refugee instruments should begin as soon as possible after arrival, noting the operational difficulties, and suggesting that appropriate modalities for exclusion be examined and technical support provided to host countries. One State made an extensive presentation on how to elucidate the definition of criteria for exclusion under Article 1 (F) by reference to a number of international instruments.

11. Many States highlighted the critical importance of enhancing the legal and operational capacity of host States, particularly developing countries confronted with large and protracted refugee situations. It was proposed that the international community, including through UNHCR, should give sustained attention to this issue.

12. There was broad reiteration of voluntary repatriation as the preferred durable solution to mass influx. In order to be effective, planning and provision for voluntary repatriation should begin, according to some delegations, at the start of a refugee crisis. One delegation noted that the nature of the conflict might require diverse approaches to finding appropriate solutions. Delegations pointed to the need for a comprehensive durable solutions strategy, which secured the support of the international community and explored all aspects of potential solutions. A number of delegations hosting large numbers of refugees called upon the international community to make energetic efforts to create an enabling environment for voluntary repatriation and provide adequate resources.

13. Resettlement was acknowledged as playing an important responsibility-sharing role. A number of States pointed to the need for flexible resettlement criteria in *prima facie* situations, given that many of the States hosting mass flows are among the world's least developed countries and local integration for large numbers is therefore difficult. Some States indicated that they had already introduced flexible criteria, including acceptance for humanitarian reasons, but stressed that their application had to be carried out in conjunction with individual screening of candidates. UNHCR was asked to play an intermediary role in the process. It was proposed that UNHCR address the question of criteria further, through regular

resettlement consultations. The Office was also asked to examine its own resettlement submission process for *prima facie* cases.

2. Temporary protection

14. Interventions on temporary protection generally stressed its exceptional and interim nature, and its compatibility with the 1951 Convention. There was widespread acknowledgement that temporary protection must be limited in time. Both the Council of Europe and European Union (EU) Member State interventions offered helpful information on the concept of temporary protection in Europe and the ongoing harmonization process within the EU framework, while a written presentation of the European Commission was also drawn to the attention of delegations. The complementarity of these processes with the Global Consultations was noted.

15. Delegations observed that there were different understandings of the concept of temporary protection. It was suggested that the term "temporary protection" will be defined more precisely through an inclusive dialogue with the stakeholders to ensure a common understanding of the concept. Several delegations stressed that temporary protection was a concept applicable only in mass influx situations. Many speakers highlighted the difficulty of defining a mass influx and the period for which temporary protection should last. It was stressed that mass influx normally included some degree of suddenness and that numbers should be such as to make individual determination impracticable. Many delegations noted the importance of UNHCR's involvement and advice in this regard. It was noted that standards of treatment available to refugees benefiting from temporary protection will be in conformity with relevant EXCOM conclusions, and anything above that should be voluntarily assumed by States.

16. A number of delegations referred to the criteria and modalities for ending temporary protection. Some States stressed the role of UNHCR in providing guidance on the viability, conditions and timing of return. It was noted by many that even where temporary protection ends, some refugees will continue to have protection needs that must be addressed. Many States emphasized that temporary protection should not prejudice the right of those enjoying it to apply for refugee status under the 1951 Convention and to have their claims examined.

3. Study on protection in mass influx situations

17. There was widespread endorsement for a comparative study of protection responses to mass influx. Delegations suggested that it should be practical, diagnostic and evaluative, and should include "lessons learned" from mass influx situations in Africa (where experience with this phenomenon is particularly rich), Asia and Latin America, as well as analysis of legal developments in the EU and elsewhere. The study should look at the quality of protection provided under these mechanisms, the applicability of the Convention, its flexibility in such situations, and solutions in protracted refugee situations. It was suggested that a preliminary report could usefully be ready for consideration at the meeting of States Parties on 12 December 2001.

B. Civilian character of asylum, including separation of armed elements and screening in mass influx situations, as well as status and treatment of ex-combatants

18. The Deputy Director of the Department of International Protection summarized the background note on "The Civilian Character of Asylum: Separating Armed Elements from Refugees" (EC/GC/01/5). The Director of UNHCR's Emergency and Security Service made a presentation of the operational measures to enhance security. There was a rich and constructive debate, with statements by 23 delegations. The recommendations and conclusions in the background paper were broadly supported, while the important contribution of the regional meeting held in Pretoria, South Africa, on 26–27 February 2001 was also welcomed. A summary of the conclusions of this meeting on Maintaining the Civilian and Humanitarian Character of Asylum, Refugee Status, Camps and Other Locations will be issued by the Secretariat as a separate document.

1. Civilian character of asylum

19. There was broad agreement that maintaining the civilian character of asylum was fundamental to the ability and willingness of States to receive and protect refugees. Most delegations noted the serious repercussions of insecurity on refugee protection, particularly for women and children, as well as its impact on host communities. A number of delegations emphasized that adequate security was also necessary to enable UNHCR staff and other humanitarian workers to provide protection and assistance. They therefore supported measures to improve staff security. There was broad agreement that drawing a clear distinction between refugees, on the one hand, and armed elements and others not deserving of protection under the refugee instruments, on the other, was in the interests of States, refugees and UNHCR.

20. Several delegations emphasized the importance of a comprehensive strategy to address the issue of security of refugee camps and settlements through a range of measures. The identification, separation and disarmament of armed elements were seen as important elements of such a strategy. Preventive measures, including the location of camps a safe distance from borders, advocacy, training and education were underlined by a number of delegations, as was early warning.

2. Roles and responsibilities

21. Many delegations underlined the primary responsibility of host States, under international humanitarian law, for ensuring security in refugee camps and refugee-populated areas, including the identification and separation of armed elements. At the same time, however, they also highlighted the lack of capacity and resources, and the operational and logistical constraints that severely restrict the ability of States to meet their obligations.

22. International solidarity and support to host States in the context of burden or responsibility sharing was acknowledged as essential by many delegations. A number of delegations recognized, however, that the role of humanitarian organizations in supporting host States to identify and separate armed elements is limited and that greater attention should be given to these issues by the peacekeeping and political components of the United Nations system, particularly the UN Security Council. One delegation offered to draw this issue to the attention of the Security Council. The Chairman of the Executive Committee and the High Commissioner were also invited to bring the matter to the attention of the Security Council and the United Nations Secretary-General respectively.

23. Several delegations referred to the need for a designated agency to assist and support States faced with security problems in the context of a refugee crisis. In this respect, other speakers called for further examination of existing structures and agencies, including the United Nations Department of Peacekeeping Operations (DPKO). The importance of inter-agency cooperation, in particular among the International Committee of the Red Cross (ICRC), the International Organization for Migration (IOM) and UNHCR, was stressed. Delegations welcomed the detailed clarification by ICRC of the international

norms and its role in this context, and noted the on-going consultations between ICRC and UNHCR to strengthen cooperation in this area. A number of delegations mentioned the recommendations of the recent Brahimi Report on UN peace operations.

24. Several speakers underlined the importance of cooperation between host States and UNHCR within the context of its mandate for the international protection of refugees. UNHCR's role in registration, training and protection monitoring was mentioned, as were the initiatives taken by UNHCR to strengthen the capacity of host States through "security packages".

3. Operational measures to enhance security

25. Many delegations recognized that the issue of the separation of military elements from refugees clearly brought to the fore important legal and operational issues. There was broad agreement that those deemed to be continuing military activities could not be considered to be refugees and clearly fall outside the ambit of international refugee protection. Nonetheless, the right of former combatants to seek asylum was recognized. In this context, it was emphasized that the exclusion clauses should be applied in an individualized manner with due safeguards and taking into account international criminal law. UNHCR was asked to develop operational guidelines to assess individual claims for refugee status, in the context of the group determination in situations of mass influx where there was a likelihood of exclusion. It was noted that the issue of exclusion would also be examined in the second track of the Global Consultations.

26. A number of delegations asked UNHCR to develop practical tools and standards, in keeping with international humanitarian law, refugee law and human rights law, in order to separate armed elements from the refugee population. Other relevant organizations, non-governmental organizations (NGOs) and governments should also be involved in the process.

27. The need to ensure adequate security and policing measures was also recognized as a key factor to safeguard the civilian character of asylum. Delegations mentioned the possibility of providing police training or more immediate support through stand-by arrangements, so as to address security concerns as early as possible. It was proposed that the experience of civilian police models as used in Kosovo and East Timor could be applied to other refugee situations. It was also suggested that the "security package" pioneered in the United Republic of Tanzania might be standardized and replicated in other situations and that lessons learned from operations involving a security-support component should be examined. More broadly, early warning and preventive measures were stressed as important, while one speaker emphasized the importance of combatting the spread of the sale of small arms and light weapons.

28. Several delegations underlined the responsibility of host States for ensuring that refugee camps were located at a safe distance from the border. UNHCR was invited to define the appropriate "safe distance".

29. Many delegations also made particular reference to the issue of child combatants, underlining the need for both demobilization and rehabilitation, as well as tracing with the aim of family reunion. A number of speakers stressed the importance of education programmes for refugees, including secondary education, noting their value as a tool of rehabilitation and to help prevent subversive and criminal activities by refugee youth. Given the interest of delegations in these issues and the range of proposals made at the Pretoria meeting, it was proposed that they be considered further under the fourth theme of track 3 of the Global Consultations on refugee women and children.

C. Registration

30. The Acting Director of the Division of Operations Support introduced the background note on "Practical Aspects of Physical and Legal Protection with regard to Registration" (EC/GC/01/6)

and described the background, purpose and broad outlines of Project PROFILE. The debate on this topic displayed the synergy between operational realities and protection requirements. Twenty-two speakers took the floor, many sharing their national experience.

31. There was broad recognition of the primary responsibility of States for registration. Where registration is carried out by UNHCR or other partners, the need for host States to be kept properly involved and informed throughout was highlighted. Other delegations drew attention to registration as a multi-faceted function that could benefit from inter-agency and NGO cooperation.

32. All speakers recognized the importance of registration as an essential tool of protection. Many delegations recognized the importance of using registration data in a principled manner, based on agreed standards. The conclusions of the background paper were broadly endorsed and many delegations expressed support for elaborating such standards in an Executive Committee conclusion.

33. Several speakers stressed the importance of confidentiality and of the need to establish appropriate safeguards for information sharing and cooperation. They also highlighted the potential risk to refugees of providing personal data. It was noted that refugees must be informed about the uses to which information will be put, and assured of the confidentiality of their responses. This not only acknowledges the need for sensitivity in dealing with the refugees, but also recognizes that accurate data cannot be obtained in the absence of such assurances. UNHCR was asked to work with States to ensure the compatibility of States' systems, amongst other things, with confidentiality requirements. The importance of striking a balance between sharing data and not putting persons at risk was stressed.

34. A number of delegations emphasized the value of a dynamic approach and keeping registration data up-to-date, in view of shifting populations and circumstances, including refugee births and deaths. There was support for registration in all refugee situations, not just in situations of mass influx or future movements, but also for existing, inadequately registered populations. The importance of easy access by refugees to registration officials and, in this connection, the need for a central location for registration data was stressed. Many delegations underlined the need for a system that works on a global level that can address all aspects of the cycle of displacement, including durable solutions.

35. There was widespread agreement that improved registration will benefit both refugees and States; refugees will have better access to their rights, and States will be better able to respond to and manage refugee protection and assistance. It was also emphasized that improved registration will enhance the activities of humanitarian agencies and NGOs and underpin planning for durable solutions. The fact that improved registration plays a key role in helping refugees maintain their personal and national identity at a time of great personal trauma, particularly when refugees have been stripped of their identity documents, was noted. It also helps address situations of statelessness that might otherwise arise. As one delegation put it, improved registration has so many advantages, there should be no doubt that we really need it and should have it.

36. A number of delegations stressed the value to refugee women and children of improved, individual registration. It assists tracing and family reunification, promotes increased participation by women in camp life, and helps them to make more informed decisions about durable solutions. It was noted that information about the number and age of children in the refugee population is crucial, for example, to target programmes to adolescents at risk of sexual exploitation or military recruitment. It was also noted that survivors of torture and persons with mental health disabilities should be accorded special attention.

37. The acknowledged importance of registration led many delegations to express support for it as a priority in terms of resources. The critical role of material, financial, technical and human resources to assist host countries in registering refugees was emphasized by a number of delegations. Several delegations explained in detail some of the drawbacks of their current reliance on cumbersome, paper-based processes and urged donor governments to support their efforts to update and improve their

systems. A number of delegations expressed appreciation to UNHCR for its assistance in national capacity building.

38. A large number of delegations welcomed UNHCR's initiative in launching Project PROFILE. Several donor States expressed support for Project PROFILE and offered to share both resources and expertise. One delegation cautioned against dependence on overly sophisticated technology. Operationally, the aim should be a fast, efficient, not-too-technologically-sophisticated system that will amongst other things prevent fraud and multiple registration. UNHCR underlined the need for earmarked resources, including human resources, for such a large-scale project intended to design practical solutions to real problems. A number of delegations encouraged UNHCR to work with a wide range of partners, including host States, donor States, NGOs and the private sector, and to draw on the expertise and experience of States already implementing advanced registration procedures.

C. Mechanisms of international cooperation to share responsibilities/burdens in mass influx situations

39. The Deputy Director of the Department of International Protection introduced the background note on "Mechanisms of International Cooperation to Share Responsibilities and Burdens in Mass Influx Situations" (EC/GC/01/7). There was a broad-ranging and constructive discussion of what was recognized by several speakers as a difficult but vital subject. In all, some 28 delegations spoke on this crosscutting theme of the Global Consultations. Burden or responsibility sharing was described as not just a financial question, but a humanitarian concept and a "practical necessity", which should remain a priority issue for the Executive Committee.

40. Further accessions and withdrawals of reservations to the 1951 Convention and its 1967 Protocol were advocated as a responsibility sharing tool. Living up to the Convention was also described as an important contribution to burden and responsibility sharing. The existence of such measures was reiterated as not being a precondition for the obligation to uphold the principle of first asylum.

41. A number of delegations from countries hosting large numbers of refugees described the massive impact these refugees have on their society, infrastructure, economy and environment. Some warned that the international system for refugee protection might collapse unless the international community assumed its responsibility to help States shoulder the burden of hosting refugees, particularly for protracted periods. A number of speakers called for greater acknowledgement of the vital, but less easily quantifiable, contribution towards refugee protection made by hosting States, compared with the cash contributions made by donor States. Several speakers acknowledged the weight of the multi-faceted burden borne by many developing countries, which willingly host large numbers of refugees, often for many years.

1. Global and comprehensive approaches

42. Many speakers stressed the importance of comprehensive and holistic approaches to situations of mass influx. It was acknowledged that such a global approach can be enhanced by regional arrangements. The Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) and the work of the EU's High Level Working Group on Asylum and Migration were cited as positive examples of such approaches. A number of delegations especially emphasized the importance of the inclusion of a broad range of States and actors, including the country of origin, in the search for durable solutions, while it was also noted that coalitions would vary depending on the particular influx. Several delegations spoke of the need for improved cooperation and coordination between the various international agencies.

2. Preventive and preparedness strategies

43. Many speakers cited the importance of measures to prevent the need for flight and to enhance preparedness as another aspect of responsibility sharing. In particular, they mentioned the importance of

strategies to promote respect for human rights, good governance, the eradication of poverty, mediation of potential or ongoing conflicts, means of addressing broader migration pressures and other measures. Others highlighted the need for enhanced preparedness, including measures to strengthen security in refugee camps. It was felt that existing stand-by arrangements could be further enhanced by stronger regional-level involvement.

3. Funding and other measures

44. Several speakers stressed the need for predictable and adequate funding of the UNHCR budget as being essential to the provision of international protection to refugees. Regarding possible projects for a permanent refugee emergency fund drawing upon the experience of the EU's European Refugee Fund, a number of donor country delegations saw merit in a broader-based fund. Among other issues receiving support were the question of debt relief for countries hosting large refugee populations and the importance of systematic, participative programmes. In particular, many delegations spoke of the importance of linking debt relief and broader development projects. Among the many areas where support was deemed crucial were infrastructural development, strengthening local administrative machinery, education programmes to prepare for return and enhance respect for local laws, curbing crime, and the transfer of technology to improve local health systems.

4. Humanitarian evacuation/transfer

45. Several States expressed support for further investigation of the idea of prearranged quotas for the emergency evacuation of refugees within the context of a comprehensive approach. Some noted that such quotas should not be used as a substitute for access to asylum and the question was raised as to how an evacuation pool related to the existing pool of States offering resettlement to refugees. A number of delegations referred to the experience of the humanitarian evacuation and transfer of refugees in the 1999 Kosovo crisis and described it as a rarely available option and a relatively expensive way of minimizing the burden borne by States of first asylum.

46. Other issues requiring clarification were how to achieve family unity and/or reunification, how to ensure the informed consent of refugees and how to define when evacuation is appropriate. Some stressed that when considering such issues, it was important to bear in mind the responsibility of the international community to find solutions to the causes of flight so as to enable safe return. Further examination of how prearranged humanitarian evacuation quotas might operate as part of a comprehensive strategy was suggested, taking into account the experience of the Humanitarian Issues Working Group (HIWG) and the EU in the former Yugoslavia.

5. Planning for a range of durable solutions

47. In seeking solutions, many delegations reiterated the need to address the root causes of flight, and reaffirmed that voluntary repatriation was the preferred solution. Resettlement was described as an important tool of burden or responsibility sharing. It was suggested that its role in this respect be investigated further, including its relationship to other durable solutions and to humanitarian evacuation.

48. Several delegations cited the limited number of States willing to accept significant numbers of refugees for resettlement. The recent diversification of the number of States offering resettlement places was welcomed. There was some concern that development of a resettlement pool, as recently proposed in the EU context, should not prejudice the right to seek asylum there. Some delegations sought a broadening of resettlement criteria, while others expressed caution about using resettlement extensively in mass influx situations, where they felt voluntary repatriation was the more appropriate response.

6. Further analysis of practical measures and mechanisms

49. There was broad agreement on the importance of and the need to investigate further practical measures for responsibility and burden sharing, particularly in mass influx situations. Generally, the focus was on ways to ensure more prompt, coordinated, predictable, comprehensive and multilateral responses to the mass influx of refugees. Delegations broadly supported the conclusions of UNHCR's background note to explore of appropriate sharing measures and mechanisms further.

IV. ANY OTHER BUSINESS

50. The Director of International Protection was asked to brief delegations on the progress made on other tracks of the Global Consultations at the meeting of the Standing Committee on 10 March 2001. An informal briefing for this purpose was convened on 13 March 2001.

V. CHAIRMAN'S SUMMARY

51. At the end of the lively and rich discussions, the Chairman read out a summary that was subsequently distributed on 26 March 2001. The summary identified key issues, theme by theme, as well a range of specific suggestions for further consideration and follow-up.

GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION
EC/GC/01/15/Rev.1
27 September 2001

3rd Meeting
Original: ENGLISH

GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION: REPORT OF THE SECOND MEETING IN THE THIRD TRACK (28-29 June 2001)

I. INTRODUCTION

1. The meeting was chaired by the Rapporteur of the Executive Committee, Mr. Haiko Alfeld (South Africa). In a brief opening statement, he commended the staff of the Department of International Protection (DIP) for their tireless work on the Global Consultations, which were proving to be both resource-intensive and demanding. The Chairman also commended UNHCR for encouraging participants from developing countries to attend and saluted non-governmental organizations (NGOs) for their continuing valuable contribution to the Global Consultations process. He urged States and other stakeholders to participate in concerted follow-up action, so as to shape the Agenda for International Protection.

2. A brief welcoming address by the Deputy High Commissioner, was followed by a statement from a refugee woman, who described her experiences, including detention, while seeking asylum. She closed her remarks by making a ringing plea of "Action please".

II. ADOPTION OF THE DRAFT REPORT OF THE FIRST MEETING

3. The Chairman presented for approval the draft report of the first meeting of the Global Consultations. Amendments were proposed by two delegations with respect to paragraphs 5, 15 and 17 of the draft report. With these modifications, the report was adopted (EC/GC/01/8/Rev.l).

III. ADOPTION OF THE AGENDA

4. The agenda (EC/GC/01/10/Rev.1) was adopted.

IV. PROTECTION OF REFUGEES IN THE CONTEXT OF INDIVIDUAL ASYLUM SYSTEMS

A. Refugee Protection and Migration Control

5. The Chairman welcomed the presence for the discussion of this item of Mr. Gervais Appave, Coordinator of the Migration Policy and Research Program (MPRP) at the International Organization for Migration (IOM).

6. The Director of the Department of International Protection introduced document EC/GC/01/11 providing a joint reflection on the topic by UNHCR and IOM. Its aim was to present the perspectives and suggested course of action of two organizations with shared concerns, each with different contributions to make to address them, and with a common interest of coordinating their respective contributions. The displacement environment in which the 1951 Convention must operate and the growth of irregular migration and smuggling of people for profit had led to a crowding of the space in which this Convention had to function. The overall challenge was to identify ways to meet the protection needs of refugees and asylum-seekers in situations where migration and asylum intersected. The Director noted that the paper suggested general lines of

cooperation between UNHCR and IOM (paras. 45-48), including activities that each organization might pursue separately, albeit in tandem, as well as issues requiring a State response.

7. The Coordinator of IOM's MPRP added that the paper was about linkages between migration and asylum. Since in reality refugees move within a broader, mixed flow that include both forced and voluntary movements, the related policies if kept totally separate may lead to guidelines which are incoherent at best - contradictory at worst. The main question at stake was how to ensure the integrity of refugee protection processes in the complex world of migratory realities. IOM hoped to open a broad debate among its member countries on the migratory aspects of the phenomenon at its Council meeting in November 2001.

8. During the ensuing debate, delegations from the countries concerned introduced summaries of the regional meetings held in Budapest, Macau, and Ottawa. There was broad recognition of the useful contribution of these meetings, which had not only provided insights on the challenges and constraints experienced at field level, but also formulated a number of substantive comments and recommendations.[1]

1. Relationship between migratory movements and refugee protection (including the issue of smuggling and trafficking)

9. All delegations recognized the importance and complexity of the asylum-migration nexus, in view of the growth of mixed flows of persons in need of international protection and migrants, and the likelihood that this trend would intensify as one of the consequences of globalization. Many delegations noted the paucity of data available on migratory movements, the types and volume of mixed movements, as well as on their underlying motivation. Several delegations suggested that the causes were likely to be overlapping and included human rights violations or armed conflict, but also economic marginalization and poverty, environmental degradation, population pressures, poor governance and scarcity of decent work. There was consensus that the phenomenon of mixed movements affected developed and developing countries alike, but that developing countries required international support to improve their capacity to respond effectively.

10. To inform more effective responses, delegations agreed on the need for more detailed and coherent data and statistics on migratory movements and a number requested IOM to undertake a detailed study on the root causes underlying migration. One delegation suggested that regional organizations, such as the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and the Southern African Development Community (SADC) could also usefully undertake similar studies. Another delegation welcomed the launch of the MPRP programme and discussions at IOM Council meetings encompassing broader migration issues and needs.

11. Delegations unanimously condemned criminal activities of trafficking and smuggling of persons, while recognizing that refugees often had to resort, alongside migrants, to criminal rings to reach first countries of asylum or to move on to other locations. A number of delegations urged that asylum-seekers must be assured of access to asylum procedures and benefit from appropriate standards of treatment. There was wide recognition of the sovereign right of States to guard their borders and to take measures to stem trafficking and smuggling of people in view of the extreme suffering this causes, especially to women and children. A number of delegations made offers of technical support to boost reception capacity at points of entry. Some delegations, however, emphasized the need to view the phenomenon in the human rights context, not simply as a question of border or migration "control". One delegation suggested that the problem should be viewed as an aspect of migration management and take into account economic and labour demands, as well as human rights concerns.

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[1] EC/GC/01/13; EC/GC/01/14

12. It was widely acknowledged that legitimate measures to stem trafficking and smuggling should not be allowed to override States' commitments to refugee protection responsibilities – notably the principle of *non-refoulement* – to the respect of human rights in general, as well as migrants' rights. In response to a question from one delegation on the scope of *non-refoulement*, the Director of DIP referred to the background document on Article 33 of the 1951 Convention prepared for the Cambridge expert roundtable.[2] Several delegations suggested measures that could contribute to preventing resort to smugglers in the first place: providing opportunities for regular migration; operation of a proper, speedy and efficient asylum system in compliance with international norms; and speedy return of those found not to be in need of international protection.

13. Several delegations emphasized the need for more capacity-building in host States as well as closer cooperation in devising comprehensive and multifaceted responses amongst all stakeholders: governmental, intergovernmental and non-governmental. In this context, a number of delegations highlighted the need for closer dialogue between countries of origin, transit and destination, through appropriate policy orientations and follow-up action. These included the suggestion that development aid, trade and investment policies should be more sensitive to refugee and migration concerns and address the root causes of movement. Many delegations also recommended that measures be taken to encourage new accessions to and full implementation of the 1951 Convention and its 1967 Protocol, as well as to the United Nations Convention against Transnational Organized Crime and its Protocols (on trafficking of persons and smuggling of migrants), the 1990 Convention on Protection of All Migrant Workers and their Families, and relevant Conventions (notably nos. 97 and 143 of the International Labour Organization (ILO)).

14. Many delegations suggested that information campaigns both in countries of origin and receiving countries should play an important part in any comprehensive response and there were calls for NGO involvement. Such campaigns could provide a realistic appraisal of opportunities for orderly migratory movement; discourage irregular migration; warn of the dangers of smuggling and trafficking; combat xenophobia; and convey to the public at large in receiving States the positive side of migration and the assets both migrants and refugees represent to their host societies. One delegation suggested that secondary movements were unavoidable and asked for understanding of the difficulties facing most host countries, particularly in protracted refugee situations. This delegation suggested that such movements required further examination, including an assessment as to whether resettlement could be an appropriate response. Another delegation argued that irregular movement of refugees who had already found protection should be discouraged by sending those refugees back to countries of first asylum. A number of delegations expressed concern at such an approach, in view of the heavy burden of hosting large numbers of refugees for protracted periods.

2. Interception and Protection Safeguards

15. Delegations expressed diverging views on interception as a tool to combat irregular migration. Some delegations saw such measures as a legitimate manifestation of States' sovereign right to guard their borders. Others acknowledged that interception was a necessary tool to deter smuggling, but stressed that it must be tempered with refugee protection safeguards. One delegation was opposed to interception measures, viewing them as an arbitrary form of burden-shifting and regretted that interception was increasingly being used to prevent the lodging of asylum applications. One delegation suggested that States must avoid a culture of blaming the "victims" of smuggling and trafficking. Some delegations recalled that, in accordance with the relevant international instruments, States should not penalize asylum-seekers and refugees who resort to smugglers to reach safety.

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[2] See "Opinion on the scope and content of the principle of non-refoulement", Sir Elihu Lauterpacht CBE QC, Daniel Bethlehem, Barrister (June 2001)

16. A number of delegations referred to the positive contribution of the regional meeting held in Ottawa, focusing on ways of incorporating refugee protection safeguards into interception measures. One delegation suggested that the discussions on interception initiated in Ottawa should be pursued with wider participation of countries from other regions. The suggestion that States that practise interception should incorporate safeguards for the protection of intercepted persons in need of international protection was widely supported. In this regard, there was broad support for the suggestion that UNHCR develop Guidelines on Safeguards for Interception Measures, incorporating appropriate protection safeguards and drawing on the conclusions and recommendations of the Ottawa meeting. UNHCR was also requested to initiate related training efforts for States. One delegation expressed concern that protection safeguards in interception could lead to new activities for UNHCR, for which additional resources should be identified. Another delegation suggested that an independent evaluation of existing interception programmes be carried out. On the issue of in-country processing, two delegations described their experiences, one of them noting that such processing might not readily lend itself to the issue of protection. Another delegation did not consider this processing as a complete alternative to interception, but as a means to make protection available. A delegation speaking on behalf of NGOs felt that in-country processing had no basis in the 1951 Convention.

3. Return of Persons not in Need of International Protection

17. There was broad agreement on the desirability of quick and effective return of persons found *not* to be in need of international protection. It was recognized, however, that such return must be orderly, safe, humane, dignified and sustainable. Several delegations recommended assistance to the receiving States or the individual. There was agreement that failure to return persons not in need of international protection could undermine the integrity of the asylum regime (as well as of migration management systems). Some delegations enumerated benefits flowing from speedy return: easier reintegration; discouragement to smugglers and traffickers; and warning potential migrants that the asylum avenue is not open. Delegations from all regions highlighted the difficulties encountered in trying to return persons not in need of international protection, notably lack of cooperation by the individuals concerned or by the country of origin and difficulty in establishing the true country of origin owing to lack of documentation. One delegation suggested that in situations involving large numbers of refugees, a combination of measures was required: return, resettlement in a third country and assistance in the asylum country until large-scale return was possible.

18. Many delegations stressed the obligation of all States to accept back their own citizens and to cooperate with States requesting the readmission. Several delegations pointed out that denial of the right to return not only affected the credibility and efficiency of asylum systems but also amounted to denial of a basic human right and could ultimately contribute to situations of statelessness. Some delegations emphasized that countries of origin in the developing world require international assistance to make returns sustainable. Other delegations felt that return should not be conditioned upon international support. A number of delegations pointed out that the return of persons not in need of international protection should ideally be voluntary, but that States do have the sovereign right to deport them. Some delegations emphasized that such non-voluntary return must be carried out, at minimum, in safe, humane and dignified conditions.

19. Several delegations commended IOM for its programmes for the return of persons not in need of international protection and recommended the continuation of these programmes. One delegation pointed out that developing countries do not have the resources to finance such programmes through IOM. Another delegation requested IOM to develop a set of guidelines for ensuring that each migrant whom it returns does so voluntarily. Several delegations emphasized that UNHCR's involvement in return issues should be consistent with its mandate, should not be

seen as sanctioning the return of persons who may be in need of international protection, and should be combined with an undertaking by States to provide resources to UNHCR for any such involvement. Two delegations questioned the legitimacy of UNHCR's involvement with rejected cases and urged caution.

4. Cooperation between UNHCR and IOM, as well as with States and other Stakeholders

20. Many delegations welcomed the closer cooperation between UNHCR and IOM and encouraged both organizations to pursue the lines set out in the joint paper. Some delegations, however, called for clearer terms of reference as to what this cooperation could embrace. Others expressed concern about the resource implications for UNHCR. Delegations encouraged UNHCR and IOM to include information activities as an integral part of their cooperation. Regarding IOM's commitment to examine the usefulness of establishing or strengthening regional and international mechanisms for managing migration movements, some delegations suggested that it would be preferable to focus on discussions on best practices at national and regional levels.

21. Delegations expressed strong support for the establishment of the proposed UNHCR/IOM Action Group on Asylum and Migration, provided the specific mandates of each organization were respected. Given the complexity of the migration/asylum nexus, it was suggested that the Action Group should also include governments, other interested organizations (such as the ILO and the Office of the United Nations High Commissioner for Human Rights (UNHCHR) and regional organizations) and NGOs. The Action Group's programme of work might include better data collection and analysis, research, formulation of policy options, promotion or adoption of international standards, training, and practical project initiatives in the field and at Headquarters level in Geneva. Reports on the work of the Action Group could be shared with ExCom and with the Council of IOM.

B. Asylum Processes (Fair and Efficient Procedures)

22. Introducting this item, the Deputy Director of DIP recalled that fair and efficient asylum procedures were an essential component of a comprehensive approach to composite flows; they were also key to full and inclusive application of the 1951 Convention and its 1967 Protocol, not least the principle of *non-refoulement.* The document on this subject (EC/GC/01/12) suggested that, in many cases, a single consolidated procedure to assess whether an asylum-seeker qualified for refugee status or other complementary protection might prove to be the most effective and expeditious means of identifying those in need of international protection. Its concluding section drew on examples of best State practice that built on existing ExCom conclusions on asylum procedures and established commonly agreed standards.

23. In a general discussion of this item, many delegations observed that access to well functioning, fair and efficient procedures was a condition *sine qua non* for respect of the principle of *non-refoulement*, the right to seek and enjoy asylum and full and inclusive application of the 1951 Convention. Such procedures could also contribute to combating their abuse. The adoption of national legislation was an important means to implement the Convention effectively, but such legislation should be in accordance with international standards. Several delegations from developing countries pointed to the need for more capacity-building to offset the very real constraints they faced. Some delegations offered help to set in place asylum procedures and assist them to function effectively.

1. Admissibility Procedures

24. Several delegations referred to the Budapest regional meeting's contribution to elucidating issues surrounding the "safe third country" notion and the impact of readmission agreements on countries consolidating their asylum systems. The meeting had brought to light concerns by such countries of the "burden-shifting" effect. A number of delegations from developing countries referred to the burdens they already bore in hosting refugees, particularly for protracted periods, and maintained that accepting back asylum-seekers and refugees must be accompanied by assistance measures, in a spirit of burden and responsibility sharing. Adequate safeguards were also vital with respect to application of the safe third country notion, notably the accepting State's consent to the transfer and examination of the asylum request. It was recognized that the decision to determine the responsibility of States to review asylum claims was separate and distinct from the substantive examination of such claims. Many delegations also highlighted the value of multilateral or bilateral "Dublin-type" agreements to apportion responsibility for examining asylum claims, over unilateral use of the safe third country notion.

25. A number of delegations expressed concern at the impact of operation of the first country of asylum concept and requested guidance on its scope, particularly in situations where the first country of asylum was confronted with large numbers of refugees in protracted refugee situations. Many delegations emphasized the need for adequate safeguards in situations where refugees were returned to a first country of asylum. Such safeguards would contribute to avoiding situations of refugees "in orbit". It was also suggested that resettlement and local settlement might need to be considered when return to protracted situations was not viable. On the question of time limits for lodging applications, it was recognized that they should not be used to restrict access to procedures, but rather to determine whether non-compliance with the deadline affects the applicant's credibility.

2. Equitable and Expeditious Asylum Procedures

26. There was broad agreement on a number of issues. Delegations recognized the value of streamlined, fair and expeditious procedures that identify persons in need of international protection and those who are not. Many delegations reported that undocumented and uncooperative asylum-seekers made it difficult for them to implement procedures effectively. There were diverging views on the "safe country of origin" notion and whether appeals should have suspensive effect. Many delegations felt that the "safe country of origin" notion was useful, provided adequate safeguards could be built into its operation. For other delegations, the very notion amounted to exclusion of entire nationalities from protection under the 1951 Convention or possibly a geographical limitation in violation thereof. While some delegations argued that appeals should not suspend decisions to deport cases in certain circumstances, one delegation representing NGOs argued that suspensive effect should be guaranteed until a final decision on the asylum claim.

27. There was general agreement that all asylum-seekers should have access to procedures to adjudicate their claims. Key features should include access to advice on procedures, personal interviews (by specialized staff when justified by the asylum-seeker's vulnerability and specific circumstances), counselling (notably by NGOs), legal aid, the right to appeal negative decisions and the right to be informed of key decisions and stages in the procedure. A decision on asylum should be reasoned. Accelerated procedures were useful to resolve manifestly *well-founded* cases as well as those where abuse of procedures or an obvious lack of foundation for a claim was manifest. Asylum-seekers had a responsibility to cooperate with the authorities. Lack of documentation, however, did not in itself render a claim abusive. The issue of lack of cooperation and lack of documentation should ideally be handled as separate issues. In addition, a mere application for asylum should not *per se* be considered grounds for detention.

3. Other Issues

28. Many delegations highlighted the importance of training border officials and those at other points of entry on standards and procedures for reception at the border. One delegation believed that the participation of NGOs and intergovernmental organizations at the border could be useful to shoulder national efforts. A number of delegations offered technical and other support, and a representative of the International Association of Refugee Law Judges informed delegations of its training programme for appellate-level judges. Some delegations also described their own procedures for making special provisions for asylum-seekers with special needs, notably female asylum-seekers who needed to be attended by female staff, particularly in the case of trauma or sexual violence. Women should also be allowed to lodge an application in their own right and have it considered on an individual basis, including if accompanied by a man. One delegation suggested that the claims of the growing number of unaccompanied or separated minors seeking asylum need to be examined "outside the box", giving due consideration to whether the best interest of the child could indeed always be preserved through asylum. In terms of special needs, minors may need to be provided upon arrival with a guardian and receive psychosocial support. The single asylum procedure advocated by UNHCR was welcomed as a potentially effective, rapid means for providing international protection expeditiously to all those who need it. This procedure deserved further examination.

4. Conclusions

29. There was broad agreement on a number of issues, notably the need for basic common standards for refugee status determination procedures derived from the framework of international refugee law. Delegations also acknowledged the need for flexibility, so as to take account of national and regional specificities and domestic legal and administrative systems. States that have not yet done so were encouraged to establish fair and efficient asylum procedures. In this context, the compilation of best practice contained in document EC/GC/01/12 (notably paragraph 50) was welcomed as a useful basis for guidance. It was suggested that the Executive Committee could usefully undertake informal consultations to discuss the process of developing basic guiding principles to build on ExCom Conclusions 8 and 20, possibly in the form of a Conclusion on Asylum Procedures, and build on UNHCR's paper in greater detail. NGOs requested an opportunity to participate in such discussions, even if they are taken up within the Executive Committee. The Chairman proposed to undertake informal discussions as to whether or not to take up the question of an ExCom conclusion and, if so, the timing, participation and framework for the related consultations.

V. CHAIRMAN'S SUMMARY

30. At the end of the discussions, the Chairman provided a brief oral summary highlighting some of the key issues and conclusions emerging from the discussions. A more complete written summary was made available following the meeting.

GLOBAL CONSULTATIONS ON
INTERNATIONAL PROTECTION

EC/GC/02/2[1]
16 April 2002

4th Meeting

Original: ENGLISH

GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION: REPORT OF THE THIRD MEETING IN THE THIRD TRACK (27-28 September 2001)

I. INTRODUCTION

1. The Rapporteur of the Executive Committee, Mr. Haiko Alfeld (South Africa), chaired the meeting. In brief opening remarks, he regretted that it had not proved possible for a refugee to attend the meeting and noted that bringing in the refugee voice to the Global Consultations remained an enormous challenge. The Chairman recalled that, since the previous "third track" meeting in June, an additional important regional meeting had been held in Cairo (3-5 July 2001), in addition to meetings in the framework of the "second track" of the Global Consultations process in Cambridge (9-10 July 2001) and San Remo (6-8 September 2001). The recently concluded Preparatory Session for the Ministerial Meeting of States Parties (20-21 September 2001) augured well for the December gathering of Ministers. The Chairman expressed his concern that participants had not been able to afford more focused attention to follow-up, but noted that two documents prepared by the Secretariat (EC/51/SC/CRP.12, Annex 2 and EG/GC/01/20) focusing on potential follow-up activities should form the basis for further reflection and consultation in future.

2. The Deputy High Commissioner then delivered a brief welcoming address.

II. ADOPTION OF THE DRAFT REPORT OF THE SECOND MEETING

3. The Chairman presented for approval the draft report of the second meeting in the third track of the Global Consultations (EC/GC/01/15). One delegation proposed an amendment to paragraph 29 of the document, to make clear that further consultations would be needed on the feasibility of an Executive Committee conclusion on asylum procedures. With this modification, the report was adopted.

III. ADOPTION OF THE AGENDA

4. The agenda (EC/GC/01/16) was adopted.

IV. PROTECTION OF REFUGEES IN THE CONTEXT OF INDIVIDUAL ASYLUM SYSTEMS

5. The Director of the Department of International Protection (DIP) provided a brief update on progress in all tracks of the Global Consultations process as well as some preliminary remarks on the agenda items now under consideration.

[1] Adopted at the Fourth Meeting of the Global Consultations on 22 May 2002.

A. Reception of Asylum-Seekers, including Standards of Treatment

6. The Chief of DIP's Protection Policy and Legal Advice Section (PPLA) section introduced the background note on reception (EC/GC/01/17), intended to draw out elements for a possible common framework for the reception of asylum-seekers, which could be adopted in the form of an Executive Committee conclusion. He hoped that the discussion would also allow UNHCR to finalize a set of general guidelines on core reception standards, which States could then apply or adapt to their particular circumstances. To this end, the background note included in annex a compilation of relevant international standards and best practices.

7. There was broad agreement that the topic was appropriate for consideration within the Global Consultations and that the background note provided a useful basis for discussion. While most of the discussions centred on reception conditions affecting individual asylum-seekers, one delegation recalled that reception in camps also deserved consideration, particularly in view of the negative impact arising, for example, from the treatment of children and education. Virtually all delegations recognized that reception conditions have an important human rights dimension, and that reception standards for asylum-seekers should indeed conform to social, cultural and economic rights.

8. Some delegations considered that the regime proposed in the background note in its entirety was balanced and should have a global application; others felt that, given conditions in many host countries in the developing world, the proposed regime was overly ambitious. Those adopting the latter position felt that reception arrangements were necessarily linked to the socio-economic situation and level of development in host countries and argued in favour of flexibility. One delegation added that, in addition to host country capacity, the size of an influx or the actual refugee population was also a limiting factor, albeit that international commitments need to be respected. A number of delegations suggested that reception arrangements must also take into account the length of asylum procedures. Accordingly, it was recognized that complete harmonization of reception conditions among countries and across regions was not feasible.

9. As specific content of a regime for the reception of asylum-seekers, delegations identified the following essential elements; stay in dignity; freedom of movement, respect for family life; access to education; access to health; information on procedure and rights in a language they can understand; swift and fair processing of cases as an effective means to address some of the more difficult conditions of reception; and appropriate arrangements to meet special vulnerabilities. A number of delegations emphasized that reception conditions should include the creation of a climate receptive to asylum-seekers, free of xenophobia. Some delegations also felt that asylum-seekers should have access to gainful employment, whereas others observed that this would be difficult to provide. On the specific question of detention of asylum-seekers, there was strong support for the position that detention should be an exceptional response, and that conditions of detention must be humane and respect basic values. Several delegations expressed concern over the detention of minors. One delegation insisted that detention should not be used to deter arrivals. Others felt that detention might be justified if a person poses a threat to national security or public order, if there is a need to verify the identity of an individual or if there are obligations to restrict movement stemming from other instruments (such as the 1999 Dublin Convention), but that detention should be subject to a process of judicial or administrative review.

10. More generally, there was a divergence of views between those who felt that reception conditions should also take into account risks of abuse of the system and the need to prevent problems such as secondary movements and forum shopping, recognizing that relatively favourable reception conditions could create a pull factor, and others who felt that the link between reception conditions and abuse is not clear and that ethics and rights must be the prevailing considerations. One delegation recalled that abuse exists in any system and queried whether a State could, in fact, go below legitimate minimum standards of treatment in seeking to prevent it. Another delegation pointed out that migrants have rights that must be taken into account in any discussion of reception standards. One delegation recalled that different standards should apply to asylum-seekers who immediately lodge an application for refugee status upon arrival in the countries of asylum and those who apply only once arrested.

11. The importance of international solidarity and burden-sharing to increase the protection capacity of developing host States to meet international standards for the reception of asylum-seekers was emphasized by a number of delegations. One delegation, seconded by another, suggested the creation of an independent fund managed by UNHCR for the purpose of assisting developing countries, both financially and technically, to bring their reception facilities in line with internationally accepted standards.

12. There was broad agreement that UNHCR guidelines in this area would be useful, as would an Executive Committee conclusion on this topic, but one delegation suggested that the UNHCR guidelines be finalized *following* the adoption of a Conclusion. Several delegations emphasized the need to draft both documents with care. Regarding the possible content of the Conclusion, a number of delegations made specific comments on paragraph 25 of the background note, which contains a range of considerations of relevance to asylum policies. Two delegations suggested that the paragraph be expanded to cover other groups with special needs, such as victims of trauma or torture. A number of delegations suggested that particular emphasis be placed on creating a climate receptive to asylum-seekers, to avoid racism and xenophobia. A number of delegations suggested that regional instruments, such as the 1969 OAU Convention, relevant declarations, as well as the 1965 Convention on the Elimination of all Forms of Racial Discrimination, should be drawn upon in finalizing the guidelines.

B. Complementary Forms of Protection

13. The Deputy Director of DIP introduced the background note (EC/GC/01/18) on this topic, recalling that it supplemented a recent paper on this subject,[1] discussed at the eighteenth meeting of the Standing Committee in July 2000. He observed that complementary protection is broadly accepted as a necessary response to the protection needs of those who would not necessarily fall within the 1951 Convention refugee definition, but are nevertheless commonly regarded as being in need of international protection. There are, however, significant variations in State practice. Reaching clearer, common understandings on the appropriate use of complementary forms of protection would help ensure that their use is not inadvertently applied to restrict the application of the 1951 Convention. In view of the interest expressed by a number of delegations, the background note included a section on procedure, notably the advantages of a single, comprehensive procedure to determine protection needs. The note suggested that harmonization may be encouraged through the development of an Executive Committee conclusion on the issue and included language (see paragraph 11) which could serve as a starting point for such development.

14. A number of delegations welcomed the inclusion of this topic on the Global Consultations agenda. One acknowledged that thinking in this area had progressed substantially since the Standing Committee considered it in 2000. Many delegations expressed support for UNHCR's background note, including the references to best State practice. Delegations broadly agreed that complementary forms of protection are a useful complement to the international protection regime based on the 1951 Convention and its 1967 Protocol, but should not be used to compromise full application of the refugee definition contained in these instruments. In this context, many delegations asserted that complementary forms of protection should not dilute or weaken the refugee definition or derogate from the rights of those entitled to protection under the Convention and Protocol. The continued centrality of both instruments was repeatedly recognized. One delegation cautioned that its support for complementary forms of protection should not be seen as an endorsement for the restrictive interpretation of the 1951 Convention in a number of States.

15. Many delegations expressly recognized that complementary forms of protection often stem from human rights considerations and referred specifically, *inter alia*, to the 1984 United Nations Convention against Torture and the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms. On the question of who should benefit from complementary forms of protection, both instruments were referred to as providing valuable benchmarks. Delegations agreed that it is necessary to distinguish complementary forms of protection from temporary protection applicable in mass influx situations. One delegation observed that, in its domestic practice, temporary protection is applied in individual circumstances and is not linked to mass influx. Regarding conditions for the cessation of

[1] EC/50/SC/CRP.18

complementary protection, one delegation suggested that these should be akin to those in the Convention's cessation clauses, but should be clearly distinguished from those that apply to lifting of temporary protection. Another delegation highlighted the necessity to look at the relevance of the exclusion clauses in determining whether to grant complementary protection.

16. Delegations were in broad agreement on the need for greater coherence and some degree of formalization of the various approaches to complementary forms of protection, as well as on the need for clearer definitions and greater consistency. In this context, a number of delegations referred to a recent initiative in the European Union (EU) to develop minimum standards for complementary (or "subsidiary") forms of protection. Regarding standards of treatment, many delegations referred to *non-refoulement* as a starting point. There was broad recognition that the standards of treatment for beneficiaries of complementary forms of protection should be identical or as close as possible to those offered to recognized refugees. One delegation suggested that legal status with documentation should be provided to those receiving complementary protection. Another delegation noted that persons benefiting from complementary protection often only have short-term permits.

17. On procedural questions, there was widespread support for the background note's recommendation that States endeavour to establish a single asylum procedure in which there is first an examination of the Convention grounds for the recognition of refugee status before proceeding to examine possible grounds for the grant of complementary protection. A number of States already implementing a single procedure reported that it had proved to be humane, speedy, efficient and provided increased legal certainty for the applicant concerned. A number of delegations recalled that the Council of Europe had also recommended adoption of a single procedure and that the EU is looking into this possibility as well.

18. There was broad support for the suggestion to begin consultations on a conclusion of the Executive Committee focusing on complementary forms of protection, on the basis of the concluding observations of UNHCR's background note.

C. Strengthening Protection Capacities in Host Countries

19. The Chief of DIP's PPLA Section introduced the background note (EC/GC/01/19) on strengthening protection capacities in host countries, which sought to define the objectives pursued and activities being carried out. Annex I set out the core components of a strategy to strengthen host-country protection capacities, while Annex II described a number of concrete initiatives and best practices. It was suggested that the guiding principles set out in paragraph 15 of the paper might be reflected in an Executive Committee conclusion in order to constitute a framework for future action. The Ambassador of Egypt and the focal point for non-governmental organisations (NGO) for the Global Consultations presented brief oral reports on the regional meeting held in Cairo on 3-5 July 2001, which had focused on strengthening the protection capacity of countries of asylum in Central Asia, North Africa and the Middle East[2]. The participants again recognized the useful contribution of the regional meetings to the Global Consultations process.

20. All delegations recognized the importance of strengthening the protection capacity of host States as a condition to implement effectively international protection standards. Delegations broadly supported the general thrust of the background paper, particularly the proposed framework to strengthen protection capacities. Some particularly welcomed the fostering of "protection networks" in civil society and the emphasis on promoting self-reliance for refugees as well as the development of capacities of refugee communities. Almost all delegations also recognized the usefulness of the concrete examples and best practices it contained.

21. Many delegations suggested that strengthening protection capacities is conditioned upon the availability of resources and must therefore be framed in the broader context of international cooperation, solidarity and burden-sharing and entail adequate funding, *inter alia*, to UNHCR, to build protection capacity in host countries. A number of delegations recommended that capacity-building initiatives also

[2] See EC/GC/01/21

focus on countries of origin, to promote respect for human rights, contribute to eradicating the root causes of refugee flows and boost the sustainability of voluntary repatriation. In recognizing the importance of strengthening protection capacities, however, some delegations argued that limited capacity should not reduce the possibility for refugees to seek and be granted asylum.

22. There was clear recognition that partnerships are an important ingredient of any capacity-building efforts. A number of delegations underlined the need for a participatory and inclusive approach. Some suggested that regional dialogues and approaches are an important element of building protection capacities. A number of delegations also recalled the key role played by NGOs in this area, both as agents of capacity-building as well as beneficiaries of these efforts. In this regard, there was a suggestion to accord NGOs legal status, where it does not exist and, if required, fully integrate them in capacity-building activities.

23. Delegations broadly acknowledged that strengthening protection capacities is a complex process that needs to take account of the social, cultural and economic conditions in the country. Delegations suggested that, to be effective, capacity-building also requires sustained support, implementation of activities that are concrete and measurable, as well as evaluation and follow-up. One delegation stressed that the aim should be to support the creation of viable structures. There was broad recognition of the need for efficient and effective coordination among the various partners to devise viable and sustained protection structures. UNHCR was called upon to assume a coordinating role in this area. Furthermore, there was broad recognition that strengthening resettlement capacity is an important element of building protection capacities.

24. Beyond capacity-building *strictu sensu*, some States stressed the need to recognize the positive impact that refugees can have on their host societies and made a call for more resources to be made available for education and vocational training, to encourage productive activities by refugees, particularly those dependent on international assistance, and thereby limit dependency. UNHCR and its partners were encouraged to devise programmes that build upon refugee capacities, to encourage empowerment and self-reliance, while laying the ground for durable solutions. A number of delegations also supported the view that refugee issues should be factored into the development agenda of States, development agencies and donor countries. Delegations also broadly recognized the importance of a receptive host environment, to foster a positive and respectful attitude towards refugees.

25. A number of points of consensus on follow-up emerged from the discussion (see also EC/GC/02/3). Most delegations felt it would be premature to have the guiding principles framed in an Executive Committee conclusion and that more opportunities for dialogue would be needed. It was suggested that UNHCR nevertheless amend and broaden the guiding principles and framework set out in its background note, in light of the discussions. UNHCR could also usefully develop a manual on protection capacity-building and maintain an updated catalogue of initiatives and activities in this area, drawing on Annex II of the background note, to be placed on UNHCR's website. There was broad recognition that NGOs, particularly local NGOs, have a role to play in strengthening protection capacities. It was suggested that funding agreements with NGOs, but also developing countries, stipulate that programmes aimed at strengthening protection capacities should be coordinated with UNHCR. There was also widespread recognition that refugees have capacities that can and should be tapped, and that empowered and self-reliant refugees are better prepared to work towards finding durable solutions.

26. UNHCR should identify where activities to strengthen protection capacities are most needed, establish priorities among the various activities, and identify refugee-hosting countries requiring support. In this context, UNHCR should facilitate the pairing of needs with concrete offers of support by States, intergovernmental organizations, NGOs, the private sector and others. Depending on the level of interest, UNHCR might convene regional/sub-regional workshops, involving States and NGOs, with the purpose of devising and implementing specific country or regional strategies to strengthen capacity. The importance of a receptive host environment to foster a positive and respectful attitude towards refugees was broadly recognized. On the question of resources, UNHCR should explore further opportunities, *inter alia*, with the private sector for resource-mobilization to build protection capacity, as well as possibilities for the donor community to allocate a portion of development funds to programmes benefiting both refugees and the local populations that host them. In addition, States and NGOs could usefully examine the idea of

expanding “twinning” projects, whereby officials from national administrations are made available to assist other States with less developed protection structures to build up expertise in different areas. Finally, strengthening resettlement capacity was recognized as an important element of capacity building.

V. CHAIRMAN’S SUMMARY

27. At the end of the discussions, the Chairman provided a brief oral summary highlighting some of the key issues and conclusions emerging from the discussions. A more complete written summary was made available in November 2001. In concluding the meeting (the last under his chairmanship), the Chairman stressed that the amount of substantive preparation for the discussions had been impressive thanks to the excellent work of DIP supported by the Secretariat. He observed that the third track of the Global Consultations had generated a vigorous dialogue with broad participation, and had provided a platform for frank and constructive interaction and partnership between UNHCR, States and civil society, allowing more meaningful reflection and analysis than was normally possible in the framework of the Executive Committee. The process was resulting in renewed, invigorated recommitment to refugee protection and more collective ownership of refugee protection by States. He also looked forward to seeing its various outcomes translated into an Agenda for Protection, and urged further consultations towards this goal.

Global Consultations:
The search for protection-based solutions
Protection of refugee women and refugee children
(22-24 May 2002)

Chairman's Summary[1]

In opening the fourth and final meeting of the third track of the Global Consultations, the Chairman welcomed the presence of delegations from many regions, in line with the truly global nature of these consultations. He recalled that the earlier third track consultations in 2001 had been characterised by a willingness to reach a convergence of views, even on subjects that did not lend themselves easily to complete consensus. This willingness had made it possible to identify a series of follow-up actions that would form the basis of the Agenda for Protection, bringing together the various parts of these Global Consultations. The Chairman encouraged all delegations to continue to manifest the same positive spirit in the discussions in the days ahead, and recalled his wish for "sociability, sincerity and substance" to guide the meeting. He undertook to try to enhance the exchanges by reducing formality and promoting interactive participation as much as possible, in line with the pattern set by his predecessor, Mr. Haiko Alfeld.

I. THE SEARCH FOR PROTECTION-BASED SOLUTIONS

a) Voluntary repatriation (EC/GC/02/5)

The first topic discussed under the protection-based item was **voluntary repatriation**, which gave rise to a very rich debate with the participation of 28 delegations. Some shared information concerning their own experiences as hosting countries or countries of return, reflecting on what could be learned from the varying challenges they posed. There was also an interesting discussion of aspects covered in UNHCR's background document, notably the concept of safety in the context of voluntary repatriation; in particular legal safety (including the issue of property restitution) and the broader issue of protracted refugee situations.

There was broad consensus on a number of general considerations relating to voluntary repatriation. The most important were as follows:

- Recognition of voluntary repatriation as the durable solution sought by the largest numbers of refugees and the need for a comprehensive strategy;
- The right to return and the responsibility of countries of origin to receive back their nationals, including creating conditions conducive to return. Mention was made, in this context, of the need to tackle root causes;
- An acknowledgement of the complexities and challenges involved in making this both a feasible and a sustainable solution;
- The importance of partnerships between States, the international community at large, humanitarian and development agencies, not forgetting the essential role played by NGOs;
- Resource issues, notably in the context of the transition from humanitarian to development aid. This also includes hand-over and exit strategies on the part of UNHCR.

Many delegations also insisted on the voluntary nature of return, based on an informed choice, but some delegations pointed out that return could not always take place in optimal conditions.

The approach outlined in UNHCR's paper was supported as representing a good balance. There was general support for various aspects of UNHCR's role as identified in the paper, although some diverging views were expressed concerning the extent of its involvement at the reintegration stage and the need for effective transition mechanisms. UNHCR's possible contribution towards creating a climate conducive to reconciliation was also discussed.

[1] A more extensive record of discussion will be made available in the report of the meeting

The following points were recommended for action:

1. UNHCR was encouraged to undertake an overview of all protracted situations, to come up with action plans for each of these situations, and to approach States willing to offer assistance in this regard;

2. Countries of origin are encouraged to identify obstacles to return and to take serious measures to remove them (including in particular property issues);

3. The elaboration of an ExCom Conclusion addressing legal safety issues including property concerns, should be pursued, as a complement to the existing Conclusion (No. 40) on voluntary repatriation;

4. Updating of UNHCR's 1996 Manual on Voluntary Repatriation. This should include a clearer focus on translating guidelines and policy into concrete action and include guidance on planning, monitoring and indicators for implementation. It should also give due attention to a more gender and age-sensitive approach;

5. States will be kept appraised of issues on the agenda of the joint UNHCR/IOM Action Group on Asylum and Migration Issues (AGAMI);

6. Finally, the experience gained with respect to protection issues emerging from the current major repatriation operation of Afghan refugees could be useful in the context of lessons learned.

b) Resettlement (EC/GC/02/7 & EC/GC/02/4)

On the topic of **resettlement** – there were 20 interventions, confirming general support for resettlement as a vital tool for protection, as a durable solution, and as an instrument of international solidarity and responsibility and burden-sharing. Support for this option as an important element of protection and UNHCR's work had not waned despite security concerns since 11 September.

There was acknowledgement of a number of current constraints to the effective implementation of resettlement as a key protection tool, such as:

- Demand outruns supply – there are not enough places available through current resettlement countries' quotas and sometimes places remain unfilled because of a lack of harmonized criteria;
- Resettlement is a costly solution and can detract resources from dealing with problems at root in country of origin;
- There is a lack of financial and human resources for coordinated, resettlement casework and processing;
- Confusion caused by migration/resettlement nexus;
- Public reaction towards refugees which tends to validate the use of integration potential criteria;
- The potential for malfeasance, abuse or fraud.

Seven main recommendations were noted as areas to be pursued/developed further:

1. Encourage an increase in quotas and expand the pool of current resettlement countries;

2. Develop the capacity of new resettlement countries (especially in regions of origin) via 'package-deal' support measures with commitment from the international community through UNHCR to bear joint responsibility for successful integration of resettled refugees;

3. Develop an international strategic approach to avoid 'lost' resettlement places;

4. Streamline processing of applications with the focus on protection needs as opposed to integration potential. Possible means included the suggested establishment of a central biometric registration system;

5. Avoid confusion between resettlement and migration through clearer resettlement processing criteria;

6. Focus on early registration analysis to prepare and anticipate needs of specific groups and keep asylum countries informed regarding likelihood of solutions/and awareness of particular protection needs – however avoid making choice of resettlement too early – balance this with possibility of emergency evacuation when required;

7. Ensure that adequate resources are allocated to supporting resettlement needs from UNHCR's regular budget.

c) Local integration (EC/GC/02/6)

The last topic under the protection-based solutions item – **local integration** – sparked off a lively debate. Two UNHCR staff members gave a useful presentation, setting this item in its historical perspective and drawing attention to the complexities it presents. A number of delegations, notably Zambia, Uganda and Cote d'Ivoire shared specific examples of policies and initiatives in their respective countries.

In the course of the discussions, many delegations referred to:

- The dangers of protracted confinement in camps over extended periods of time; the risks of dependence that this engendered not forgetting the damaging loss of self-esteem;
- The extreme difficulties faced by developing countries hosting refugees in terms of economic, social and environmental costs; the threats to local and national security and their feeling of abandonment by the international community as support diminished year by year, with no durable solution in sight;
- There was strong interest in the notion of self-reliance, as distinct from local settlement, and as precursor to any of the three durable solutions; the advantages it could bring not only for the refugee themselves, but in terms of skills, for their country of origin if return subsequently took place;
- A number of interventions also focused on the need for a more pronounced rights-based approach to local integration and self-reliance.

A few delegations, however, took the view that more consideration needs to be given to the perspective of the host country. They insisted on:

- The interest of States to safeguard their own citizens, especially in the case of competing demands on meagre resources;
- The need to obtain international support and funding.

Many of the general conclusions reached under the previous items were also found relevant, notably the need to address root causes; to incorporate local integration as a solution into a comprehensive strategy; to encourage effective burden–sharing; and for UNHCR to act as a catalyst in soliciting the full involvement of other partners including development agencies.

Among the recommendations for follow-up action, the following were noted:

1. To support new initiatives and those already underway at bilateral and multilateral level which include the promotion of self-reliance of refugees;

2. To build further on the steps and measures recommended at the African ministerial consultations convened by UNHCR in December 2001;

3. To envisage the elaboration of an ExCom conclusion on the subject of local integration.

II. PROTECTION OF REFUGEE WOMEN

21 delegations took the floor to participate in discussions on **protection concerns related to refugee women**. These encompassed both the plenary debate and a panel discussion, which included a number of interesting presentations on: partnerships; safety and security and equal access to assistance; women's leadership, participation and decision-making; and the application of law and policy in a gender-sensitive way. The plenary discussions picked up on a number of these issues, but also gave importance to vital concerns about the development of gender-sensitive registration and documentation, and the complex problems of trafficking in women and girls.

The panel discussions were intended to enrich the Global Consultations process and indeed provided food for thought - not least through the reminder from the Ambassador for Norway that "every UNHCR staff member is a protection officer….". A number of other delegations echoed this call to responsibility, affirming that all partners involved – UNHCR, States and NGOs - have a responsibility to ensure international protection for refugee women. These responsibilities will need to be clearly allocated to guarantee appropriate action.

The main messages, drawn from the questions and discussions that followed, indicated that today it is much clearer where the problems lie. The years of work already undertaken have provided a thorough range of rules and policy guidelines. However, there is still a gap in practical application and implementation of these, which needs to be addressed as a priority for international protection work – particularly for women, who constitute 51 per cent of the persons of concern to UNHCR. In this respect, emphasis was put on the need for a two-pronged approach: targeted action and gender-equality mainstreaming. The constraints to this implementation were identified as having been mainly due to a lack of:

- resources –material and human – available for field protection work
- skilled and trained personnel, who can in turn train other partners
- commitment and political will from the international community.

Despite the understandable focus on "bad news", such as the West Africa situation, the Director of DIP pointed out that there are also many positive instances of practical achievements – notably in the current implementation of protection and rehabilitation activities for Afghan women returnees, and in training events and development of practical field-support manuals. She also confirmed that the Agenda for Protection would indeed incorporate these concerns in the forthcoming implementation of the recommendations and lessons-learned identified in the course of the Global Consultations process.

The following broad recommendations noted from the discussions reflect the general direction of the action that lies ahead:

1. For States that have not already done so, move to applying refugee law and asylum procedures in a gender-sensitive manner. Obviously this also concerns trafficked women who seek asylum.

2. Emphasize the importance of preventing and responding to sexual and gender-based violence, including working with men, and using a multi-sectoral approach.

3. Ensure full implementation of the various guidelines and policies, and review in this context the recommendations made in the US/Canada-sponsored assessment.

4. Strengthen the office of the Senior Coordinator and allocate the necessary funding to support UNHCR's human resources – in particular in leadership functions and through appropriate training – in order to respond to women's protection issues with greater impact. This should include both protection functions and community services support.

5. Review and if necessary redirect and re-prioritize funds and resources to support the implementation of gender-based protection activities.

6. Generate increased commitment from States to support and carry through implementation of recommended action.

III. PROTECTION OF REFUGEE CHILDREN

The subject of the **protection of refugee children**, the last on the agenda of the meeting, was preceded by a panel with UNICEF and the Save the Children Alliance as key partners, as well as with the leader of the team which prepared the evaluation of refugee children. This event also included the participation of a refugee adolescent from Bhutan, who asked to be given hope for a decent future, pleading with delegations that her appeal should be heard.

A number of themes emerged from the discussions under this agenda item. They included the following:

- Wide recognition that relevant standards and guidelines on the protection of refugee children are available: the problem lies in their lack of implementation on the ground;
- Grave concern and unanimous condemnation of sexual exploitation of refugee children, as alleged in the recent joint mission report on West Africa undertaken by UNHCR and Save the Children (UK);
- Approval of a rights-based approach and general agreement that the concept of protection not only encompassed legal, but also social and physical aspects;
- Support for the active participation of refugee children, notably adolescents in identifying protection priorities and programme design;
- General agreement that unaccompanied and separated children are particularly vulnerable to sexual exploitation and abuse, detention, child labour, military recruitment and denial of access to education and basis assistance;
- Wide acknowledgement of the important role of education as a tool of protection;
- General agreement on the importance of registration and documentation.

In terms of follow-up, the following recommendations were identified:

1. Unequivocal and prompt action on the issue of alleged sexual exploitation, including sanctions of any perpetrators and preventive measures to avoid recurrence in West Africa and elsewhere; strong support in this context for the work of the Inter-Agency Task Force on Protection from Sexual Abuse and Exploitation in Humanitarian Crises;

2. UNHCR was urged to follow-up on the recommendations of the evaluation on refugee children, with an implementation plan giving clear timelines, specific steps and indications of human and financial resource needs;

3. Refugee children issues, including that of the trafficking of children, must be reflected in all relevant topics in the drafting of the Agenda for Protection;

4. States not yet signatories of the Convention on the Rights of the Child and its two Optional Protocols should be encouraged to consider signing and ratifying these instruments;

5. UNHCR should cooperate more closely with UNICEF, including updating its MOU. UNICEF was also requested to assume a more active role in refugee children's education.

IV. CONCLUDING OBSERVATIONS

In drawing the Global Consultations to a close, the Chairman recalled that the goal set by UNHCR in launching this process of consultative meetings was to revitalize the international protection regime. He believed that this had indeed been achieved. In the course of the various meetings, a wide range of protection issues had been covered, permitting the identification of gaps and areas for improvement. The next step would be to consolidate the conclusions drawn in the Agenda for Protection, which would be on the agenda of the Standing Committee at the end of June 2002.

The Chairman thanked the delegations for having responded to his request to respect the "3-S" goals by demonstrating a spirit of collaboration and cooperation (i.e. "sociability") in order to work together and make progress on a number of complex and difficult issues (i.e. the "substance"). The agenda had been

a full one, and completing it on time had been largely due to the spirit of “sincerity” reflected in the respect for timeliness and intervention time limits shown by the delegations. He also acknowledged the work of UNHCR staff from the Division of International Protection, the Senior Coordinators for Refugee Women and for Refugee Children, the Secretary of the Executive Committee and her team and all other colleagues who shared in preparing the papers and organising the smooth running of the meetings.

Global Consultations on INTERNATIONAL PROTECTION

Lisbon Expert Roundtable
3-4 May 2001

Organized by the United Nations High Commissioner for Refugees
And the Carnegie Endowment for International Peace
Hosted by the Luso-American Foundation for Development

Summary Conclusions – Cessation of Refugee Status

The second day of the expert roundtable addressed the cessation clauses of the 1951 Convention relating to the Status of Refugees, based on two discussion papers, *Current Issues in Cessation of Protection under Article 1C of the 1951 Convention and Article I.4 of the 1969 OAU Convention*, by Professor Joan Fitzpatrick and *When is International Protection No Longer Necessary? The "Ceased Circumstances" Provisions of the Cessation Clauses: Principles and UNHCR Practice, 1973 – 1999,* by Rafael Bonoan. Participants were also provided with the UNHCR Guidelines on the Application of the Cessation Clauses and written contributions from the Government of the Netherlands; Judge Bendicht Tellenbach, Swiss Asylum Appeal Commission; and Dr. Penelope Mathew, Australian National University. NGO and other input was fed into the process in the course of the discussion. Professor Walter Kaelin moderated the discussion.

The following summary conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the issues emerging from the discussion.

A. State and UNHCR Practice with respect to the Cessation Clauses

(1) One of the objectives of the discussion was to understand why, overall, the cessation clauses under the 1951 Convention are little-used provisions by States. There was therefore considerable discussion across the range of issues which impact on the application of the cessation clauses. The emergent focus of the discussion was on the more complex issue of the application of articles 1C(5) and (6). For this reason, and in view of the fact that articles 1C(1)-(4) are less used, these conclusions reflect the greater emphasis in the discussion on the application of articles 1C(5) and (6).

(2) A number of countries do not invoke the cessation clauses at least in part because of the administrative costs involved, including the costs of implementing review procedures; the recognised likelihood that even where cessation results, it may not lead to return because those whose refugee status has ceased will have the possibility to remain under another status; and/or a State preference for naturalization under Article 34 of the Convention.

(3) Cessation has, on occasion, been a formality used for administrative reasons, that is to transfer both administrative and fiscal responsibility from one government entity to another. In this sense, it may not have any direct impact on the life of the individual(s) concerned.

(4) In some States a declaration of general cessation has been made in relation to refugees from a specific country not for the purpose of reviewing the status of those recognized as refugees but with a view to limiting applications of asylum-seekers coming from that country. In some instances cessation appears to have been used to designate a country of origin as generally "safe" in the context of refugee status determination. In a similar light, recent legislation in some States providing for the periodic review of refugee status may lead to an increased interest in invoking the cessation clauses. These examples indicate that there is a need to clarify applicable standards in the application of the cessation clauses.

(5) UNHCR has, in certain specific situations involving large numbers of refugees, invoked the cessation clauses by publicly issuing declarations of general cessation.

B. Application of the "Ceased Circumstances" Cessation Clause (articles 1C(5)-(6) of the 1951 Convention)

a) Cessation as a flexible tool

(6) The "ceased circumstances" cessation provisions pose a number of legal and operational questions and are most in need of expert examination and practical guidance.

(7) State practice indicates that there is not necessarily a basis for the view that more flexible interpretation and/or more active use of the "ceased circumstances" cessation clauses would lead States to extend full Convention refugee status to those who would otherwise benefit from temporary protection.

(8) In considering a flexible approach to cessation, it is helpful to distinguish between operational procedures and normative standards. At the operational level, a flexible approach is needed. This would include such measures as consultations between the affected parties, including refugee communities, and phased implementation that takes into account the needs of the host country, the country of return, and the refugees themselves. On the other hand, at the normative level, a flexible application of the cessation clauses should not be taken to mean that protection standards may be diminished.

b) Criteria and process

(9) The process of arriving at a declaration of general cessation requires coherence, consultation and transparency.

(10) The criteria for declaring general cessation as set out in Executive Committee Conclusion No. 69 (1992) on Cessation of Status and in UNHCR's Guidelines are generally adequate. This being said, there is a need for further development of the guidelines which should focus on procedures for assessing ceased circumstances. This should include broader consideration of a range of factors including human security, the sustainability of return, and the general human rights situation.

(11) The criteria for cessation should be applied carefully, not in purely formalistic terms, with full awareness of the situation in the country of origin as well as the country of asylum.

(12) In determining whether general cessation can be invoked with regard to a specific group of refugees, the following elements are crucial: (i) assessment of the situation in the country of origin against the criteria mentioned above in paras. (10) and (11) on the basis of all available information from a variety of sources ; (ii) involvement of refugees in the process (perhaps including visits by refugees to the country of origin to examine conditions); (iii) examination of the circumstances of refugees who have voluntarily returned to the country of origin; (iv) analysis of the potential consequences of cessation for the refugee population in the host country; and (v) clarification of categories of persons who continue to be in need of international protection and of criteria for recognizing exceptions to cessation.

(13) Following a declaration of general cessation, procedures should be implemented in a flexible, consultative, and phased manner, particularly in developing countries hosting large numbers of refugees.

(14) Factors critical to the success of implementing general cessation include agreement on implementation procedures and timeframes among States, UNHCR, NGOs and

refugees; counselling of refugees; information-sharing; and the provision of assistance to returnees.

c) Targeted/partial application of the "ceased circumstances" clause

(15) Possible criteria for targeted, or partial, application of the cessation clauses require further examination. Two situations may arise. In the first, a certain sub-group, rather than an entire refugee caseload from a specific country of origin, might be targeted for cessation. This approach has been taken by UNHCR on one occasion, in relation to declaring general cessation for Ethiopian refugees from the Mengistu regime, but not for Ethiopian refugees who had fled subsequently. In some circumstances it might be possible to use a similar approach.

(16) The second possible use of partial cessation would be with respect to persons from a particular area of the country of origin. Consideration should be given to the importance of not subjecting refugees to unnecessary review in light of changes which may in fact be temporary. The notion of eventual return to safe areas in the country of origin would need further careful examination in the context of cessation. Importing the idea of relocation/internal flight alternative from refugee status determination is, for instance, not appropriate in relation to cessation and would raise human rights concerns, most notably the creation or expansion of situations of internal displacement.

d) Individual application of the ceased circumstances cessation clause

(17) The practice under Article 1C(5)-(6) has hitherto been for cessation to be declared on a group basis, and not applied to individual cases selected from among a larger group of the same nationality. While nothing in the Convention precludes its use with respect to an individual refugee, such an approach would require further analysis if it were to be used, not least because of the need to respect a basic degree of stability for individual refugees.

e) Compelling reasons

(18) Application of the "compelling reasons" exception to general cessation contained in Article 1C(5)-(6) is interpreted to extend beyond the actual words of the provision and is recognized to apply to Article 1A(2) refugees. This reflects a general humanitarian principle that is now well-grounded in State practice.

(19) In addition, Executive Committee Conclusion No. 69 sets out a further humanitarian exception for persons whose long stay in the host country has resulted in strong family, social and economic ties. These and other similar categories of cases should benefit from a secure legal status.

f) Cessation in situations of mass influx

(20) The use of cessation in mass influx depends on the situation in the country of origin and on the status of the refugees in the host countries. It can be categorized as follows:

- *Prima facie group determination under the 1951 Convention and/or the OAU Convention*: The Conventions' cessation clauses apply.

- *Temporary protection in the wake of mass influx, which includes persons covered by the 1951 Convention*: Since temporary protection is built upon the 1951 Convention framework, it is crucial that in such situations the cessation clauses are respected. This can be achieved, for instance, by promoting voluntary repatriation in safety and dignity when conditions so allow, and by providing access to refugee status determination procedures when temporary protection is lifted, if not sooner. Access to status determination procedures after lifting temporary protection would need to take

into account humanitarian and human rights exceptions and in particular compelling reasons arising out of previous persecution.

≠# *Complementary protection/broader notion of temporary protection*: A different set of procedures and criteria would avail, linked to the reasons for recognition, given that it applies to those who are not covered by the 1951 Convention. Such standards would still need to be developed, depending on the situation.

g) Relationship to durable solutions

(21) As a guiding principle, cessation of refugee status should lead to a durable solution. It should not result in people residing in a host State with an uncertain status. Nor would cessation necessarily lead to return.

(22) While voluntary repatriation and cessation may both be elements in a comprehensive approach to address specific refugee situations, the standards and policies appropriate for each are different. An analysis of the circumstances of refugees who repatriate voluntarily may be an important element in determining whether a general declaration of cessation would follow.

(23) Residual caseloads remaining after the ending of a voluntary repatriation programme can be divided broadly into two categories. Where there has been an individual status determination, the cessation clauses might be applied if the circumstances so warrant. Where there has been no individual determination (either because of a prima facie determination of refugee status or because of the granting of temporary protection), individuals not choosing voluntary repatriation should be entitled to seek individual determinations which, in addition to the principles that would ordinarily apply to such determinations, might also include a review of whether their circumstances have changed in the particular case, or there are compelling reasons arising out of previous persecution.

(24) In those cases where return is not a viable option, naturalization or at the very least some form of permanent residence is necessary.

C. Change in personal circumstances under 1951 Convention, article 1C (1) – (4) and OAU Convention, article I.4(a-d)

(25) Cessation based on changes in personal circumstances should be assessed under the criteria of voluntariness, intent, and effective protection, which should not be applied in a formalistic manner. The conclusions contained under this heading in Prof. Fitzpatrick's paper were broadly endorsed.

D. Relationship of cessation to determination of refugee status

(26) In principle, refugee status determination and cessation procedures should be seen as separate and distinct processes, and which should not be confused.

(27) If in the course of the asylum procedure there are fundamental changes in the country of origin, the asylum authorities should bear the burden of proof that such changes are indeed fundamental and durable. Humanitarian exceptions would need to be properly accommodated in such a context, that is, for instance, in cases where individuals had previously suffered severe forms of persecution.

E. Final observations

(28) It was considered that UNHCR's Guidelines on Cessation were generally well crafted but should be updated on the basis of the findings of this meeting. Particular

attention should be paid to ensuring that cessation is undertaken only following full consultation and open communication with all affected parties.

EC/GC/01/2Track/1
30 May 2001

English only

Lisbon Expert Roundtable
Global Consultations on International Protection
3-4 May 2001

Organised by United Nations High Commissioner for Refugees
And Carnegie Endowment for International Peace
Hosted by Luso-American Foundation for Development

Summary Conclusions – Exclusion from Refugee Status

The first day of the Lisbon Expert Roundtable addressed the question of the exclusion clauses of the 1951 Convention relating to the Status of Refugees, basing the discussion on a background paper by Professor Geoff Gilbert, University of Essex, *Current Issues in the Application of the Exclusion Clauses*. In addition, Roundtable participants were provided with the UNHCR Guidelines on the Exclusion Clauses and written contributions from the Government of the Netherlands and the Government of Turkey. Subsequently, written contributions were received from Government Experts of Canada, France, Turkey and the United Kingdom and will be reflected in the report. Participants included 32 experts from 25 countries, drawn from Governments, NGOs, academia, the judiciary and the legal profession. Professor Georges Abi-Saab, former Justice of the International Criminal Tribunal for Yugoslavia, moderated the discussion.

In view of limited time available, the discussion focused on those aspects of the background paper and the UNHCR Guidelines that were considered to be in need of clarification. The paragraphs below, while not representing the individual views of each participant or necessarily of UNHCR, reflect broadly the issues emerging from the discussion.

General Considerations

(1) In the wake of the Second World War, the drafters of the Convention contemplated certain types of crime to be so horrendous that they justified the exclusion of the perpetrators from the benefits of refugee status. In this sense, the perpetrators are considered "undeserving of refugee protection." Other reasons for the exclusion clauses include the need to ensure that fugitives from justice do not avoid prosecution by resorting to the protection provided by the 1951 Convention, and to protect the host community from serious criminals. The purpose of the exclusion clauses is therefore to deny refugee protection to certain individuals while leaving law enforcement to other legal processes.

(2) The interpretation and application of article 1F should take an "evolutionary approach", and draw on developments in other areas of international law since 1951, in particular international criminal law and extradition law as well as international human rights law and international humanitarian law.

(3) Refugee law, extradition, international criminal law, and international human rights law provide complementary principles and mechanisms to bridge the tension between the need to avoid impunity and the need for protection.

(4) Exclusion clauses are of an exceptional nature and should be applied scrupulously and restrictively because of the potentially serious consequences of exclusion from refugee status for the individual concerned.

Article 1F(a) – Crimes against peace, crimes against humanity, war crimes

(5) Article 1F(a) is a dynamic provision to be interpreted in the light of a number of different rapidly evolving sources of international criminal law.

(6) The Rome Statute establishing the International Criminal Court and the Statutes of the two ad hoc tribunals (the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda), constitute the latest comprehensive instruments informing the interpretation of article 1F(a) crimes. These, together with provisions in other international humanitarian law instruments, clarify the interpretation of crimes covered by article 1F(a). The forthcoming publication by the International Committee of the Red Cross of a study on customary rules of international humanitarian law may be another source of interpretation.

Article 1F(b) – serious non-political crimes

(7) State practice on the interpretation of the term "serious non-political offence" in article 1F(b) varies.

(8) It is difficult to achieve consensus on the precise meaning of "political", not least because a certain margin of interpretation of the term remains a sovereign prerogative. In this context, it should be noted that extradition treaties specify that certain crimes, notably certain terrorist acts, are to be regarded as non-political, although such treaties typically also contain non-persecution clauses.

(9) It was acknowledged that there is no generally accepted definition of terrorism. Many perpetrators of terrorist acts may fear prosecution and not persecution, and so would in fact not qualify for inclusion. If they did, article 1F(b) would be sufficient to exclude them in most instances.

(10) The context, methods, motivation and proportionality of a crime to its objectives are important in determining whether it is political or not. The "predominance" test (i.e. whether the offence could be considered to have a predominantly political character and in this sense might be proportionate to the political objective) is used in most jurisdictions to define "political" crimes.

(11) A "serious" offence is one that would on the facts attract a long period of imprisonment, and should include direct and personal involvement. The term "serious" is also linked to the principle of proportionality, the question being whether the consequence (eventual return to persecution) is proportionate to the type of crime that was committed. Each case must be viewed on its own facts, calling into question the existence of automatic bars to refugee status based on the severity of any penalty already meted out.

(12) There was considerable debate on the question of proportionality and balancing. In considering this question,

(i) State practice indicates that the balancing test is no longer being used in common law and in some civil law jurisdictions.

(ii) In these jurisdictions other protection against return is, however, available under human rights law.

(iii) Where no such protection is available or effective, for instance in the determination of refugee status under UNHCR's mandate in a country which is not party to the relevant human rights instruments, the application of exclusion should take into account fundamental human rights law standards as a factor in applying the balancing test.

The meeting did not reach consensus on point iii), although some support for it was expressed. It is suggested that this be examined further at the second roundtable in the context of the discussion on article 33 of the 1951 Convention.

Article 1F(c) – acts contrary to the purposes and principles of the United Nations

(13) Article 1F(c) is not redundant, although most exclusion cases can be covered by the other provisions. Some States have used it as a residual category, for instance, in relation to certain terrorist acts or trafficking in narcotics. The exclusion of terrorists under article 1F(c) attracted considerable debate. There was, however, no agreement on the types of crimes article 1F(c) would usefully cover.

(14) In view of its vague and imprecise language, it should be interpreted restrictively and with caution. It should be limited to acts contrary to the purposes and principles of the United Nations, as defined by the UN.

Inclusion before exclusion

(15) A holistic approach to refugee status determination should be taken, and in principle the inclusion elements of the refugee definition should be considered before exclusion. There are a number of reasons of a policy, legal and practical nature, for doing this:

- Exclusion before inclusion risks criminalising refugees;
- Exclusion is exceptional and it is not appropriate to consider an exception first;
- Non-inclusion, without having to address the question of exclusion, is possible in a number of cases, thereby avoiding complex issues;
- Inclusion first enables consideration to be given to protection obligations to family members;
- Inclusion before exclusion allows proper distinction to be drawn between prosecution and persecution;
- Textually, the 1951 Convention would appear to provide more clearly for inclusion before exclusion, such an interpretation being consistent in particular with the language of article 1F(b);
- Interviews which look at the whole refugee definition allows for information to be collected more broadly and accurately.

(16) It is possible for exclusion to come first in the case of indictments by international tribunals and in the case of appeal proceedings. An alternative option in the face of an indictment is to defer status determination procedures until after criminal proceedings have been completed. The outcome of the criminal proceedings would then inform the refugee status determination decision.

Standard of Proof

(17) Exclusion proceedings do not amount to a full criminal trial. In determining the applicable standard of proof in exclusion procedures, “serious reasons” should be interpreted as a minimum to mean clear evidence sufficient to indict, bearing in mind international standards. Appropriate procedural safeguards derived from human rights law should be put in place in view of the seriousness of the issues and of the consequences of an incorrect decision. In particular, the benefit of the doubt should be available in exclusion cases.

(18) Association with/membership of a group practising violence or committing serious human rights abuse is, *per se*, not sufficient to provide the basis for a decision to exclude. However, depending on the nature of the organisation, it is conceivable that membership of a certain organisation might be sufficient to provide a basis for exclusion in some instances.

(19) Expertise of a very special nature is frequently required where exclusion questions arise. More attention should be given to training of decision-makers in laws relevant to the

question of exclusion, particularly in international human rights law and international criminal law.

Defences

(20) In general, the defences as outlined in the UNHCR Guidelines and which are normally available under national and international criminal law should be available in the context of examining the applicability of the exclusion clauses. The absence of *mens rea* is not a defence as such, but indicates the lack of an element of the offence.

(21) There is no room for the defence of superior orders in considering the applicability of the exclusion clauses. Duress, on the other hand, which is a different defence, may apply. The question of whether amnesty laws might raise a defence would depend on the facts of the particular case.

Family Members

(22) Where a family head is excluded from refugee protection, family members' qualification for refugee status should be considered in their own right. There should be no exclusion by association.

Minors

(23) Under article 40(3)(a) of the Convention on the Rights of the Child, States have an obligation to set a minimum age for criminal liability. Children below that age must not be considered for exclusion.

(24) Minors should not be excluded where the necessary *mens rea* cannot be established.

(25) As noted in the UNHCR Guidelines on Exclusion, even if article 1F is applied to a child, s/he should be protected against *refoulement*.

Exclusion in Mass Influx Situations

(26) In situations of mass influx, there are two key guiding principles:
(i) The exclusion clauses apply in mass influx situations;
(ii) Exclusion needs to be examined in individual procedures.

(27) A clear distinction should be made between operational arrangements to separate armed elements from the refugee population on the one hand, and individual procedures in relation to certain suspected groups for the purpose of exclusion from refugee status on the other.

(28) Armed elements, while protected under the relevant provisions of international humanitarian law, are not to be considered as asylum-seekers unless they lay down their arms. Their identification and separation is the responsibility of the host state but it often presents a plethora of operational problems, the resolution of which is only successful if the international community, including the Security Council, provides the necessary support, including a safe and secure environment.

(29) The issue of those excluded from refugee status in mass influx situations should also be addressed, as developing countries confronted with these problems do not have the capacity or resources to deal with these cases.

(30) More in-depth examination and analysis is required of the application of the exclusion clause in situations of mass influx, including on the relevance of inclusion before exclusion where there is prima facie recognition of refugees, as well as other substantive, procedural and evidentiary problems. In view of the policy, legal and operational aspects

of these problems, UNHCR should undertake further study of the subject in co-operation with States, NGOs and scholars.

Final observations

(31) There is a need to examine further the relevance of exclusion in the context of those benefiting from non-refoulement as a principle of customary international law. This issue could be discussed at the Cambridge Roundtable on article 33.

(32) Non-returnability under human rights law is much wider than the protection afforded under the 1951 Convention. Such non-returnability could be available to those excluded from refugee status.

(33) The exclusion clauses in the 1951 Convention are exhaustively enumerated. No other exclusion provisions can therefore be incorporated into national legislation.

(34) In developing the interpretation and application of the exclusion clauses, the central tenet must remain protection-oriented while ensuring that fugitives from justice do not avoid prosecution by resorting to the protection provided by the 1951 Convention. Where appropriate, States should prosecute excludable persons who are not returned in accordance with international and national law. The goal should be towards developing a normative system that integrates the different applicable legal regimes in a coherent and consistent manner.

Global Consultations on INTERNATIONAL PROTECTION

Cambridge Expert Roundtable
9–10 July 2001

Organized by the United Nations High Commissioner for Refugees and the Lauterpacht Research Centre for International Law, University of Cambridge

Summary Conclusions – Supervisory Responsibility

The second day of the Cambridge Expert Roundtable addressed the question of supervising implementation of the 1951 Convention relating to the Status of Refugees. This was based on a background paper by Professor Walter Kälin of the University of Berne entitled "Supervising the 1951 Convention on the Status of Refugees: Article 35 and Beyond". Participants comprised 35 experts from some 15 countries, drawn from governments, non-governmental organizations (NGOs), academia, the judiciary and legal profession. They were provided with a number of written comments on the paper,[1] as well as the report and the conclusions and recommendations of the Global Consultations Regional Meeting held in San José, Costa Rica, on 7–8 June 2001. The latter compared UNHCR's supervisory role with that of the Inter-American human rights bodies. The morning session was chaired by Professor Chaloka Beyani of the London School of Economics and the afternoon by Professor Guy Goodwin-Gill of the University of Oxford.

Taking into account the breadth of the discussion and the recognized preliminary character of the inquiry, this document presents only a brief summary of the discussion, as well as a list of the varied suggestions on strengthening implementation which came up in the course of it. The document does not represent the individual views of each participant or necessarily of UNHCR, but reflects broadly the themes emerging from the discussion.

Introduction

1. The focus of the wide-ranging discussion, which was more of a brainstorming session than a legal analysis, was on ways to enhance the effective implementation of the 1951 Convention. Generally, there was agreement that the identification of appropriate mechanisms should seek to preserve, even strengthen, the preeminence and authority of the voice of the High Commissioner. Anything that could undermine UNHCR's current Article 35 supervisory authority should be avoided.

2. The difficulties confronting international refugee protection today form the backdrop to any examination of strengthened supervision. They include major operational dilemmas obstructing proper implementation, diverging views on the interpretation of Convention provisions and insufficient focus in intergovernmental forums on international protection issues.

[1] Comments were received by a group of African NGOs (West African NGOs for Refugees and Internally Displaced Persons – WARIPNET (Senegal), Africa Legal Aid (Ghana) and Lawyers for Human Rights (South Africa)); Rachel Brett of Quaker UN Office; Chan-Un Park, lawyer from Republic of Korea; Judge Jacek Chlebny, Poland; the International Council of Voluntary Agencies (ICVA); and the Medical Foundation for the Care of Victims of Torture, London.

UNHCR's supervisory role

3. Under paragraph 8 of its Statute, UNHCR's function is to protect refugees including by promoting the conclusion of international refugee instruments, supervising their application, and proposing amendments thereto. This function is mirrored in Article 35 of the 1951 Convention in which States undertake to cooperate with UNHCR in the exercise of its functions, including in particular by facilitating its duty of supervising the application of the provisions of the Convention.

4. The elements of UNHCR's supervisory role can be listed as including:
   (a) working with States to design operational responses which are sensitive to and meet protection needs, including of the most vulnerable;
   (b) making representations to governments and other relevant actors on protection concerns and monitoring, reporting on and following up these interventions with governments regarding the situation of refugees (e.g. on admission, reception, treatment of asylum-seekers and refugees);
   (c) advising and being consulted on national asylum or refugee status determination procedures;
   (d) intervening and making submissions to quasi-judicial institutions or courts in the form of *amicus curiae* briefs, statements or letters;
   (e) having access to asylum applicants and refugees, either as recognized in law or in administrative practice;
   (f) advising governments and parliaments on legislation and administrative decrees affecting asylum-seekers and refugees at all stages of the process, and providing comments on and technical input into draft refugee legislation and related administrative decrees;
   (g) fulfilling an advocacy role, including through public statements, as an essential tool of international protection and the Office's supervisory responsibility;
   (h) strengthening capacity e.g. through promotional and training activities;
   (i) receiving and gathering data and information concerning asylum-seekers and refugees as set out in Article 35(2) of the 1951 Convention.

5. This broad range of UNHCR's supervisory activities is generally accepted and indeed expected by States, although implementation of the Convention remains fraught with difficulties. This has led to calls for strengthened supervisory mechanisms, including by enhancing capacity in the protection area.

Considerations and possible approaches

6. Supervision is not simply about ascertaining violations, but perhaps more importantly, it is also about constructive engagement and dialogue as well as coordination to ensure the resolution of issues.

7. It is important to ensure that NGOs have a proper role in the process of supervision. The establishment of specialized NGOs in the field of refugee rights should be fostered, along with information dissemination, advocacy and legal aid.

8. Generally, information collection, research and analysis need to be improved. It was suggested that UNHCR's Centre for Documentation and Research should be preserved, appropriately supported, funded and staffed. With regard to requests for reports and information from States, such requests would need to be incremental and targetted, given the limited response to earlier requests. Another possibility would be to establish a mechanism with differentiated reporting burdens. Article 36 of the 1951 Convention, which requires States to provide

information on the laws and regulations adopted to ensure application of the Convention, is a reporting responsibility of States.

9. There is no one single model used by treaty monitoring bodies which can simply be replicated and applied to supervising implementation of the 1951 Convention. The experience gained in the human rights monitoring field and in other areas such as the International Narcotics Control Board, the World Trade Organization or the Council of Europe is potentially useful. There is also a need to ensure complementarity with human rights treaty-based monitoring systems and to avoid competing interpretations which might arise with several bodies with overlapping competencies. A need for confidentiality in certain circumstances need not rule out speaking out in others.

10. A number of possible approaches and suggestions were put forwards as follows:

(a) Strengthen UNHCR's role. UNHCR's role, as described above, could be enhanced by increasing protection staff significantly, improving cooperation with regional bodies further, and by UNHCR strengthening provision of technical legal and other advice. One possibility which could be examined further would be for UNHCR to prepare reports for governments on implementation, which could inform and support dialogue between UNHCR and States, and could eventually be published. Such measures naturally have resource implications.

(b) The Executive Committee. The Executive Committee could complement UNHCR's supervisory role through a special mechanism which might review special problems of implementation. There is, however, a need to avoid the politicization of debate. The experience of the Human Rights Commission is salutary in this regard. A subcommittee of the Executive Committee, similar to the former Subcommittee of the Whole on International Protection could, for instance, be constituted to which the High Commissioner might submit problems of implementation. This would ensure a more focused debate on international protection matters generally and better quality Conclusions on protection. Such a subcommittee could also itself usefully identify obstacles to implementation of the Convention, including in specific situations, and promote solutions, not least through burden/responsibility sharing and comprehensive approaches.

(c) Meetings of States Parties. Meetings of States Parties, as undertaken in the context of international humanitarian law organized by the International Committee of the Red Cross (ICRC), could perhaps be replicated in the refugee law context, although in the human rights context such meetings have not always been so effective. The December 2001 States Parties meeting could reflect upon the utility of a review conference some years later, with UNHCR suggesting the agenda and reporting on the state of implementation of the 1951 Convention.

(d) Peer review and ad hoc mechanisms. One advantage of peer review mechanisms among States is that they allow for a more positive identification of a "best practices" approach, as well as collective discussion of problems. Trade policy review mechanisms serve as one model. They examine implementation and problems but not in an adversarial manner. The approach allows peer pressure to be exerted to improve implementation. Ad hoc mechanisms which do not have to be treaty-based could also be useful. For instance, the Committee of Ministers of the Council of Europe made a Declaration on

compliance with commitments accepted by member States in 1994. As a result, peer review mechanisms have now been established. Thematic issues are selected, so that “best practice” can be identified, rather than the focus being on particular countries. Confidentiality is built into the system to ensure criticism is possible.

(e) Judicial forums. An informal system of review by judges could be established. For instance, the International Association of Refugee Law Judges (IARLJ) could offer a forum in which adjudicators can discuss the interpretation and implementation of the Convention on an advisory and informal basis. Establishing a judicial body as such, which could be used to provide preliminary opinions on issues, as is the case with the European Court of Justice, was proposed as a possibility in the longer term.

(f) Expert advisers and/or fact-finding missions. One possibility would be to establish a system whereby the High Commissioner appoints one or a number of expert advisers to assess implementation in relation to particular issues or particular refugee situations. A report would be made to the High Commissioner, who could then consider bringing it to the attention of the Executive Committee. Another possibility would be to set up a mechanism whereby the High Commissioner could request the organization of fact-finding missions, including government representatives and other experts, which could collect information and/or make recommendations on particular situations. It should be remembered, however, that fact-finding missions as initiated by the ICRC have tended to encounter major obstacles and their competence is only accepted by a limited number of States.

11. Participants agreed that their discussion was only the beginning of an important process to strengthen the implementation of the Convention, including through enhanced supervision. This process should continue, expanding to other actors and taking in other perspectives. It was felt that the Ministerial meeting in December 2001 provided an opportunity to crystallize support for moving the discussion forward.

Global Consultations on INTERNATIONAL PROTECTION

Geneva Expert Round Table
8-9 November 2001

Organized by the United Nations High Commissioner for Refugees and the Graduate Institute of International Studies in Geneva

Summary Conclusions on Article 31 of the 1951 Convention relating to the Status of Refugees – Revised

The discussion during the first day of the Geneva Expert Roundtable was based on a background paper by Guy Goodwin-Gill, Professor of International Law at the University of Oxford, entitled *Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection.* In addition, Roundtable participants were provided with written contributions from Michel Combarnous, International Association of Refugee Law Judges (IARLJ), Frankie Jenkins, Human Rights Committee of South Africa, as well as the Refugee and Immigration Legal Centre in Melbourne, Australia. Participants included 28 experts from 18 countries, drawn from Governments, NGOs, academia, the judiciary and the legal profession. Rachel Brett from the Quaker United Nations Office in Geneva moderated the discussion.

The Round Table reviewed the extensive practice of States in regard to refugees and asylum seekers entering or remaining illegally, many of whom fall within the terms of Article 31 of the 1951 Convention. It took account of the origins of this provision in the debates in the United Nations in 1950 and in the Conference of Plenipotentiaries, held in Geneva in 1951. It noted the intention of the drafters of the Convention to lay down, among others, a principle of immunity from penalties for refugees who, 'coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present... without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.'

The following summary conclusions do not necessarily represent the individual views of participants or of UNHCR, but reflect broadly the understandings emerging from the discussion.

GENERAL CONSIDERATIONS

1. Article 31 of the 1951 Convention relating to the Status of Refugees presents particular challenges to States seeking to manage asylum applications effectively, while ensuring that specific international obligations are fully implemented.

2. The interpretation and application of Article 31 requires that account be taken both of the developing factual circumstances affecting the movements of refugees and asylum seekers, and also of developments in international law, including the impact of regional and international human rights instruments, the practice of treaty and other monitoring bodies, and the provisions of related treaties, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

3. It was recalled that the UNHCR Executive Committee had acknowledged that refugees will frequently have justifiable reasons for illegal entry or irregular movement, and that it had recommended appropriate standards of treatment in, among others, Conclusions Nos. 15, 22, 44 and 58.

4. It was also observed that for States Parties to the 1951 Convention and/or 1967 Protocol, Article 31 combines obligations of conduct and obligations of result.

5. Thus, Article 31(1) specifically obliges States not to impose penalties on refugees falling within its terms. Article 31(2) calls upon States not to apply to the movements of refugees within the scope of paragraph 1, restrictions other than those that are necessary, and only until their status is regularized locally or they secure admission to another country.

6. The effective implementation of these obligations require concrete steps at the national level. In the light of experience and in view of the nature of the obligations laid down in Article 31, States should take the necessary steps to ensure that refugees and asylum seekers within its terms are not subject to penalties. Specifically, States should ensure that refugees benefiting from this provision are promptly identified, that no proceedings or penalties for illegal entry or presence are applied pending the expeditious determination of claims to refugee status and asylum, and that the relevant criteria are interpreted in the light of the applicable international law and standards.

7. In particular, while the relevant terms of Article 31 ('coming directly', 'without delay', 'penalties', 'good cause') must be applied at the national level, full account must always be taken of the circumstances of each individual case if international obligations are to be observed. It was further noted, on the basis of the practice of States, that these obligations are implemented most effectively where accountable national mechanisms are able to determine the applicability of Article 31, having regard to the rule of law and due process, including advice and representation.

8. Steps are also required to ensure that the results laid down in Article 31(2) are achieved. In particular, appropriate provision should be made at the national level to ensure that only such restrictions are applied as are necessary in the individual case, that they satisfy the other requirements of this Article, and that the relevant standards, in particular international human rights law, are taken into account.

9. The incorporation and elaboration of the standards of Article 31 in national legislation, including by providing judicial review in the case of detention, would be an important step for the promotion of compliance with Article 31 and related human rights provisions.

SPECIFIC CONSIDERATIONS

10. In relation to Article 31(1):

(a) Article 31(1) requires that refugees shall not be penalised solely by reason of unlawful entry or because, being in need of refuge and protection, they remain illegally in a country.

(b) Refugees are not required to have come directly from territories where their life or freedom was threatened.

(c) Article 31(1) was intended to apply, and has been interpreted to apply, to persons who have briefly transited other countries or who are unable to find effective protection in the first country or countries to which they flee. The drafters only intended that immunity from penalty should not apply to refugees who found asylum, or who were settled, temporarily or permanently, in another

country. The mere fact of UNHCR being operational in a certain country should not be used as a decisive argument for the availability of effective protection in that country.

(d) The intention of the asylum-seeker to reach a particular country of destination, for instance for family reunification purposes, is a factor to be taken into account when assessing whether s/he transited through or stayed in another country.

(e) Having a well-founded fear of persecution is recognized in itself as 'good cause' for illegal entry. To 'come directly' from such country via another country or countries in which s/he is at risk or in which generally no protection is available, is also accepted as 'good cause' for illegal entry. There may, in addition, be other factual circumstances which constitute 'good cause'.

(f) 'Without delay' is a matter of fact and degree; it depends on the circumstances of the case, including the availability of advice. In this context it was acknowledged that refugees and asylum-seekers have obligations arising out of Article 2 of the 1951 Convention.

(g) The effective implementation of Article 31 requires that it apply also to any person who claims to be in need of international protection; consequently, that person is presumptively entitled to receive the provisional benefit of the no penalties obligation in Article 31 until s/he is found not to be in need of international protection in a final decision following a fair procedure.

(h) The term 'penalties' includes, but is not necessarily limited to, prosecution, fine, and imprisonment.

(i) In principle, a carrier which brings in an 'undocumented' passenger who is subsequently determined to be in need of international protection should not be subject to penalties.

11. In relation to Article 31(2):

(a) For the purposes of Article 31(2), there is no distinction between restrictions on movement ordered or applied administratively, and those ordered or applied judicially. The power of the State to impose a restriction must be related to a recognised object or purpose, and there must be a reasonable relationship of proportionality between the end and the means. Restrictions on movement must not be imposed unlawfully and arbitrarily.

(b) The detention of refugees and asylum seekers is an exceptional measure and should only be applied in the individual case, where it has been determined by the appropriate authority to be necessary in light of the circumstances of the case and on the basis of criteria established by law in line with international refugee and human rights law. As such, it should not be applied unlawfully and arbitrarily and only where it is necessary for the reasons outlined in ExCom Conclusion no. 44, in particular for the protection of national security and public order (e.g. risk of absconding). National law and practice should take full account of the international obligations accepted by States, including through regional and universal human rights treaties.

(c) Refugees and asylum seekers should not be detained on the ground of their national, ethnic, racial or religious origins, or for the purposes of deterrence.

(d) Initial periods of administrative detention for the purposes of identifying refugees and asylum seekers and of establishing the elements for their claim to asylum should be minimised. In particular, detention should not be extended for the purposes of punishment, or maintained where asylum procedures are protracted.

(e) Detention beyond the initial period must be justified on the basis of a purpose indicated in 11(b) above.

(f) UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers provide important guidance. Families and children, in particular, should be treated in accordance with international standards and children under eighteen ought never to be detained. Families should in principle not be detained; where this is the case, they should not be separated.

(g) There is a qualitative difference between detention and other restrictions on freedom of movement. Many States have been able to manage their asylum systems and their immigration programmes without recourse to physical restraint. Before resorting to detention, alternatives should always be considered in the individual case. Such alternatives include reporting and residency requirements, bonds, community supervision, or open centres. These may be explored with the involvement of civil society.

(h) Access to fair and expeditious procedures for the determination of refugee status, or for determining that effective protection already exists, is an important element in ensuring that refugees are not subject to arbitrary or prolonged detention.

(i) In terms of procedural safeguards, at a minimum, there should be a right to review the legality and the necessity of detention before an independent court or tribunal, in accordance with the rule of law and the principles of due process. Refugees and asylum-seekers should be advised of their legal rights, have access to counsel and to national courts and tribunals and be enabled to contact the Office of UNHCR.

(j) UNHCR should, upon request, be advised of, and allowed access to, all cases of detained refugees and asylum seekers.

(k) Where detention is deemed necessary, States should ensure that refugees and asylum seekers are treated in accordance with international standards. They should not be located in areas or facilities where their physical safety and well-being are endangered; the use of prisons should be avoided. Civil society should be involved in monitoring the conditions of detention.

ADDITIONAL CONSIDERATIONS

12. Non-legal strategies and necessary follow-up are also critical. These include the preparation and dissemination of instructions to relevant levels of government and administration on the implementation of Article 31, training and capacity-building. Particular attention should be given to ensuring that strategies and actions taken by States do not serve to exacerbate racist or xenophobic perceptions, behaviour or attitudes.

13. States should maintain accurate records of all cases where refugees and asylum seekers are detained or where their movement is otherwise restricted, should publish statistical data of such detention and restrictions on movement and should regularly inform UNHCR of cases of detained refugees and asylum seekers pursuant to their obligation under Article 35 of the Convention.

Global Consultations on INTERNATIONAL PROTECTION

Geneva Expert Roundtable
8-9 November, 2001

Organized by the United Nations High Commissioner for Refugees
and the Graduate Institute of International Studies in Geneva

Summary Conclusions on Family Unity

The second day of the Geneva Expert Roundtable addressed the issue of family unity, based on a discussion paper by Kate Jastram and Kathleen Newland, entitled *Family Unity and Refugee Protection*. Participants were also provided with written contributions from Judge Katelijne Declerk of the Belgian Permanent Appeals Tribunal for Refugees, Ninette Kelley, a Canadian legal practitioner, Dr. Savitri Taylor, La Trobe University, Victoria, Australia, and the Refugee Immigration and Legal Centre, Melbourne, Australia. Participants included 28 experts from 18 countries, drawn from Governments, NGOs, academics, the judiciary and the legal profession. Professor Vitit Muntarbhorn, from Chulanlongkorn University, Thailand, moderated the discussion.

The following summary conclusions do not necessarily represent the individual views of participants or of UNHCR, but reflect broadly the understandings emerging from the discussion.

GENERAL CONSIDERATIONS

1. A right to family unity is inherent in the universal recognition of the family as the fundamental group unit of society, which is entitled to protection and assistance. This right is entrenched in universal and regional human rights instruments and international humanitarian law, and it applies to all human beings, regardless of their status. It, therefore, also applies in the refugee context. A small minority of participants, while recognising the importance of the family, did not refer to family unity as a right but as a principle.

2. The right to family unity is derived from, *inter alia,* Article 16 of the Universal Declaration of Human Rights 1948, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Article 16 of the European Social Charter 1961, Articles 17 and 23 of the International Covenant on Civil and Political Rights 1966, Articles 10 of the International Covenant on Economic, Social and Cultural Rights 1966, Article 17 of the American Convention on Human Rights 1969, Article 74 of Additional Protocol 1 of 1977 to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War 1949, Article 18 of the African Charter on Human and Peoples' Rights 1981, Articles 9, 10 and 22 of the Convention on the Rights of the Child 1989, and Articles XXIII and XXV of the African Charter on the Rights and Welfare of the Child 1990.

3. Although there is not a specific provision in the 1951 Refugee Convention and its 1967 Protocol, the strongly worded Recommendation in the Final Act of the Conference of Plenipotentiaries, reaffirms the "essential right" of family unity for refugees. Moreover, refugee law as a dynamic body of law, is informed by the broad object and purpose of the 1951 Convention and its 1967 Protocol, as well as by developments in related areas of international law, such as international human

rights law and jurisprudence and international humanitarian law. In addition, Executive Committee Conclusions nos. 1, 9, 24, 84, 85 and 88, each reaffirm States' obligations to take measures which respect family unity and family reunion.

4. The obligation to respect the right of refugees to family unity is a basic human right which applies irrespective of whether or not a country is a party to the 1951 Convention.

5. Respect for the right to family unity requires not only that States refrain from action which would result in family separations, but also that they take measures to maintain the unity of the family and reunite family members who have been separated. Refusal to allow family reunification may be considered as an interference with the right to family life or to family unity, especially where the family has no realistic possibilities for enjoying that right elsewhere. Equally, deportation or expulsion, could constitute an interference with the right to family unity unless justified in accordance with international standards.

6. The right to family unity is of particular importance in the refugee context, not least in providing the primary means of protection for individual members of the family unit. Maintaining and facilitating family unity helps to ensure the physical care, protection, emotional well-being and economic support of individual refugees and their communities. The protection that family members can give to one another multiplies the efforts of external actors. In host countries, family unity enhances refugee self-sufficiency, and lowers social and economic costs in the long-term. In addition, giving effect to the right to family unity through family reunification may help to reduce the number of, and dangers associated with, unauthorised or spontaneous arrivals, as well as to reduce unnecessary adjudication of claims for refugee status. Family unity can promote the sustainability of durable solutions for refugees (that is, voluntary repatriation, local integration, and resettlement).

7. The object and purpose of the 1951 Convention implies that its rights are in principle extended to the family members of refugees. In some jurisdictions, this is referred to as derivative status. Thus, family members of a refugee should be allowed to remain with him or her, in the same country and to enjoy the same rights. In addition, in light of increased awareness of gender-related persecution and child specific forms of harm, each family member should be entitled to the possibility of a separate interview if he or she so wishes, and principles of confidentiality should be respected.

8. International human rights law has not explicitly defined "family" although there is an emerging body of international jurisprudence on this issue which serves as a useful guide to interpretation. The question of the existence or non-existence of a family is essentially a question of fact, which must be determined on a case-by-case basis, requiring a flexible approach which takes account of cultural variations, and economic and emotional dependency factors. For the purposes of family reunification, "family" includes, at the very minimum, members of the nuclear family (spouses and minor children).

FAMILY REUNIFICATION

9. The circumstances in which refugees leave their countries of origin frequently involve the separation of families. Consequently, family reunification is often the only way to ensure respect for a refugee's right to family unity. A review of State practice demonstrates that family reunification is generally recognised in relation to refugees and their families, and that practical difficulties related to its implementation in no way diminish a State's obligations thereto.

10. Implementing the right to family unity through family reunification for refugees and other persons in need of international protection has special significance because of the fact that they are not able to return to their country of origin.

11. Requests for family reunification should be dealt with in a positive, humane and expeditious manner, with particular attention being paid to the best interests of the child. While it is not considered practical to adopt a formal rule about the duration of acceptable waiting periods, the effective implementation of obligations of States requires that all reasonable steps be taken in good faith at the national level. In this respect, States should seek to reunite refugee families as soon as possible, and in any event, without unreasonable delay. Expedited procedures should be adopted in cases involving separated and unaccompanied children, and the applicable age of children for family reunification purposes would need to be determined at the date the sponsoring family member obtains status, not the date of the approval of the reunification application.

12. The requirement to provide documentary evidence of relationships for purposes of family unity and family reunification should be realistic and appropriate to the situation of the refugee and the conditions in the country of refuge as well as the country of origin. A flexible approach should be adopted, as requirements that are too rigid may lead to unintended negative consequences. An example was given where strict documentation requirements had created a market for forged documents in one host country.

ASYLUM SEEKERS

13. As regards asylum-seekers, since a decision has not yet been made as to their legal status, it may not be possible to determine where they should enjoy this right or which State bears responsibility for giving effect to it. It is, therefore, important to expedite decision-making particularly in cases where separation causes particular hardship, where "best interests" of the child come into play, or where there is a likelihood of a positive determination being made. Preparation for possible family reunification in the event of recognition should, in any event, begin in the early stages of an asylum claim, for instance, by ensuring that all family members are listed on the interview form.

MASS INFLUX

14. The right to family unity also applies during situations of mass influx, and temporary evacuation. From an operational perspective, it is important to take practical measures to prevent family separations and ensure family reunification as early as possible in these situations. Otherwise, chances of reunification diminish as time goes by.

VOLUNTARY REPATRIATION AND REINTEGRATION

15. The right to family unity and family reunification also applies, and is particularly important, in the context of voluntary repatriation and reintegration. A unified family unit is better able to re-establish itself in the country of origin and contribute to the rebuilding of the country.

Global Consultations on INTERNATIONAL PROTECTION

San Remo Expert Roundtable
6-8 September 2001

Organised by the United Nations High Commissioner for Refugees and the International Institute of Humanitarian Law

Summary Conclusions – Gender-Related Persecution

The San Remo Expert Roundtable addressed the question of gender-related persecution and the 1951 Convention relating to the Status of Refugees, basing the discussion on a background paper by Rodger Haines Q.C., Refugee Status Appeals Authority of New Zealand, entitled *Gender-Related Persecution.* In addition, Roundtable participants were provided with written contributions from Justice Catherine Branson, Federal Court of Australia, Deborah Anker, Harvard Law School, Karen Musalo and Stephen M. Knight, Hastings College of Law, University of California, and the World Organisation Against Torture. Participants included 33 experts from 23 countries, drawn from Governments, NGOs, academia, the judiciary and the legal profession. Deborah Anker, from Harvard Law School, moderated the discussion.

The following summary conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the understandings emerging from the discussion.

The Convention is, *inter alia,* founded on the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. Because men, women and children can experience persecution in different ways, Article 1A(2) demands an inquiry into the specific characteristics and circumstances of the individual claimant. Accordingly, the below understandings follow:

1. The refugee definition, properly interpreted, can encompass gender-related claims. The text, object and purpose of the Refugee Convention require a gender-inclusive and gender-sensitive interpretation. As such, there would be no need to add an additional ground to the Convention definition.

2. Gender refers to the social construction of power relations between women and men, and the implications of these relations for women's and men's identity, status, roles and responsibilities. Sex is biologically determined.

3. Even though gender is not specifically referenced in the refugee definition, it is clear -- and thus accepted -- that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment.

4. Ensuring that a gender-sensitive interpretation is given to each of the Convention grounds can prove very important in determining whether a particular applicant has a well-founded fear of persecution on account of one of the Convention grounds. The main problem facing women asylum seekers is the failure of decision-makers to incorporate the gender-related claims of women into their interpretation of the existing enumerated grounds and their failure to recognize the political nature of seemingly private acts of harm to women.

5. It follows that sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently to men.

6. In cases where there is a real risk of serious harm at the hands of a non-state actor (e.g. husband, partner or other non-state actor) for reasons unrelated to any Convention ground, and the lack of state protection is for reason of a Convention ground, it is generally recognized that the nexus requirement is satisfied. Conversely, if the risk of harm by the non-state actor is Convention related, but the failure of State protection is not, the nexus requirement is satisfied as well.

7. Where individual women do not meet the requirements of the refugee definition of the 1951 Convention, their expulsion may nevertheless be prohibited under other applicable human rights instruments.

8. Protection of refugee women not only requires a gender-sensitive interpretation of the refugee definition, but also a gender-sensitive refugee status determination procedure.

San Remo Expert Roundtable
6-8 September 2001

Organised by the United Nations High Commissioner for Refugees
and the International Institute of Humanitarian Law

Summary Conclusions – Internal Protection/Relocation/Flight Alternative

The San Remo Expert Roundtable addressed the question of the internal protection/relocation/flight alternative as it relates to the 1951 Convention relating to the Status of Refugees. The discussion was based on a background paper by James C. Hathaway and Michelle Foster, University of Michigan, entitled *Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination.* In addition, Roundtable participants were provided with written contributions including from Hon. Justice Baragwanath, High Court of New Zealand, Hugh Massey, United Kingdom, Marc Vincent, Norwegian Refugee Council, Reinhard Marx, Practitioner, Germany, and the Medical Foundation for the Care of Victims of Torture. Participants included 33 experts from 23 countries, drawn from Governments, NGOs, academia, the judiciary and the legal profession. Hugo Storey, from the International Association of Refugee Law Judges (IARLJ), moderated the discussion.

There has been no consistent approach taken to the notion of IPA/IRA/IFA by states parties: a number of states apply a reasonableness test, others apply varying criteria, including in one jurisdiction, the "internal protection alternative" approach as defined in the background paper. UNHCR has expressed its concern over recent years that some states have resorted to IPA/IRA/IFA as a procedural short-cut for deciding the admissibility of claims. Given the varying approaches, it was considered timely to take stock of the different national practices with a view to offering decision-makers a more structured analysis to this aspect of refugee status determination. These summary conclusions do not finally settle that structure, but may be useful in informing the application, and further developing the parameters, of this notion.

The following summary conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the understandings emerging from the discussion.

1. IPA/IRA/IFA can sometimes be a relevant consideration in the analysis of whether an asylum-seeker's claim to refugee status is valid, in line with the object and purpose of the Refugee Convention. The relevance of considering IPA/IRA/IFA will depend on the particular factual circumstances of an individual case.

2. Where the risk of being persecuted emanates from the state (including the national government and its agents), IPA/IRA/IFA is not normally a relevant consideration as it can be presumed that the state is entitled to act throughout the country of origin. Where the risk of being persecuted emanates from local or regional governments within that state, IPA/IRA/IFA may only be relevant in some cases, as it can generally be presumed that local or regional governments derive their authority from the national government. Where the risk of being persecuted emanates from a non-state actor, IPA/IRA/IFA may more often be a relevant consideration which has though to be determined on the particular circumstances of each individual case.

3. The individual whose claim to refugee status is under consideration must be able – practically, safely, and legally – to access the proposed IPA/IRA/IFA. This requires consideration of physical and other barriers to access, such as risks that may accrue in the process of travel or entry; and any legal barriers to travel, enter or remain in the proposed IPA/IRA/IFA.

4. If the asylum-seeker would be exposed to a well-founded fear of being persecuted, including being persecuted inside the proposed IPA/IRA/IFA or being forced back to and persecuted in another part of the country, an IPA/IRA/IFA does not exist.

5. The mere absence of a well-founded fear of being persecuted is not sufficient in itself to establish that an IPA/IRA/IFA exists. Factors that may be relevant to an assessment of the availability of an IPA/IRA/IFA include the level of respect for human rights in the proposed IPA/IRA/IFA, the asylum-seeker's personal circumstances, and/or conditions in the country at large (including risks to life, limb or freedom).

6. Given its complexity, the examination of IPA/IRA/IFA is not appropriate in accelerated procedures, or in deciding on an individual's admissibility to a full status determination procedure.

7. More generally, basic rules of procedural fairness must be respected, including giving the asylum-seeker clear and adequate notice that an IPA/IRA/IFA is under consideration.

8. Caution is desirable to ensure that return of an individual to an IPA/IRA/IFA does not arbitrarily create, or exacerbate, situations of internal displacement.

Global Consultations on INTERNATIONAL PROTECTION

Cambridge Roundtable
9–10 July 2001

Organised by the United Nations High Commissioner for Refugees
And the Lauterpacht Research Centre for International Law

Summary Conclusions – The principle of *Non-Refoulement*

The first day of the Cambridge Expert Roundtable addressed the question of the scope and content of the principle of *non-refoulement*. The discussion was based on a joint legal opinion by Sir Elihu Lauterpacht and Daniel Bethlehem of the Lauterpacht Research Centre for International Law, which was largely endorsed.

The discussion focused on those aspects of the legal opinion which were considered deserving of particular comment or in need of clarification. The paragraphs below, while not representing the individual views of each participant, reflect broadly the consensus emerging from the discussion. The general appreciation of the meeting was:

1. *Non-refoulement* is a principle of customary international law.

2. Refugee law is a dynamic body of law, informed by the broad object and purpose of the 1951 Refugee Convention and its 1967 Protocol, as well as by developments in related areas of international law, such as human rights law and international humanitarian law.

3. Article 33 applies to refugees irrespective of their formal recognition and to asylum seekers. In the case of asylum seekers, this applies up to the point that their status is finally determined in a fair procedure.

4. The principle of *non-refoulement* embodied in Article 33 encompasses any measure attributable to the State which could have the effect of returning an asylum seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she is at risk of persecution, including interception, rejection at the frontier or indirect *refoulement*.

5. The principle of *non-refoulement* applies in situations of mass influx. The particular issues arising in situations of mass influx need to be addressed through creative measures.

6. The attribution to the State of conduct amounting to *refoulement* is determined by the principles of the law on State responsibility. The international legal responsibility to act in conformity with international obligations wherever they may arise is the overriding consideration.

7. There is a trend against exceptions to basic human rights principles. This was acknowledged as important for the purposes of the interpretation of Article 33(2). Exceptions must be interpreted very restrictively, subject to due process safeguards, and as a measure of last resort. In cases of torture, no exceptions are permitted to the prohibition against *refoulement*.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(63) Output 1.2: Refugee and Humanitarian Entry and Stay

Senator Cooney asked for material on definitional issues concerning refugee and humanitarian terminology.

Answer:

We have assumed that Senator Cooney's question relates to terminology in specialist use among governments, academics and non-government organisations interested in humanitarian situations to describe the people affected by those situations. UNHCR, as the international organisation mandated by the United Nations to assist refugees, is a natural fulcrum for international dialogue on humanitarian issues and for this reason governments tend either to adopt its terminology or use it as a point of departure for their particular policy purposes. Following is a selection of the more commonly used terms and definitions from UNHCR sources.

Asylum-seeker: "An individual whose refugee status has not yet been determined." (*Handbook for Emergencies*, 2nd edition, UNHCR, Geneva, 1 January 2000)

Humanitarian (status) cases: "Persons who are formally permitted, under national law, to reside in a country on humanitarian grounds. These may include persons who do not qualify for refugee status." (*Protecting Refugees: A Field Guide for NGOs*, UNHCR, Geneva, 1 May 1999)

Refugee: Any person who is not excluded from protection under the Refugees Convention and who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it. (United Nations 1951 *Convention relating to the Status of Refugees* as amended by its 1967 Protocol)

Persons of concern to UNHCR: "A generic term used to describe all persons whose protection and assistance needs are of interest to UNHCR. These include refugees under the 1951 Convention, persons who have been forced to leave their countries as a result of conflict or events seriously disturbing public order, returnees, stateless persons, and, in some situations, internally displaced persons. UNHCR's authority to act on behalf of persons of concern other than refugees is based on General Assembly resolutions." *Protecting Refugees: A Field Guide for NGOs*, UNHCR, Geneva, 1 May 1999)

Trafficking: “Trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons, either by threat or use of abduction, force, fraud, deception or coercion, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having the control over another person.” (Article 2, *Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*, UN General Assembly, 23 November 1999)

Smuggling: “Smuggling of migrants shall mean the intentional procurement for profit for illegal entry of a person into and/or illegal residence in a State of which the person is not a national or a permanent resident.” (Article 2, *Revised draft Protocol against Smuggling in Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organised Crime*, UN General Assembly, 23 November 1999)

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(64) Output 1.2: Refugee and Humanitarian Entry and Stay

Senator McKiernan (L&C 424) asked:

In relation to question no. 24 asked by Senator Bartlett at the additional estimates hearing in February 2002, provide the numbers for the last five years on the split family visa applications.

Answer:

The split family provisions were introduced in 1997-98 program year. The following table gives the number of humanitarian visa grants under the split family provisions since their commencement to 31 May 2002.

Program year	Number of humanitarian visas granted to split family applicants
1997-1998	338
1998-1999	617
1999-2000	815
2000-2001	693
1/7/01 to 31/5/02	353
Total	**2 816**

At 31 May 2002, there were 949 applicants in the split family pipeline representing 25% reduction from 1263 at the beginning of the program year.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(65) Output 1.2: Refugee and Humanitarian Entry and Stay

Senator McKiernan (L&C 435) asked:

a) Is there an agreement in place at the moment between the Commonwealth and the States on roles and responsibilities for the care in the community of humanitarian minors?

b) If so, what are the agreed roles and responsibilities?

c) If not, what efforts are being made to resolve the difficulty and fulfil the obligations?

d) Will the Commonwealth be responsible for funding care arrangements that are agreed to by the states?

Answer:

a) Yes, the Commonwealth and the states operate under cost-sharing agreements. They are presently under review by a working party as the terms and conditions were set in 1985.

b) Under current cost-sharing arrangements, workers employed by state welfare authorities provide supervision and counselling to all unaccompanied humanitarian minors and their caregivers to prevent breakdown in care arrangements through early intervention and assistance to families providing care.

The Commonwealth reimburses the states on a cost share basis linked to the caseworkers' salaries.

c) The Commonwealth is proposing a Memorandum of Understanding which provides a significantly higher level of funding than states and territories currently receive under existing cost share agreements and which more clearly sets out the role of state and territory welfare authorities. Further negotiations with states and territories are proposed on this MOU.

d) The Commonwealth contributes to the costs associated with the welfare supervision of minors under the cost share agreements whereby the Commonwealth pays 50% of the salary of a caseworker for every 25 unaccompanied humanitarian minors plus one third of oncosts.

The states also receive Commonwealth revenue funding for the provision of general services for the population in their states. In addition, unaccompanied humanitarian minors are counted as part of the total refugee program and are fully costed for general services provided by both the Commonwealth and state.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(66) Output 1.3: Enforcement of Immigration Law

Senator Carr (L&C 314) asked, " Can you confirm that in July last year DIMIA undertook an investigation into the matter referred to on page three of the *Campus Review* of 22-28 May this year? There are further reports in the Melbourne *Age*. I would appreciate a detailed answer on the steps the Department has taken in regard to the matters raised in the *Campus Review* article of 22-28 May 2002."

Answer:

Between July and September 2001, various Sydney universities referred 27 fraudulent International English Language Testing System (IELTS) certificates to DIMIA. A Sydney-based Migration Agent had presented 25 of these fraudulent IELTS certificates in support of applications for enrolment at the universities.

As a result of the referral of these fraudulent certificates to DIMIA:

- DIMIA officials reviewed all 25 instances where fraudulent IELTS certificates were lodged in support of university enrolment applications. Following this review, 11 students were interviewed due to possible enrolment and course requirement irregularities and their visas were considered for cancellation. Of the 11 students interviewed, 10 of these students have had their visas cancelled. The remaining 15 students were not found to be in breach of their visa conditions;

- information gathered during the interviews by DIMIA officials was referred to the NSW Police to assist that law enforcement agency with its investigation into the Sydney-based Migration Agent mentioned above. This investigation is ongoing;

- DIMIA liaised with IDP Education Australia (one of the joint owners of the IELTS test) to ensure that the Department is aware of the latest security features of IELTS certificates and to better enable DIMIA staff to identify fraudulent IELTS certificates; and

- a streamlined checking process for all IELTS certificates presented to DIMIA has been introduced.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 AND 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(67) Output 1.3: Enforcement of Immigration Law

Senator Carr (L&C 315) asked, " There are reports in the Sunday Age of 10 February this year of fake degrees flooding the market. This is a Singaporean based operation. Are you familiar with that article?"

Answer:

The Department is aware of a number of 'fake degree' operations, including alleged operations based in Singapore, that were publicised in the media in January and February of this year. Most operations are web-based, offering browsers fake degrees from a range of institutions if they register on the site and pay a registration fee.

Immigration staff at overseas posts undertake rigorous checks, which include the verification of education documents, on any questionable document submitted in support of a visa application.

In March, the Department circulated a number of articles relating to 'fake degree' operations to representatives of international education peak bodies to bring the issue to their attention and enable them to improve the integrity measures in the issuing of their certificates.

Where such allegations, relating to operations onshore, come to the notice of the Department, and are found to have substance, they are referred to the appropriate authorities.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(68) Output 1.3: Enforcement of Immigration Law

Senator Carr (L&C 315) asked, " Can you provide me with details of student visa cancellations for non-compliance during 2001-02 with students from the following colleges: Excelsior, Lloyds International, Alexander Institute of Technology, Alexander College, Uniworld College and Alpha Beta College? And could you provide me with details for the reasons for cancellations?"

Answer:

The table below provides the number of visa cancellations for the selected colleges, including the power used and the reason code where the visa was cancelled under section 137J. A student will have their visa automatically cancelled under section 137J where they do not report to a DIMIA office within 28 days of the notice sent to them by their education provider advising them they have breached their visa condition requiring attendance at classes and satisfactory academic results.

Section 116 is used where the student does report to DIMIA in response to the notice and an officer, after interviewing the student, makes a decision to cancel the visa. It is also used to cancel the visas of non-genuine students and those who have breached other visa conditions such as the limited work rights condition.

Section 128 mirrors the grounds in section 116 and is used where the visa holder is outside Australia.

Visa Cancellations by Power 2001-02 (to end of April 2002)

College	No. of Visa Cancellations					
	Section 137J (auto cancellation)			Section 116 (general cancellation)	Section 128 (student overseas)	Total
	Code 8*	Code 10**	Sub-Total			
Alexander Institute	1	-	**1**	2	6	**9**
Alpha Beta	35	1	**36**	10	10	**56**
Excelsior	15	4	**19**	2	4	**25**
Lloyds International	6	9	**15**	2	4	**21**
Uniworld	24	23	**47**	10	12	**69**

*Code 8: Non-Attendance at Classes
**Code 10: Failed to Meet Course Requirements

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(69) Output 1.3: Enforcement of Immigration Law

Senator Carr (L&C 315) asked, " Could you also advise me as to any other private providers, besides those where the situation exists with the providers listed above, where there have been persistent or serious problems with student visa issues including cancellations? Can you provide a list including the numbers and details of the problems discovered?"

Answer:

Investigations into students by DIMIA are usually progressed to the stage that administrative action can be taken against the student, ie if there is a breach of visa conditions, their visa will be cancelled and the student will depart or be removed.

Where there are persistent or serious problems with providers these usually relate to possible breaches by the institutions of the *Education Services for Overseas Students Act 2000* (ESOS Act). These breaches are referred to DEST.

A list of providers for whom sanctions have been imposed under the ESOS Act was provided to Senator Carr by DEST at the Employment, Workplace Relations and Education Legislation Committee's Senate Estimates hearing on 21 June 2002.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(70) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 438) asked:

a) The Melbourne Age on 10 May reported allegations that problems of religious based discrimination and harassment were prevalent in Australia's immigration detention centres. Has the department sought to ascertain the veracity of these allegations?
b) If so, what were the results of its inquiries and what further action, if any, has it taken or does it plan to take in relation to this matter?

Answer:

The Department acknowledges that communal living can cause tension, but detainees are encouraged to live harmoniously together. Allegations of religious intolerance are treated seriously and detainees are encouraged to discuss concerns with Centre Management and in consultation forums such as resident committees.

There have been suggestions from time to time that some disagreements or tensions between individuals or groups of detainees are based on religious or cultural differences. There have been issues raised about the way some detainees adhere to their religious observances.

If such situations arise, the Department and the Services Provider work together with detainees to defuse any tensions, encourage better communication, promote religious tolerance and to essentially resolve the issue through a process of negotiation.

Detainees are encouraged to practice their religion of choice and where possible are provided with the necessary resources to do so. To the extent possible, the Department and Service Provider work with the detainees to ensure they have access to appropriate providers and facilities.

The Department will continue to implement its policies on a non-discriminatory basis, treating detainees equally irrespective of their religion, nationality and ethnic background or gender.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(71) Output 1.3: Enforcement of Immigration Law

Senator Cooney (L&C 438) asked, "There are people in our community of Arab origins and people who follow Muslim faith who are being targeted. What is being done about that? There are some suggestions that the department itself encourages that. I will give you one example put to me by Julian Burnside. A friend of his in Armadale had his house raided by eight people from the department because there were two people who looked like Arabs in the house. When inquiry was made, that was the reason that was given for the raid. Can you check on that."

Answer:

The suggestion that the department is targeting people based on their origin or religious beliefs and in particular Arabs and Muslims is simply not true. Our field operations are never planned with the aim of targeting people of any particular origin or their religious beliefs but rather based on general community information and information generated from departmental computer systems.

Compliance staff from our Melbourne office visited an address in Armadale on Monday 15 April 2002. The staff were acting on community information suggesting that unlawful non-citizens were staying at the house.

On arrival at the house the compliance staff explained the purpose of their visit to the person resident. On confirming that the resident was legally in Australia and that no one else was in residence the staff immediately departed the address.

The householder was cooperative and no force was used to enter the premises. Four staff entered the house, not eight as alleged.

The conduct of such visits is an important element in locating people illegally in Australia, which in turn helps to maintain the integrity of Australia's immigration system.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(72) Output 1.3: Enforcement of Immigration Law

Senator Faulkner (L&C 327) asked for the organisational chart for the Intelligence Analysis Section.

Answer:

The chart is attached.

INTELLIGENCE ANALYSIS SECTION

Tony Pollock
Director
6264 2484
0409 780 504

Strategic Analyst
Ken McArthur
6264 2585

Analysis
Rest of the World

Jim McCormack
Assistant Director
6264 1020
0427 217 359

Wayne O'Donohoe
6264 2954
Philippines, Central Asia,
Mongolia, Greater China
(inc. PRC, Hong Kong,
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QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(73) Output 1.3: Enforcement of immigration law

Senator Faulkner (L&C 329) asked, " Are there any memorandums of understanding or protocols or other guidance or documentation that govern your operations in Indonesia? What other guidance is available in relation to how you conduct your activities in countering people-smuggling in Indonesia and whether it comes by the joint People Smuggling Strike Team or by the intelligence analysis unit or by any other DIMIA operations either onshore in Indonesia or Australia based?"

Answer:

There is a memorandum of understanding between all Commonwealth agencies that are involved in combating people smuggling at Australia's overseas missions including Indonesia. The memorandum covers intelligence exchanges at posts, operational exchanges and cooperation, and other similar issues. DIMIA also has a service agreement with the Australian Federal Police, which covers cooperation between the two agencies.

DIMIA has three overseas compliance officers in Indonesia who have received training in intelligence analysis and reporting, document examination and other skills relevant to their duties. These officers report directly to the Regional Director Jakarta and to the Director Overseas Compliance and Liaison Section in Border Protection Branch in DIMIA's Canberra head office. They also consult with Intelligence Analysis Section and other sections in Border Protection Branch. Staff from all agencies involved in anti-people smuggling activities within Australia's Jakarta Embassy meet regularly.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(74) Output 1.3: Enforcement of Immigration Law

Senator Cooney (L&C 330) asked in relation to the running of the enforcement division, including the detention centres:

a) Provide the cost to the Department broken down into the cost to run each centre and how much people are paid.

b) Provide details of reports made within centres.

Answer:

a) The cost for Output 1.3 – Enforcement of Immigration Law for the period to end May 2002 for last financial year is $294.3 million. Of this amount, $60.683 million relates to employee expenses and $233.644 million for other expenses. This includes all functions under Output 1.3 including Regulate Entry and Departure, Prevent Unlawful Entry, Detection Onshore, Removals, Litigation as well as Detention. This figure is on a full accrual basis, which includes the allocation of corporate and head office expenses. It is not possible to provide this figure down to the level of individual detention centres.

The costs for each centre for the period 1 July 2001 to 31 December 2001 were provided to the Legal and Constitutional Legislation Committee in March 2002 in response to question on notice no. 88. Those figures are currently being updated to reflect the full year outcome for 2001-02. The final figures are not yet available but will be provided to the Committee as soon as possible once they are finalised.

The following table provides the direct expenses only for individual cost centres for the period to end May 2002 split into employee expenses and other operational costs.

The costs are not on a full accrual basis and include payments made under the contract for managing the detention centres as well as departmental expenses such as those for some employees, travel, motor vehicles, telephones, interpreting costs, depreciation and other administrative costs. They do not include Departmental head office corporate costs, state office costs attributed elsewhere in Output 1.3 (eg compliance), capital costs or those for detainees located in state correctional facilities.

Centre	DIMIA Employee	Other Expenses	Total

	Expenses ($m)	($m)	($m)l
Villawood (1)	0.000	9.988	9.988
Maribyrnong (1)	0.000	4.142	4.142
Perth (1)	0.052	3.400	3.452
Pt Hedland	0.493	10.405	10.898
Curtin	0.479	26.171	26.651
Woomera	0.489	41.665	42.154
Christmas Island	0.365	17.742	18.108
Cocos Island	0.173	4.672	4.844
Baxter	0.006	0.024	0.030
Singleton	0.000	1.122	1.122
Coonawarra	0.000	0.007	0.007
Total	$ 2.057	$ 119.338	$ 121.396

(1) DIMIA employee expenses for these centres are not attributed directly to the individual centres. They do not include staffing expenses more generally attributable to Output 1.3 (eg compliance). Centre staff are also attributed to other functions eg compliance.

b) ACS is required to keep the Department informed of all aspects of service delivery through the provision of incident reports and monthly up-date reports. These reports allow the Department to remain informed of developments within the detention centres and to closely monitor service delivery against the Immigration Detention Standards (IDS).

Detention Operations Section, on average, receives between 20 and 30 incident reports daily in relation to incidents in all detention facilities. The incident reports cover a range of issues, from routine matters such as removals, escorts, births and excursions through to altercations between detainees and notification of hunger strike action or progress reports.

For the 2000-01 Financial Year, 909 incident reports were received across 894,649 total detainee days. This represents one incident report for every 984 detainee days.

Service provider performance against IDS is assessed on a quarterly basis. A variety of reports and sources of information are used in making the assessment: from monthly reports from DIMIA managers at each IDC, to monthly reports of amenities, programs and activities for each centre provided by ACM, to incident reports and feedback from other agencies or NGOs.

In addition, DIMIA's performance monitoring regime contains reporting requirements, such as:

- Monthly analysis of incident reports for systemic issues;
- DIMIA Managers' Monthly Reports;

- Weekly teleconferences with IRPC/IDC DIMIA Managers;
- Independent investigation reports by DIMIA;
- Analysis and tracking of issues raised through Ombudsman and HREOC reports;
- Audits of specific elements of Immigration Detention Standards;
- Contract Operations Group (COG), used as a forum for raising and managing performance issues; and
- Unaccompanied Minors and Children fortnightly teleconference.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(75) Output 1.3: Enforcement of Immigration Law

Senator Sherry (L&C 331/332/333) asked:

In relation to the computerised scanning software system for passenger card data collection:

(a) Confirm the value of the contract.

(b) Provide the final cost to the Border Control and Compliance Division to oversee the selection of the contract

(c) What proportion of cards cannot be read?

(d) What is the extra cost involved in the delay and the manual processing?

Answer.

(a) The contract for the processing of passenger card data assisted by the use of computer scanning technology is for the three years from 1 August 2000 with options for a further two years. The contract price was estimated to be worth around $15 million over the five years to end July 2005 for processing of an estimated 100 million passenger cards. The contract is:

- designed to deliver data to the Australian Bureau of Statistics within one month of the end of the reference month;
- providing instant on line access to images of passenger cards for purposes of the Migration Act, law enforcement and other authorised purposes within two weeks of the date of movement;
- providing an ability to search the image library by any one of many descriptors and thus is a contingency source of movement records in the event that DIMIA's TRIPS system becomes unavailable.

The ongoing processing employs around 60 Insight staff and 4 DIMIA staff and processes around 1.5 million cards each month within 30 days of month's end.

(b) The Border Control and Compliance Division established a three person project team to develop a Request for Proposals that was advertised nationally in August 1999. Over the period August 1999 to December 1999 the team briefed potential respondents, discussed proposals, received and evaluated proposals and held subsequent discussions with potential contractors. The team also travelled to Sydney and Melbourne to conduct visits to reference sites.

Subsequent to selection of a preferred contractor the team was joined by a consultant Information Technology specialist to develop a Business Plan on the basis of the relevant proposal. The team also sought independent advice regarding the financial viability of the contractor and legal advice concerning the contract.

The total cost of the process was $93,500 and comprised $70,800 in project team salaries, $2,000 in project team travel costs, $9,700 in IT consultancy costs, $5,600 in financial advice consultancy costs and $5,400 in legal consultancy costs.

(c) The majority of cards were able to be electronically imaged and matched to DIMIA's systems. However, around 20,000 of the 1,400,000 card images (1.4%) for August 2000 could not be successfully processed. The quality of the data captured from the cards was unacceptable to the Australian Bureau of Statistics, as this deficiency in the data meant that an accurate estimate of permanent and long term arrivals and departures could not be achieved and other users questioned the credibility of the data for their purposes.

The difficulties encountered extended to cards for subsequent months, particularly in the period to December 2000. There was an unexpectedly wide variety of passenger cards in circulation at that time which did not consistently meet formatting and colour specifications suitable for scanning. There were differences in cards produced by the airlines and travel agents. These cards departed from the range of cards tested in feasibility trials and by the contractor in the development of the specifications for the system and caused problems and difficulties with the automated processing arrangements. As these problems came to attention card design and specifications were adjusted and the cards in use by July 2001 were better suited to the process than the cards collected over the previous 11 months and of the 1,350,000 cards processed in April 2002, only 435 could not be processed.

(d) Additional costs incurred as a consequence of the delays encountered have been in two areas:

- The first involved the accelerated processing of cards for the period July 2001 to February 2002. This requirement was to assist the Australian Bureau of Statistics be in a position to report population estimates by June 2002. The additional cost was approximately $2 million in the 2001-02 financial year.

- The second involved the need to manually process cards for the period August 2000 to June 2001 and this will take until late 2002 to complete. The additional cost incurred to the end of June 2002 has been approximately $1.3 million.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(76) Output 1.3: Enforcement of Immigration Law

Senator Sherry (L&C 334) asked, "Are any Commonwealth payments made based on the ABS data?"

Answer:

The distribution of a number of Commonwealth payments to the States is, in part, influenced by the population determinations provided by the ABS, in consultation with the States. This includes the provision of GST revenue, the payment of Budget Balancing Assistance and National Competition Policy payments and financial assistance grants under the Local Government (Financial Assistance) Act 1995.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(77) Output 1.3: Enforcement of Immigration Law

Senator Sherry (L&C 334) asked

(a) How many extra staff were employed by Insight in order to carry out the backlog processing?

(b) How many staff were employed by the previous contractor to do the processing?

Answer

(a) With regard to the accelerated processing of the 2001-02 cards, Insight employed an additional 43 staff between December 2001 and March 2002 to process around 12 million cards (covering 8 months, July 2001 to February 2002).

With regard to the manual processing of the 2000-01 data Insight is employing an additional 115 staff between April 2002 and October 2002 to process around 17 million cards (covering 11 months, August 2000 to June 2001).

(b) The previous manual process employed between 25 and 30 full time equivalent staff at the contractor's premises as well as an average of 25 DIMIA staff to process around 1.3 million cards per month (about 15 million per year). The shift to an automated process was necessary as manual processing was struggling to meet the requirements of data users in the face of continuing increases in the number of international passenger movements. All possible efficiencies in the manual processing had been identified and implemented, and processing times had been reduced, however it was not possible to reduce the time to provide data to ABS from around 8 weeks from month's end. In addition, projections were that processing times would extend as passenger volumes rose. It was considered vital to move to automate the process to ensure that the processing system would be sustainable into the future and to expedite the time in which data become available.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(78) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 338) asked for results on the take-up rate of the two facilities introduced in November 2000 as a consequence of the Review of Illegal Workers in Australia (RIWA).

Answer:

In November 2000, the government launched a number of initiatives to help employers to check work rights. These initiatives are part of phase one of the implementation of the review of illegal workers in Australia (RIWA). Phase one is an educative and awareness phase.

The initiatives to help employers and labour suppliers to check work rights include:

- **a pilot work rights information line** for enquiries about general work right issues, help with reading visa labels and information about the illegal worker warning notices. The service is free and currently operates from 8:00am to 6:00pm Monday to Friday;

- **a free call centralised work rights fax-back facility** where employers or labour suppliers with the authority of their overseas-born employee can obtain information about the employee's work right status.

As at 30 April 2002, over 20,780 calls had been recorded by the pilot work rights information line.

- the most common industries using the line were Labour Suppliers, Health and Community Services, the Accommodation, Café and Restaurant industry and the Manufacturing industry.

As at 30 April 2002, over 9000 requests had been received by the centralised work rights fax-back facility since its inception.

- the key industries requesting information were labour suppliers, the retail trade industry, the manufacturing industry and the property and business services industry.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(79) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 339) asked for a breakdown of the industries the persons, who were working unlawfully, have been found in?

Answer:

Illegal worker warning notices were introduced on 30 November 2000. Since the notices were introduced, a total of 881 notices have been issued. Of the 881 notices issued 721 have been issued during the period 1 July 2001 to 30 April 2002. The main industries issued with warning notices include Retail Trade (163), Manufacturing (137), Personal and Other Services (108), Accommodation, Cafés and Restaurants (62), and Construction (58).

The table below provides a breakdown of industries in which Illegal Worker Warning Notices have been issued for the period 1 July 2001 to 30 April 2002.

Industry	No. of Employers	No. of Warning Notices Issued
Agriculture, Forestry & Fishing	21	42
Manufacturing	43	137
Construction	24	58
Wholesale Trade	13	46
Retail Trade	94	163
Accommodation, Cafes & Restaurants	33	62
Cultural & Recreational Services	19	25
Personal & Other Services	44	108
Property & Business Services	19	47
Health & Community Services	3	4
Education	2	2
Government Admin/ Defence	1	1
Communication Services	2	2
Transport & Storage	3	7
Unknown – no industry type recorded	12	17
Total	**333**	**721**

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(80) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 339) asked, " Specifically within the building and construction industry, do you have any contact with the Office of the Employment Advocate in relation to getting their cooperation in the investigation of illegal workers in that industry?"

Answer:

DIMIA has had no direct dealings with the Office of the Employment Advocate in relation to illegal workers in the construction industry.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(81) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 340) asked, " Could you take the matter of the clause in the collective agreement about having the employer check the status of possible illegal workers at the Lucas Heights nuclear facility up with the Office of the Employment Advocate and follow it through?"

Answer:

- An article in *The Australian* newspaper of 19 April 2002 indicated that the Office of the Employment Advocate questioned aspects of a draft agreement between construction unions and the head contractor for the construction of a new nuclear reactor at the Lucas Heights site in Sydney. The article reported that the aspects of the draft agreement which had been questioned related to the requirement that sub-contractors do not use illegal workers.

- The Government is firmly opposed to the use of illegal workers. DIMIA takes action to prevent and enforce action against illegal work wherever possible.

DIMIA is aware of the draft agreement and has discussed it with the Department of Employment and Workplace Relations (DEWR). We understand that the concerns of the Office of the Employment Advocate related mainly to union demands for access to details of all employees on the site.

  - The draft agreement included a form to obtain details of all employees' work rights from DIMIA, which is to be signed by both the employer and employee. It also states that the information about the employee's entitlement to work will be provided to the principal contractor and the union on request.

  - DEWR and the Office of the Employment Advocate were concerned that this form would be used by unions to obtain details of all employees on the site.

- Under the Information Privacy Principles, DIMIA would not provide details of an individual's work rights to a third party, such as a union, without the employee's consent.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(82) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 342) asked for the most recent statistics relating to compliance activity for persons working illegally in Australia.

Answer:

- During the period 1 July 2001 to 30 April 2002, 5,840 persons have been located in compliance field operations. A further 8,216 persons have been located as a result of self-referrals.

- A total of 2,584 persons have been identified as working illegally as a result of these locations.

  - 2,400 persons were identified as a result of compliance field operations.

  - 184 persons were identified as a result of self-referrals.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(83) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 342) asked, " How many building and construction sites would you visit in a year during your compliance activities?"

Answer:

- Employers and labour suppliers can have employer awareness information sessions delivered in their workplace by compliance officers.

- In the period 1 July 2001 to 30 April 2002, 1115 employer awareness visits have been delivered nationally by compliance officers.

  - The large majority of the visits have been conducted in NSW by the NSW Employer Awareness Unit. This Unit was established in June 2001.

  - Employer awareness information is also provided to employers and labour suppliers as part of field operations.

- In the ten months to 30 April 2002, 353 employer awareness information sessions were delivered to employers in the Construction industry, making it the largest industry to receive such sessions. Other major industries receiving employer awareness information include Retail Trade (135), the Accommodation, Cafés and Restaurant industry (113) and the Personal and Other Services industry (113).

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(84) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 343) asked for the most recent overstayer statistics.

Answer:

(1) As at 31 December 2001 there were an estimated 59,000 overstayers which represented a decrease of 1.7% over the June 2001 total of 60,000.

The table below shows the length of overstaying of these overstayers.

Length of overstaying	Number	%
12 Months or less	13,300	22
Between 1 and 2 years	8,200	14
Between 2 and 3 years	6,000	10
Between 3 and 4 years	4,300	7
Between 4 and 5 years	3,400	6
Between 5 and 6 years	2,200	4
Between 6 and 7 years	1,700	3
Between 7 and 8 years	1,600	3
Between 8 and 9 years	1,200	2
Between 9 and 10 years	1,200	2
More than 10 years	16,000	27
TOTAL	**59,000**	**100**

(2) As at 31 December 2001, the composition of estimated overstayers by visa category and length of overstay indicates that around 22% overstay for 12 months or less.

Visa Category	12 mths or less		More than 12 mths		Total	
Visitor	11,000	18%	38,000	64%	49,000	82%
Student	1,000	2%	2,000	4%	3,000	6%
Temporary Resident	700	1%	2,300	4%	3,000	5%
Other	800	1%	3,200	6%	4,000	7%
Total	**13,500**	**22%**	**45,500**	**78%**	**59,000**	**100%**

(3) As at 31 December 2001, the composition of estimated overstayers by citizenship – top 15 countries is outlined below.

Country of Citizenship	Male	Female	Total	% of total
United Kingdom	3,800	2,500	6,300	11%
United States of America	3,100	2,200	5,300	9%
China, People's Republic of	2,700	1,200	3,900	7%
Philippines	2,200	1,400	3,600	6%
Indonesia	2,100	1,200	3,300	6%
Korea, Republic of	1,600	1,200	2,800	5%
Japan	1,400	1,300	2,700	5%
Malaysia	1,200	800	2,000	3%
Thailand	800	900	1,700	3%
Germany, Federal Republic of	900	700	1,600	3%
India	1,200	300	1,500	3%
Fiji	800	700	1,500	3%
Singapore	700	700	1,400	2%
France	800	600	1,400	2%
Vietnam	600	500	1,100	2%

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(85) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 343) asked for statistics of the number of those persons who, when apprehended in the community, would be detained.

Answer:

For the period 1 July 2001 to 31 May 2002 there were 6,708 people located in the community and of these 4,667 were detained. This represents 70% of all those located in the community.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(86) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 345) asked for the details of the 23 persons who have been in immigration detention over 36 months.

Answer:

As at 24 May 2002 there were 23 persons in immigration detention over 36 months. This figure was provided at the Budget Estimates Hearing.

Detailed statistics provided to the Committee on 6 June 2002 showed that, as at 24 May 2002, there were actually 19 people who had been detained for longer than 36 months. This figure was revised down from 23 as a result of a data purification exercise, which rectified delays in data entry.

All 19 persons are male detainees. Four are Vietnamese nationals who will be processed for removal under the MOU with Vietnam.

Of the remainder, four are Iranian nationals who are available for removal, or have action pending in the courts.

The rest cover a range of nationalities including: Indian (two), Korean (one), Sudanese (one), Romanian (one), Algerian (one), Kuwaiti (one), stateless (one), Afghani (one) Cambodian (one), and Iraqi (one). These persons either have matters outstanding before the Department, court action pending, or DIMIA is pursuing arrangements for their removal e.g. obtaining travel documents.

Of the 19, four are in immigration detention in State prisons, seven are at the Villawood IDC, two are at the Curtin IRPC, four are at the Port Hedland IRPC, one is at the Maribyrnong IDC and one is at the Perth IDC.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(87) Output 1.3: Enforcement of Immigration Law

Senator Allison (L&C 348) asked, " Is it possible to indicate how many are in the category of there being no third country willing to take them and their own country we do not have an agreement with?"

Answer:

There is no record kept of the number of persons who are ready for removal who do not have third country removal options. Each person ready for removal is assessed individually. Removal to a third country is an option considered where an individual puts forward claims to right of entry to a third country.

If persons ready for removal cooperate with efforts to establish their identity and provide sufficient information to obtain travel documents most countries are willing to accept the return of their own nationals and bilateral agreements are generally unnecessary.

In a small number of cases the Department has agreements with countries regarding specific removal issues and the Department is continuing to negotiate with other countries where there is an unwillingness to accept returns or where there are practical difficulties.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(88) Output 1.3: Enforcement of Immigration Law

Senator Allison (L&C 349/350/351/352/353/354) asked in relation to Maribyrnong Immigration Detention Centre:

a) Given the high level of monitoring, the security cameras and the control room, which is manned 24 hours a day and looks into every corridor in every area beyond the bedrooms and toilets, why is it necessary for two-hourly headcounts, and how are these headcounts conducted?

b) Provide a schedule of the medication currently being taken and the doses of that medication together with medical records.

c) Whether detainees are forced to take sleeping pills and the methods used.

d) Confirm that the issue of one blanket and no more than two on request is sanctioned by DIMIA and that visitors are not permitted to take blankets into the centre on request.

e) Confirm that heating was not turned on for 3 weeks after requests had been made.

f) Confirm that none of the rooms have doors, including toilets, bathrooms or the bedrooms, and how is privacy arranged?

g) Confirm that previously employed prison officers do receive the full six-week training course.

h) What measures do you have in place to ensure that complaints against officers can be made without any repercussions from or retribution by those officers towards the detainees?

i) Provide information on the size of groups allowed in the green area at once, and why this is the case.

j) Is the decision that the mother is not allowed to accompany the child or children to kindergarten being reviewed?

k) Provide details of the case of the detainee diagnosed with tuberculosis, whether he is still at the centre and whether inoculation against the disease was provided for other detainees.

l) It is the case that flowers are not permitted at the centre?

m) Confirm that there is now a rule that visitors are not permitted to bring in notebooks and pencils.

Answer:

a) There are three headcounts per day, which are conducted at meal times for the convenience of detainees. During these headcounts, detainees are required to show their identity cards.

   From time to time, where there are concerns about health or wellbeing of individuals, detainees will be placed on an observation routine in addition to normal head count procedures. In some instances, detainees are accommodated in observation rooms for that purpose, in others they will remain in general accommodation but staff will be required to check on their wellbeing at specific intervals, for example, 15 minute or half-hourly observations.

b) This information is confidential and private and is therefore not appropriate to provide publicly. However, this information could be supplied in a private briefing should that be acceptable to the committee.

c) No detainee is forced to take sleeping pills.

d) There is no limit on the number of blankets that can be issued by ACM to a detainee at any one time.

   At the time of Senator Allison's visit, detainees were permitted to receive blankets from visitors but not permitted to use them because of issues with the laundry contract.

   A review has since taken place and detainees are now permitted to use blankets from visitors. Detainees are permitted two additional blankets each, which is limited to facilitate storage arrangements when blankets are not in use.

e) There had been problems with the heating system which resulted in some areas of the centre being affected. There was a period of two days in May when the heating pumps failed and the heating system was not operational.

f) Most areas in the facility have doors, including the interview, short stay, observation, education, TV, laundry rooms, toilets and family rooms and associated ensuites. Some of these have privacy locks, such as the toilets and family rooms.

   The male shower blocks have cubicles with lockable doors. The female shower blocks have external doors and curtains for each cubicle.

   One of the six-person dormitories has a door. The remaining sleeping accommodation comprises partitioned dormitories with two double bunks within each partitioned area. The partitioned areas do not have doors.

g) All ACM Detention Officers and Correctional Officers complete Certificate III which is a nationally accredited program at Pre-Service Level. The Pre-Service Training consists of five core modules: the Organisation, Communication, Safety and Security, Offender Management and Occupational Health and Safety.

   In the case of Correctional Officers, emphasis is placed on the Corrections Act, prisoner's rights and the relevant state legislation.

   In the case of Detention Officers, emphasis is placed on the immigration detention context including multicultural awareness, torture and trauma, Immigration Detention Standards and Migration Legislation.

If Correctional Officers move to work in a Detention Centre, they undertake a 40 hour Bridging Program to cover the above areas and obtain a DIMIA specific orientation. In addition, all Detention Officers undertake 40 hours refresher training annually, which includes updating technical skills, communicating effectively with detainees, conflict resolution and cross-cultural awareness.

h) Complaints may be made directly to the Services Provider or to DIMIA, either in person or in writing. Confidentiality is maintained at all times. Detainees may also make complaints to the Human Rights and Equal Opportunity Commission (HREOC) and the Commonwealth Ombudsman.

i) There is no limit on the group size for women and children using the grassed area. Only six males are permitted access to the grassed area at any one time. This has been put in place for security and operational reasons. There have been some operational difficulties with the fence, which was recently installed. Once rectified, this policy will be reviewed.

j) ACM has arranged for the mother to accompany her children to kindergarten except on occasions when escort officers are continuing on to another location.

k) The detainee diagnosed with tuberculosis was removed from Australia in December 2001. The Department reports all notifiable diseases to Health Services Australia who provide advice on all appropriate action, which was followed.

l) Flowers are permitted at the centre.

m) There is no rule that prevents visitors from taking notebooks and pencils into the visits area. These items can be given to detainees via the Services Provider.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(89) Output 1.3: Enforcement of Immigration Law

Senator Bartlett (L&C 350) asked if there has been an escape from Maribyrnong in the last couple of years.

Answer:

The following table provides details of the number of escapes for the last two financial years.

Year	Number of Incidents	Number of Detainees
2000/2001	6	10
2001 - present	1	1
Total	**7**	**11**

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(90) Output 1.3: Enforcement of Immigration Law

Senator Crossin (L&C 355/356) asked.

In relation to the Darwin showgrounds:

a) Provide the 15 dates (the number given at the last estimates round in February) and the number of people processed and transferred on each of the 15 occasions in the last 12 months that the Darwin showgrounds were used to process illegal entrants

b) When was the most recent occasion the showgrounds were used

c) Can you indicate why, if the temporary detention centre was available for use around the time of December, the group of Chinese nationals were processed at the showgrounds and not the Coonawarra temporary processing centre

d) Provide details of costs and charges incurred for processing the people at the showgrounds during the last 12 months in terms of security, health, cleaning and catering

Answer:

a) The dates the Darwin Showground has been used since March 2001are as follows:
20 March 2001 - 77 Illegal entrants processed and transferred
29 March 2001 - 164 illegal entrants processed and transferred
15 April 2001 - 90 illegal entrants processed and transferred
24 April 2001 - 138 illegal entrants processed, a further 74 processed *29 April*. (118 were transferred 29 April and the remaining 91 on 1 May 2001).
10 May 2001 - 65 illegal entrants processed and transferred.
9 June 2001 - 171 illegal entrants processed, and a further 113 processed *14 June*. (130 were transferred on 10 June and the remaining 159 were transferred 15 June).
8 July 2001 - 76 Illegal entrants processed and transferred.
8 August 2001 - 76 illegal entrants processed and transferred.
25 August 2001 - 100 illegal entrants processed and transferred.
29 August 2001 - 125 illegal entrants processed and transferred.
29 December 2001 - 114 illegal fishermen processed and transferred.

b) Darwin Showground was last used 29 December 2001.

c) The immigration detention facility at HMAS Coonawarra was not commissioned in December 2001 and was not available for use.

d) Costs associated with the use of Darwin Showground for this period are $34,446 for hire and cleaning, $52,141 for catering and $40,912 for health. We are unable to extract data specific to security costs at the Showground.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(91) Output 1.3: Enforcement of Immigration Law

Senator Crossin (L&C 355/357/358/359/360/362) asked:

In relation to the Coonawarra detention centre:

a) Advise the date the additional demountables were moved to the site and the when the work commenced.

b) Provide dates and how often Defence have used the centre.

c) Are there any ongoing cleaning costs associated with this centre lying dormant?

d) Are there any grounds maintenance or landscaping costs, ie trees being planted around the perimeter of the centre?

e) Provide the cost for the plumbing work done around the centre to provide drainage for excess water during the wet season.

f) Provide the date the decision was made to relocate the razor wire and the cost associated with the relocation.

g) Who undertook the work to relocate the razor wire and was it put to tender?

h) Confirm that one row of razor wire has been removed and the plans for the second row.

i) Was there any public consultation with community groups who may have an interest in such a facility being built?

In relation to Darwin IRPC:

j) At the last round of estimates, the department advised that $108,000 of the $40 million has been spent to date on the permanent centre. Provide an update of this figure with a breakdown of each measure, ie legal, financial, strategic and probity advice.

Answer:

a) Work on the establishment of the contingency detention facility commenced at HMAS Coonawarra on 1 September 2001.

Installation of demountable buildings commenced in mid October 2001 and was completed in late November 2001.

b) The facility has not yet been used by the Department of Immigration and Multicultural and Indigenous Affairs. The Department of Defence has also advised it has not used the Coonawarra contingency IRPC since the works began.

There is an agreement with the Department of Defence for the use of the facilities when not being used for detention processing purposes. These arrangements have been in place since 30 April 2002.

The Department of Defence has a set of keys to provide independent access, should this be required.

c) There are no ongoing cleaning costs as such. Cleaning will be arranged as required when the buildings are used.

d) Grounds maintenance is covered by the Department of Defence under a pre- existing arrangement.

Landscaping has been completed along the Stuart Highway frontage at a cost of $16,550. This cost includes planting and establishment.

e) The estimated total cost of drainage is $155,000 of which $76,000 had been expended as at 12 June 2002.

f) The decision to relocate the razor wire was made in late February and first discussed with the Department of Defence on 8 March 2002.

The cost of relocating the razor wire was $49,772.

g) The successful tenderer was Kalbuild, part of the Kalymnian Building and Supply Group Pty Ltd, who were selected following a select tender process involving three companies.

h) One row of razor wire has been relocated to ground level in the sterile zone.

The Department has not yet made a decision on the use of the remaining razor wire.

i) The Minister announced on August 23 2002 that a Contingency IRPC would be established at HMAS Coonawarra, Darwin.

Extensive consultation with the Department of Defence preceded the announcement.

The Department of Defence has advised that it subsequently consulted closely with Defence personnel and families living

and/or working on the base.

Since the announcement there has been ongoing consultation between the Department and the Northern Territory Government.

j) The total expenditure on the Darwin IRPC to 13 June 2002 is $132,008.

The breakdown of these costs is:

Service	**Feb 2002**	**Total**
Legal	$12848	$18,472
Strategic Financial	$92340	$110,724
Probity	$2,812	$2,812
Total	$108,000	$132,008

This expenditure represents costs apportioned to the Darwin project as part of the body of work undertaken by the Department's advisers in relation to the development of purpose designed and built immigration detention facilities.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(92) Output 1.3: Enforcement of Immigration Law

Senator Allison (L&C 363) asked in relation to Maribyrnong Immigration Detention Centre:

a) Provide the date of the most recent birth at the centre and confirm whether children were permitted to be with the mother at that time.

b) Provide details of why a burns victim who required skin grafts, was not provided with that medical attention.

c) Confirm the frequency of fire drills at the centre.

d) Provide a copy of the log of claims developed by detainees at a recent hunger strike.

e) Provide an update on the status of each log of claims and whether or not the Department has agreed that they are justified.

f) Was the Department present at the meeting at which the so-called log of claims was discussed?

g) In a booklet produced by ACM there is a warning about injury that can be caused by strap wire - can the Department confirm what that advice is?

h) Advise what the routine or the requirement is with regard to informing detainees about the circumstances in which the accommodation charge will be made of them, i.e. detainees being told that they will incur a debt and not being given advice that if, for instance, they are granted refugee status there is no debt. Does that apply to them?

i) Are there any cases where the debt is not waived, where a detainee is given some sort of residential status?

Answer:

a) The most recent birth at the centre was Saturday 15 June 2002. There were no other children in the family.

b) The treating specialist has not recommended skin grafts for this person.

c) Fire drills are carried out periodically but not to any set timetable and follow the Metropolitan Fire Brigade guidelines (Victoria). The last fire drill took place on 27 March 2002.

d), e) & f) The Department is not aware of a written log of claims developed by detainees during a recent hunger strike. However, during a meeting

between detainees and DIMIA, detainees raised a number of issues with the DIMIA representative, which were addressed during the meeting.

- Due to inaccessibility of the kitchen during the evening, can detainees take food and Coca Cola into their rooms?

  Detainees are permitted to take snacks into their rooms on the condition that the food will fit into the plastic airtight containers that will be supplied by the kitchen. A maximum of six sealed cans of Coca Cola or one 2 litre bottle is also permitted in rooms.

- When will the drain in the courtyard be cleaned?

  Detainees were informed that DIMIA would arrange for the drain to be cleaned within the week. This issue is now resolved.

- Why did it take one week for the washing machine to be repaired?

  The repairer was waiting for spare parts. The machine is now working properly.

- Detainees often make requests and suggestions to the Operations Manager and nothing happens.

  It was suggested to detainees that they select three detainee representatives who will attend the weekly meeting. The representatives were requested to supply a list of questions to management the day before the meeting so that management could be in a position to respond. The detainees were happy with the suggestion, which has now been initiated.

- When would access to the grassed area commence?

  Detainees were informed that there have been concerns with the security of the area and once the new security fence was operational, access to the courtyard would commence. Women and children commenced using the area on 14 May 2002. Males commenced using the area on 21 May 2002.

- Why have some visitors been banned?

  Detainees were advised that visitors are subject to rules and should these rules be broken, visitors would be banned. When visitors have been banned, they are required to sign an undertaking that they will abide by the rules and access is regranted.

- Can toys be placed in the visits area?

  Detainees were informed that this issue would be revisited as the toys previously in the visits area had been destroyed. Crayons and paper are now provided.

- The quality of food is poor and there has been a lack in water supply.

  A meeting with the Kitchen Manager took place following this issue being raised. The lack of water supply was the result of a burst water main. Both issues have been resolved.

- Can a coffee vending machine and microwave be installed in the games room to alleviate mess?

  Detainees were informed that this would not be appropriate, as there would be OH&S concerns with reheating food incorrectly and due to the high level of vandalism, companies would not supply further coffee machines. Detainees were also advised that they needed to be responsible for helping to keep this area clean.

- Can ACM Managers be available to talk with detainees each day?

  Detainees were advised that this would not be possible due to the work pressures of the ACM Managers. However, detainees can approach a Manager when they are walking through the centre as well as submitting a request form.

- Some services are not available from telephones and can there be some clarification about who can read detainee faxes?

  The telephone problems are a result of services provided by Telstra. Telstra was contacted and these problems have been rectified. Detainees were informed that an ACM Officer checks the fax machine and only reads the address.

- Some detainees have not been provided with the detainee booklet.

  Detainees are provided with the booklet at induction. Further copies can be obtained from the Property Officer.

- Detainees are having difficulty accessing doctors after hours.

  Detainees were informed that they are required to see the nurse in the first instance.

- Can Detainee Representative Meetings be held more frequently with fewer representatives to ensure that matters are resolved quickly?

  Detainee Representative Meetings are held once each week with three detainee representatives present.

g) The ACM booklet states,

*"You should also note that there is in place in certain areas **security strap wire** which can cause injury if contacted.*

Contact with the security strap wire will result in injury"

Security strap wire is a term used for all barbed security wire (this includes, razor wire, tiger tape, etc). On arrival at the centre, detainees are issued with the booklet and have the contents explained to them. The booklet is available in a variety of languages and interpreters are used if necessary.

h) While not a requirement under the Act, Departmental procedures state that a detained non-citizen should be informed they are liable for the costs of detention and removal from Australia. The contents of the form setting out the advice should be explained to the non-citizen through an interpreter, if necessary. There are separate processes and forms for those who have held a visa at some stage, that is compliance cases and for those who have arrived unlawfully without a visa (unauthorised air and boat arrivals).

During the period of detention, the non-citizen may be provided with an update of the debt incurred. At the conclusion of the period of detention, a final notice of the detention debt and removal costs (if applicable) may be served on the non-citizen. A person may remain liable for detention costs for each day spent in detention even if ultimately allowed to remain in Australia lawfully.

i) Departmental policy is that recovery action for the debt will not be pursued where:

- a person has been granted refugee status; or
- a non-citizen was reasonably suspected of being unlawfully present in Australia, was detained, but later was found to have been lawfully present; or
- a s200 deportee was detained, but the deportation order was revoked; or
- Extenuating circumstances.

Although debts are not pursued in these cases, they are not normally formally waived. The formal approval for debt waiver is a matter for the Department of Finance and Administration. In some circumstances, individual applicants may seek a waiver of their debt but each case must be determined on its own merits.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

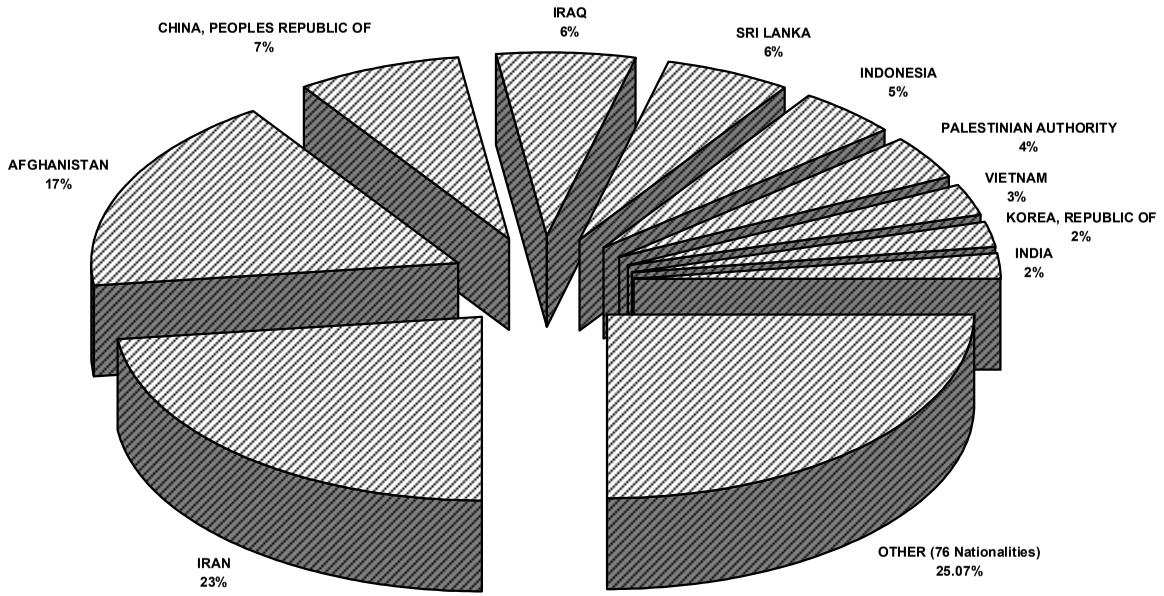
(93) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 404) asked for statistics on the number of persons in detention in Australia in the same graph form that the Minister tabled in the House of Representatives.

Answer:

Statistical data in graph form was provided to the Secretary of the Legal and Constitutional Legislation Committee on 6 June 2002. A copy is attached.

Detainees by Nationality



Source: DIMIA client services system 24 May 2002

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(94) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 406) asked for clarification that confirmation of identity might be able to be provided by means of other than a passport.

Answer:

Penal checks are part of the procedure by which applicants satisfy the Minister that they meet the character requirements for entry to Australia.

There is no single procedure or proof of identity standard applicable to all countries for obtaining these penal checks. Each country from which a penal clearance may be sought has country specific procedures and requirements for conducting penal checks and issuing penal clearances. The forms of identification that applicants are required to provide in order to obtain a penal clearance vary from country to country. Other forms of identity, depending on the country approached by the applicant may include, amongst other things, fingerprints or photographic evidence.

In the case of South Korea, the Korean National Police Agency, through the Australian Embassy, have stated that the applicant's passport details and a photo of the applicant are required before they will issue a penal clearance.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(95) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 407) asked, "In regard to the child who was allegedly bashed, were photographs taken of him at the time and have those photographs subsequently been lost or misplaced or are they now part of the AFP record?"

Answer:

Photographs were taken at the time. The Department has electronic copies of these photographs. The AFP also has copies.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(96) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 408) asked whether the detainee, who fell out of the tree in Port Hedland, is still in hospital.

Answer:

On 24 April 2002, the detainee was taken to Port Hedland Hospital and later transferred to Perth where he received appropriate medical attention at the Shenton Park Rehabilitation Hospital. On 23 May 2002, the detainee was released from hospital and is currently residing in the Perth IDC.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(97) Output 1.3: Enforcement of Immigration Law

Senator Bartlett (L&C 409) asked, "Are the people who have been in the Perth detention centre for a long time there because they specifically want to be?"

Answer:

There are currently three detainees who have been in immigration detention for longer than 12 months at the Perth IDC. The detainees have requested to be accommodated at the Perth IDC as they have extensive community contacts in Perth or need to be in Perth for medical reasons.

The detainees have completed primary assessment of their protection claims and have exhausted all avenues of appeal and review, and are available for removal.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(98) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 415) asked:

(a) Provide the Committee with details of the various damages that have resulted over the past 12 months from 1 July last year

(b) Provide an update of the charges that have resulted from the unrest at the detention centres.

Answer:

(a) Substantial damage sustained since July 2001 is as follows:

Woomera IRPC
During a number of incidents in November and December 2001 considerable damage was sustained to all compounds, 26 buildings were destroyed and 14 damaged, including: the officers' station, program rooms, accommodation blocks, ablutions, storage room, laundry, recreation and education rooms. The estimated cost of damage in those incidents is $2.5 million.

The incidents at the Woomera IRPC in April 2002 resulted in approximately $55,000 of damage to fencing, buildings and recreational facilities. All damage has been made safe and plans for repairs are under way.

Curtin IRPC
In April 2002 a number of incidents at the Curtin IRPC resulted in damage to dining, kitchen, education, computer, welfare, recreation, counsellor's, and officers station facilities. The assessed damage is estimated to be in the order of $0.7 million

Port Hedland IRPC
During incidents in April 2002, damage was sustained to a number of compounds at the Port Hedland IRPC. This included damage to buildings, fencing, and fire safety equipment. The cost of the damage is approximately $45,000.

(b) Charges that have resulted from the unrest at the detention centres are as follows:

Woomera

No suspects were identified for the fires at Woomera in November and December 2001. As a result the AFP believes that the matter will not progress any further.

Curtin IRPC

As a result of the April 2002 disturbances five detainees were charged with damage to Commonwealth property. All detainees were remanded to Broome Court on 24 June 2002.

Port Hedland IRPC

AFP advised on 29 May 2002 that they had completed their investigations into the April disturbances. After consultations with the Perth office of the DPP it was determined that there was insufficient evidence to commence a prosecution against any person involved in the disturbance.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(99) Output 1.3: Enforcement of Immigration Law

Senator Cooney (L&C 417) asked for the details of the corporate structure of ACM.

Answer:

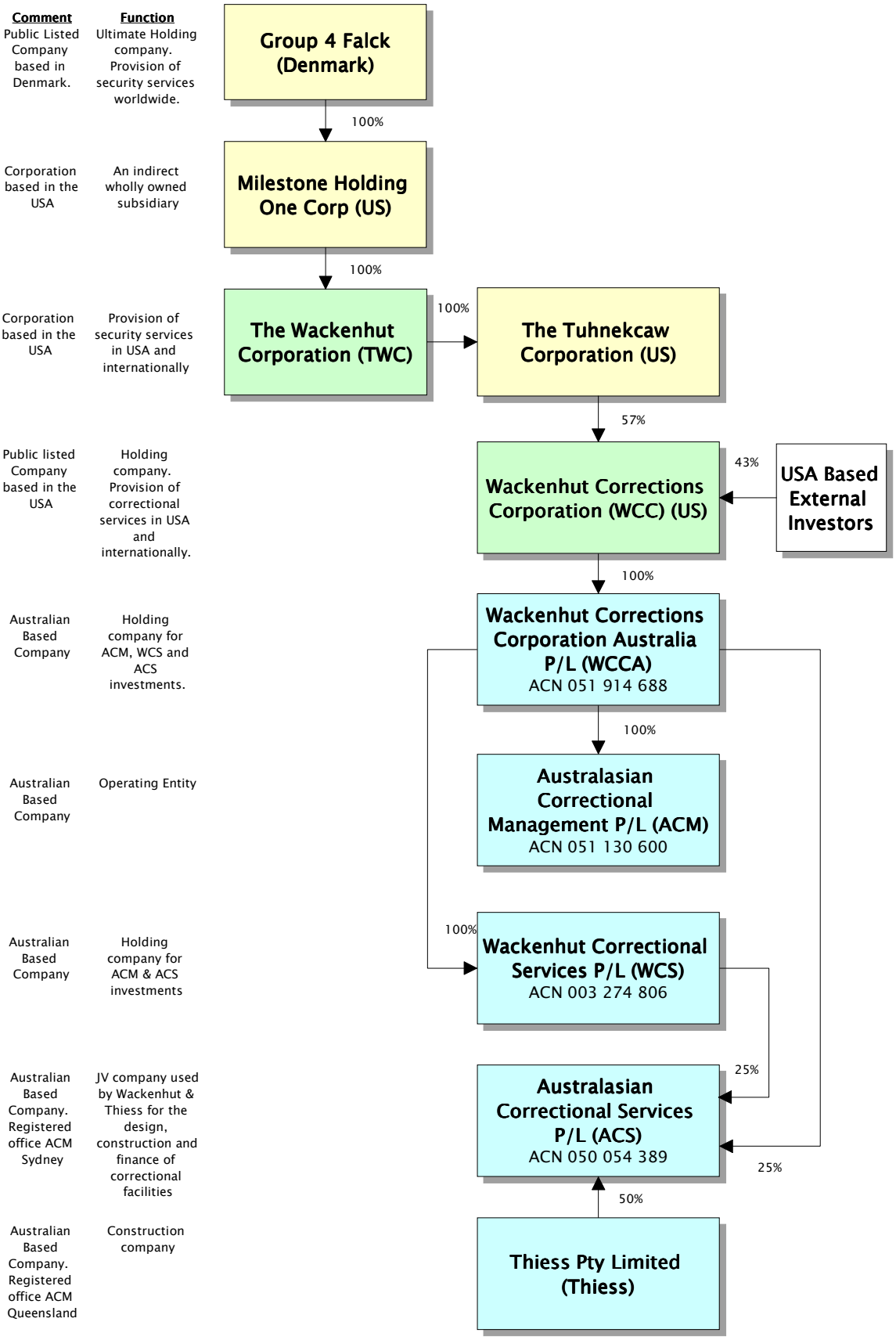
OWNERSHIP – COMMERCIAL AND LEGAL

Australasian Correctional Management Pty Ltd (ACN No. 051 130 600) is a proprietary company registered on 19 March 1991 under the Corporations Law of New South Wales. The controlling entity is Wackenhut Corrections Corporation Australia Pty Ltd (WCCA - ACN No. 051 914 688). WCCA is a wholly owned subsidiary of Wackenhut Corrections Corporation (WCC), a company listed on the New York Stock Exchange (NYSE: WHC).

The Corporate Structure of Australasian Correctional Management (ACM) and its parent company Wackenhut Corrections Corporation is attached. The principals and/or owners of ACM are also attached.

WACKENHUT CORRECTIONS CORPORATION / ACM

CORPORATE STRUCTURE



Australasian Correctional Management P/L
ACN 051 130 600

Directors:	Kevin Lewis
	Donald Keens
	George Zoley Alternate Director for Donald Keens
	Wayne Calabrese
Company Secretary:	James Phelan

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(100) Output 1.3: Enforcement of Immigration Law

Senator Cooney (L&C 418) asked for the evaluations of the training courses conducted by ACM.

Answer:

ACM has run a total of 15 Detention Officer training courses Australia wide since January 2002. These courses conform to the Australian Quality Training Framework (AQTF) of the Australian National Training Authority (ANTA), which is the authority for the vocational, educational and training system in Australia. Under the AQTF the assessment awards one of two results only, being competent or not yet competent.

Of the 1815 applications received by ACM, 1116 were selected for interview and psychometric testing and 320 were subsequently selected to attend pre-service training courses. Of the 320 participants, 301 successfully completed their courses. The 19 participants who did not graduate from the courses were not eligible to be employed by ACM as Detention Officers.

ACM places an emphasis on pre-selection which is reflected in the high percentage of trainees successfully completing the pre-service course.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(101) Output 1.3: Enforcement of Immigration Law

Senator Sherry (L&C 419) asked, "Are you aware of any subcontracting by the existing operator?"

Answer:

Australasian Correctional Services Pty Ltd (ACS) was selected as the services provider at Immigration detention facilities following an exhaustive tender evaluation in September 1997. ACS is contracted to deliver a full range of services required at the immigration detention facilities, including guarding, catering, health, welfare and education services. Actual service delivery is undertaken by Australasian Correctional Management Pty Ltd (ACM), the operational arm of ACS. This arrangement was entered into at the commencement of the contract with the consent of the Department.

The Department is aware that ACM engages various personnel on individual employment contracts who provide a range of services in detention centres, including, for example, doctors and psychologists. ACM also has a contract with A&K Anderson to provide cleaning and catering services to the Maribyrnong IDC.

These contracts are not regarded as subcontracts and do not transfer the obligation to provide the services from ACM to the contractor.

Under the General Agreement, regardless of any contracting arrangement, ACS as the contractor retains responsibility for ensuring the delivery of services in accordance with the contractual requirements and the Immigration Detention Standards.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(102) Output 1.3: Enforcement of Immigration Law

Senator Sherry (L&C 420) asked whether Group 4 is in the process of acquiring Wackenhut Corrections Corporation.

Answer:

It is our understanding that a wholly owned subsidiary of Group 4 Falck merged with Wackenhut Corporation (the parent company of Wackenhut Corrections Corporation) on 9 May 2002. The Department's contract for the delivery of detention services remains with Australasian Correctional Services Pty Ltd (ACS).

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(103) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 103) asked for a copy of the response to question on notice number 387 asked by Mr Kerr on 27 May 2002.

Answer:

The response supplied to Mr Kerr is copied below:

(Question No. 387)

Mr Kerr asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 27 May 2002:

(1) Is it a fact that detainees at Woomera are allowed only to use card phones supplied by Pay-Tel Australia Ltd.

(2) Does Pay-Tel charge for calls at $1.25 a minute compared with prices ranging from 9 to 22 cents a minute using normal phone card providers; if not, what are the comparable figures.

(3) Why has his Department entered into, or allowed its contractor to enter into, a monopoly agreement for the provision of this service.

(4) If the substance of the matters raised in this question is correct why is this service that is vital to the well being of those detained being provided at a cost many times the ordinary commercial rate.

Mr Ruddock – The answer to the honourable member's question is as follows:

(1) The pay phones in the Woomera IRPC are provided by Pay-Tel and the cards used in them are also Pay-Tel cards.

(2) Pay-Tel advise that their charges are based on 24hr/7day rates. These phones charge a flat call rate of $0.70 per minute Australia wide and to mobile phones, with no flagfall cost.

By comparison, I am advised that Telstra charges for public phones are based on a sliding scale depending on the distance and time of day. Their calls to Sydney and

Melbourne start at lower than $0.70 and go higher than $0.70, including the flagfall, depending on the time.

With regards to international calls, I am advised by Telstra “Call Pricing” that their rates per minute for public phones are $5.10 to Afghanistan, $3.95 to Iraq and $3.50 to Iran.

I am advised that Pay-Tel international call rates per minute at the Woomera IRPC pay phones are $1.76 to Afghanistan, $1.17 to Iraq and $1.17 to Iran.

(3) The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) contracted Pay-Tel in 2000 to provide pay phones at Woomera at a time when Telstra was unable to provide the required service within the specified time frame. Pay-Tel was able to install the phones at very short notice and they also had the technology and a maintenance service suitable for the centre. Time was a critical factor in determining a provider and Pay-Tel was able to meet its 5 day delivery standard.

(4) On the advice received, the substance of the matter regarding call costs is not correct.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(104) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 422) asked in regard to the new facility at Baxter, what is the arrangement for telephones in that area?

Answer:

In each of the nine accommodation compounds there will be two portable telephones for incoming calls and two static card-operated telephones for outgoing calls.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(105) Output 1.3: Enforcement of Immigration Law

Senator Sherry (L&C 423) asked, " Under this tender process, if the subcontractors who are supplying goods or services to the principal tenderer and operator, are concerned about payment, for example, and they are waiting an inordinate amount of time and they believe this should not be happening, will there be a process whereby they can complain to the department?"

Answer:

The Request for Tender documentation will not seek to interpose DIMIA in any business dealings between a principal Services Provider and its sub-contractors. This would not prevent a sub-contractor from bringing concerns of this sort to the attention of DIMIA.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(106) Output 1.3: Enforcement of Immigration Law

Senator Sherry (L&C 423) asked, " Is Spotless involved in any of these sorts of facilities?"

Answer:

DIMIA has been advised by the current Services Provider that Spotless is not involved in the provision of services at any immigration detention facilities.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(107) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 423) asked, "How many bridging visas E have been granted from July 1 of this financial year? I am particularly interested in those that might be granted to young persons, children, or older persons who may have been in immigration detention centres."

Answer:

There were 28,831 Bridging Visa E granted between 1 July 2001 and 31 May 2002.

Of these, twenty-nine (29) Bridging Visa E were granted to prescribed non-citizens (refused or bypassed immigration clearance) held in immigration detention.

Seven (7) of these visas were granted to minors.

Those granted the remaining visas represent a consistent spread of ages between 18 and 45 yrs old.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(108) Output 1.3: Enforcement of Immigration Law

Senator McKiernan (L&C 423-424) asked in relation to issuing bridging visas, provide a copy of the Migration Series Instructions (MSIs).

Answer:

The MSI entitled *MSI-131: Bridging E visa – Subclass 051 – Legislation and Guidelines* is attached. This MSI is currently being updated.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(109) Output 1.3: Enforcement of Immigration Law

Senator Carr (L&C 313) asked, " How many breaches of either code 8 or code 10 has the department identified which have not been notified by the providers?"

Answer:

Education providers are required to report to DIMIA overseas students who fail to attend classes (code 8) or to achieve a satisfactory academic result (code 10).
In the current program year (2001-02) to the end of April, the department received 2454 code 8 and 2182 code 10 notices from education providers. As the automatic visa cancellation process relies on education providers to report non-complying students, it is not possible to identify the number of code 8 or 10 breaches where the education provider did not report a student.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(110) Output 1.3: Enforcement of Immigration Law

Senator Carr (L&C 313) asked, " Of those five providers who have been suspended and the further five who have been cancelled, were the cancellations the result of actions taken by the Commonwealth or the states, and can you divide those two, or were those a result of business failures or some other non-breach of the code or regulations?"

Answer:

Administration of the Education Services for Overseas Students Act 2000 (ESOS Act) is the responsibility of the Department of Education, Science and Training (DEST). This includes decisions relating to the registration of providers on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) and imposition of sanctions including suspension and cancellation of providers. DEST may initiate cancellation as the result of an action by a State or Territory for which the ESOS Act provides automatic sanction

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(111) Output 1.3: Enforcement of Immigration Law

Senator Carr (L&C 313/314) asked about an illegal printing press, operating in Petersham, reproducing multiple copies of forged university letterheads, entry examination papers and ESL papers. The Senator asked whether the Department was aware of the case and whether confirmation could be provided that 19 charges have been laid against a Sydney man under section 302A and 527C of the New South Wales Crimes Act.

Answer:

The question related to a matter about which the Department was officially notified in early May 2002.

Following a search of a printing premises in Petersham in New South Wales by law enforcement officials, an Australian citizen has been charged with 19 offences as follows:

- 13 counts against section 302A of the Crimes Act 1900 – make/possess implements for making false instruments; and

- 6 counts against section 527C(i)(c) of the Crimes Act 1900 – goods in/on premises reasonably suspected of being stolen.

This person is due to appear for plea/mention at the Downing Centre on 4 July 2002.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 29 and 30 May 2002

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(112) Output 1.3: Enforcement of Immigration Law

Senator McKiernan asked, " Understanding that the APS is currently preparing to respond to DIMIA's tender for detention management services at the 6 existing detention centres, does the APS plan to, or has it decided it will compete to provide, detention management, or other protective services for DIMIA processing centres at:

a) Coonawarra
b) Pinkenba
c) Baxter
d) Darwin
e) Christmas Island?"

Answer:

The Australian Protective Service (APS) has been shortlisted as a result of its response to the recent request for Expression of Interest. The Statement of Requirements will refer to eleven detention facilities ie Villawood, Maribyrnong, Perth Immigration Detention Centres, Port Hedland, Woomera, Curtin and Baxter Immigration Reception and Processing Centres and the contingency facilities at Singleton, HMAS Coonawarra in Darwin, Christmas Island and Cocos Island. It is up to interested tenderers to respond to the Request for Tenders.