

## QUESTION TAKEN ON NOTICE

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(175) Output 1.3: Enforcement of Immigration Law**

Senator Ludwig asked:

- (1) How many foreign crew went missing from their vessels in the last ten years?
- (2) How many were apprehended?
- (3) How many remain at large?
- (4) What is the reporting procedure when a crew deserts a vessel?
  - (a) What mechanisms are in place to ensure that these procedures are adhered to?
  - (b) What penalties are in place for non-reporting of these incidents?
  - (c) How many times have these penalties been imposed, and against whom?
- (5) When did these mechanisms come into place?
- (6) From which ports did they go missing?

*Answer:*

- (1) The following table identifies the number of crew deserters between 1999 and 2005. DIMIA has recorded this information electronically since 1999-00. Data recorded prior to 1999-00 is not able to be readily extracted.

<b>Financial Year</b>	<b>Number of Deserters</b>
1999-00	65
2000-01	69
2001-02	44
2002-03	36
2003-04	41
2004-05 (to 31 Mar 05)	28
Total	283

- (2) and (3) The following table identifies the outcome of crew desertions between 2001 and 2005. DIMIA has recorded this information in a manner that allows the ready extraction of information on individual deserters from 2001-02. Data recorded prior to 2001-02 is not able to be readily extracted.

Financial Year	Number of Deserters	Current status	Number
2001-02	44	Departed Australia	17
		Have been granted visas to remain in Australia or have un-finalised visa applications	25
		Remain unlawfully in the Australian community with no visa applications pending	2
2002-03	36	Departed Australia	18
		Have been granted visas to remain in Australia or have un-finalised visa applications	16
		Remain unlawfully in the Australian community with no visa applications pending	2
2003-04	41	Departed Australia	21
		Have been granted visas to remain in Australia or have un-finalised visa applications	11
		Remain unlawfully in the Australian community with no visa applications pending	8
		Remain unlawful in Immigration Detention	1
2004-05 (to 31 Mar 05)	28	Departed Australia	11
		Have been granted visas to remain in Australia or have un-finalised visa applications	4
		Remain unlawfully in the Australian community with no visa applications pending	12
		Remain unlawful in Immigration Detention	1

(4) The master of a vessel, or the ship's agent on their behalf, is required to report absent members of crew to Australian Customs Service officers, who will inform DIMIA.

(a) Section 228 of *the Migration Act 1958* requires the master of a vessel to report absent members of crew at the time of the vessel's departure from the port. The master must deliver to an officer a written report specifying the name of the crew member and stating that they were a member of crew when the vessel arrived and whether the crewmember left the vessel at that port with or without the master's permission.

(b) Under Section 228, a penalty of \$4 000 upon prosecution is in place for the non-reporting of an absent member of crew.

(c) The Department has not prosecuted any parties under this section of the Act in the last ten years.

(5) This provision has been in force since at least 1958.

(6) The following table identifies the port from which crew desertions occurred between 2001 and 2005. DIMIA has recorded this information in a manner that allows the ready extraction of statistics from 2001-02. Data recorded prior to 2001-02 is not able to be readily extracted.

<b>Deserters by Port</b>					
	<b>Year</b>				
<b>Port</b>	<b>01/02</b>	<b>02/03</b>	<b>03/04</b>	<b>04/05</b>	<b>Total</b>
<b>Fremantle</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>6</b>	<b>27</b>
<b>Newcastle</b>	<b>4</b>	<b>7</b>	<b>7</b>	<b>5</b>	<b>23</b>
<b>Sydney</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>1</b>	<b>14</b>
<b>Port Adelaide</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>11</b>
<b>Brisbane</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>11</b>
Bunbury		1			1
Cairns			4	1	5
Dampier		1			1
East Swanston		2			2
Esperance	1			1	2
Geelong	4			3	7
Gladstone	1	1	1	1	4
Gove			2		2
Hay Point		1	2		3
Mackay	5				5
Melbourne		2	5	1	8
Port Botany			1		1
Port Hedland		2		1	3
Port Kembla	2		1	1	4
Port Lincoln	2				2
Port Walcott		1			1
Portland	1				1
Townsville	2			1	3
Weipa		3			3
Wollongong	3				3
Yamba				2	2
<b>Total</b>	<b>44</b>	<b>36</b>	<b>41</b>	<b>28</b>	<b>149</b>

## QUESTION TAKEN ON NOTICE

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(176) Output 1.3: Enforcement of Immigration Law**

Senator Ludwig asked:

- 1) Can you advise of the number and dates of recorded incidents of self-harm by detainees at Baxter in the period between 2004-05?
- 2) Can you advise of the number and dates of recorded incidents of attempted suicide by detainees at Baxter in the period between 2004-05?
- 3) Can you advise of the number and dates of recorded incidents of self-harm or attempted suicide by children at Baxter in the period between 2004-05?
- 4) Can you advise of the number and dates of transfer of detainees from Baxter to hospital in 2004-05?
- 5) What were the reasons for the transfer?
- 6) How many people, who have made protection visa claims, have absconded from detention in this last financial year?
- 7) From which IDC and IRPCs did people abscond from, and how many from each in what year?

*Answer:*

- 1) There were 66 reported incidents of attempted and actual self harm at Baxter Immigration Detention Facility (IDF) during financial year 2004 to 2005 (10 June 2005 YTD).

The table below provides the date and number of incidents.

<b>Date</b>	<b>No. of Incidents</b>
08/07/2004	1
22/07/2004	1
23/07/2004	1
29/07/2004	1
10/08/2004	1
17/08/2004	1
18/08/2004	1
26/08/2004	1
06/09/2004	1
09/09/2004	1
10/09/2004	3
17/09/2004	1
24/09/2004	1
29/09/2004	1

30/09/2004	1
15/10/2004	1
18/10/2004	1
20/10/2004	1
23/10/2004	1
26/10/2004	1
30/10/2004	1
02/11/2004	1
03/11/2004	2
11/11/2004	1
15/11/2004	1
22/11/2004	1
23/11/2004	1
25/11/2004	2
27/11/2004	1
29/11/2004	4
30/11/2004	2
03/12/2004	1
06/12/2004	1
07/12/2004	3
08/12/2004	5
09/12/2004	1
17/12/2004	1
25/12/2004	1
31/12/2004	1
02/01/2005	1
06/01/2005	1
13/01/2005	1
14/01/2005	1
17/01/2005	2
23/02/2005	1
05/04/2005	2
15/04/2005	1
27/04/2005	1
30/04/2005	1
04/05/2005	1
<b>Total</b>	<b>66</b>

2) For statistical purposes the Department does not make judgements as to whether an attempt or act of self harm is an attempted suicide. The Department treats all such actions seriously and records all reported incidents of attempted or actual self harm.

Self harm is self inflicted injury or the act of causing harm to oneself, such as attempts and acts of cutting the body, voluntary starvation etc.

3) There were no incidents of self harm by children at Baxter Immigration Detention Facility (IDF) during financial year 2004-05 (10 June 2005 YTD).

4) The Department does not have this information readily available and to collate this information would involve a manual examination of individual files and is an unreasonable diversion of departmental resources.

5) The Department does not have this information readily available and to collate this information would involve a manual examination of individual files and is an unreasonable diversion of departmental resources.

6) There has been one detainee who had made a protection visa claim who has absconded from detention in the financial year 2004-05 (10 June YTD).

7) Since 01 July 2001, 190 detainees have escaped from IDFs. Of these, 148 have been located.

The tables below provide details of the number detainees who have absconded from IDFs<sup>1</sup> for the last three financial years and 2004-05 (10 June YTD).

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<sup>1</sup> The following centres were operational:

\*2001-2002 Curtin IRPC, Port Hedland IRPC, Villawood IDC, Maribyrnong IDC, Perth IDC, Christmas Island IRPC, Cocos (Keeling) Islands IRPC and Woomera RHP (Operational August 2001 Mothballed December 2003)

\*2002-2003 Curtin IRPC, Port Hedland IRPC, Woomera IRPC, Villawood IDC, Maribyrnong IDC, Perth IDC, Baxter IDF and Woomera RHP

\*2003-2004 Port Hedland IRPC, Port Hedland RHP (Operational September 2003 – Mothballed May 2004), Villawood IDC, Maribyrnong IDC, Perth IDC, Christmas Island IRPC, Baxter IDF, Woomera RHP and Port Augusta RHP (Operational November 2003)

\*2004-2005 (YTD) Villawood IDC, Maribyrnong IDC, Perth IDC, Christmas Island IRPC, Baxter IDF, Port Augusta RHP

**Number of escapes from Immigration Detention Facilities (IDFs)**

**FY 2004-2005 (to 10 June 2005)**

<b>Facility</b>	<b>No. Incidents</b>	<b>No. Detainees</b>	<b>Located</b>
<b>Baxter IDF</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Port Augusta RHP</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Villawood IDC</b>	<b>3</b>	<b>3</b>	<b>1</b>
<b>Maribyrnong IDC</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Perth IDC</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Christmas Island IRPC</b>	<b>1</b>	<b>2</b>	<b>2</b>
<b>Total</b>	<b>5</b>	<b>6</b>	<b>4</b>

**FY 2003-2004**

<b>Facility</b>	<b>No. Incidents</b>	<b>No. Detainees</b>	<b>Located</b>
<b>Baxter IDF</b>	<b>2</b>	<b>2</b>	<b>1</b>
<b>Port Augusta RHP</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Woomera RHP</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Port Hedland IRPC</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Port Hedland RHP</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Villawood IDC</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>Maribyrnong IDC</b>	<b>3</b>	<b>3</b>	<b>2</b>
<b>Perth IDC</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Christmas Island IRPC</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total</b>	<b>8</b>	<b>8</b>	<b>6</b>

**FY 2002-2003**

<b>Facility</b>	<b>No. Incidents</b>	<b>No. Detainees</b>	<b>Located</b>
<b>Baxter IDF</b>	<b>1</b>	<b>2</b>	<b>2</b>
<b>Woomera IRPC</b>	<b>2</b>	<b>10</b>	<b>10</b>
<b>Woomera RHP</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Port Hedland IRPC</b>	<b>1</b>	<b>1</b>	<b>0</b>
<b>Villawood IDC</b>	<b>9</b>	<b>14</b>	<b>8</b>
<b>Maribyrnong IDC</b>	<b>2</b>	<b>2</b>	<b>1</b>
<b>Perth IDC</b>	<b>4</b>	<b>4</b>	<b>3</b>
<b>Curtin IRPC</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total</b>	<b>19</b>	<b>33</b>	<b>24</b>

**FY 2001-2002**

<b>Facility</b>	<b>No. Incidents</b>	<b>No. Detainees</b>	<b>Located</b>
<b>Curtin IRPC</b>	<b>2</b>	<b>2</b>	<b>2</b>
<b>Woomera IRPC</b>	<b>4</b>	<b>92</b>	<b>78</b>
<b>Port Hedland IRPC</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Villawood IDC</b>	<b>4</b>	<b>48</b>	<b>33</b>
<b>Maribyrnong IDC</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Perth IDC</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total</b>	<b>11</b>	<b>143</b>	<b>114</b>



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**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(177) Output 1.3: Enforcement of Immigration Law**

Senator Ludwig asked:

1. How many people are currently subject to a deportation order on character grounds?
2. What is the average length of time of residence in Australia?
3. What is the average age of arrival in Australia?
4. What avenue or process is open to these people to appeal a decision to deport them?
5. What advice is given to these people regarding this process?
6. What was the average length of time served in prison preceding deportation orders?
7. How many have been deported from Australia under section 501, 200 and 201?

*Answer:*

1. There are 31 people who are currently subject to a deportation order under section 200, but who have not yet been removed from Australia.
- 2.-3. Specific details concerning the average length of residence or the average age of people subject to deportation or visa cancellation under Section 501 are not readily available.
4. Where a person is liable for deportation under Section 200, they may seek judicial review of the decision through the courts. The individual may also seek merits review through the Administrative Appeals Tribunal.

Where a visa is cancelled by the Minister personally under Section 501 individuals may seek judicial review through the Courts. Where a decision is made by a delegate, the individual may also seek merits review through the Administrative Appeals Tribunal.

5. Individuals are informed of their review rights at the time of visa cancellation.
6. Specific details concerning the average length of time served in prison preceding the deportation orders are not readily available.
7. Removals do not occur under either Section 501 or Section 200. Section 501 is the means by which a person becomes unlawful, whereas Section 200 refers to

the separate process of removing a person by deportation on criminal/character grounds. Removals occur under Section 198.

The following table reflects the number of people removed from Australia following visa cancellation under Section 501 or deportation action under Section 200 (incorporating Sections 201-203).

<b>Year</b>	<b>Removed from Australia</b>
2004 to end May 2005	47
2003-04	47
2002-03	79
2001-02	66
2000-01	48
1999-00	56
1998-99	56
1997-98	60
1996-97	34
<b>Total</b>	<b>493</b>

**QUESTION TAKEN ON NOTICE**

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

**(178) Output 1.5: Offshore Asylum Seeker Management**

Senator Ludwig asked:

1. Can you provide the cost of detention per day per detainee per facility for those people in all off shore detention facilities initiated under the pacific solution?
2. Please provide this figure for each month of the 2004-05 financial year and projected figures for 2006.

*Answer:*

Per capita costs for persons accommodated in offshore processing centres are not calculated. This is because offshore processing centres are kept in a state of readiness and, therefore, changes in the number of residents may not necessarily have an impact on costs. Offshore costs also include capital expenditure. This arrangement differs from the costing structures that apply to onshore detention facilities where occupancy levels are the major determinant of costs.

## QUESTION TAKEN ON NOTICE

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### (179) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

- 1) How many unaccompanied children have been deported from Australia in 00-01-02-03-04-05, and where were they deported to?
- 2) What provisions are there to ensure that they are collected at their point of arrival?
- 3) How many were collected?

*Answer:*

- 1) In the following program years the number of unaccompanied minors (UAMs) removed from Australia were as follows;

Year	Number of UAMs	Destination Country	Comments
2000-01	0		
2001-02	4	1 Nigeria 1 Palestinian Returned to Syria 1 Syria 1 Kenya	
2002-03	7	3 Kenya 2 Pakistan 1 Sri Lanka 1 Afghanistan	Voluntary Re-Integration Package
2003-04	4	3 Afghanistan 1 Iraq	Voluntary Re-Integration Package Voluntary Re-Integration Package
2004-05	134	134 Indonesia	Removal of illegal foreign fisher UAMs (a)

(a) To date, all fisher minors have been male. Data on the number of fisher minors removed from Australia prior to the 2004-05 financial year is not available, due to a recent change in the way that this data is collected and recorded in departmental systems.

- 2) UAMs are not returned until appropriate arrangements are in place for their arrival at the country of their destination. Generally, arrangements are made with a family member, minder or appropriate welfare agency.

Fisher minors are rarely charged with fisheries offences unless they are the master of a fishing vessel or a recidivist. The Department seeks to remove fisher minors not being charged as soon as reasonably practicable according to the *Migration Act 1958* and, because of their status as minors, their removal is a matter of priority.

3) The Department is unaware of any reports where arrangements made for a UAM's reception has not been managed appropriately.

## **QUESTION TAKEN ON NOTICE**

### **BUDGET ESTIMATES HEARING: 25-27 May 2005**

#### **IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO**

#### **(180) Output 1.3: Enforcement of Immigration Law**

Senator Ludwig asked:

1. What amount did the Agency spend during the financial year 2004/2005 on outsourced legal practitioners (including private firms, individuals, the Australian Government Solicitor, and any others)?
2. What was the budgeted amount for outsourced legal practitioners in 2004/2005?
3. What amount did the Agency spend on internal legal services? (Provide an estimate if exact amount is unavailable.)
4. Does the Agency have an in-house legal section? If so, what was the 2004/2005 actual cost of this section? What was the budgeted amount for this section in 2004/2005? What is the budget amount for this section in 2005/2006?
5. What is the total projected expenditure on legal services for 2005/2006 for the Agency?
6. Which organisations or individuals were contracted to provide legal services to the Agency in 2004/2005?
7. In each instance, how much was each organisation or individual paid for these services?
8. Does the Agency use an open tendering or select tendering process (as described in the Commonwealth Procurement Guidelines, p 42) when procuring legal services?
9. If a select tendering process is used: (a) which method of select tendering is used and (b) which firms or individuals are currently eligible to tender for legal services?
10. If a multi-use list is used: (a) which firms or individuals are currently on that list and (b) when was the list last opened for applications?
11. In 2004/2005 did the Agency obtain any legal services using a direct sourcing procurement process? If so, provide details including the name of the provider, the work involved and the cost?
12. In 2004/2005 did the Agency procure any legal services under the thresholds required for 'covered procurements' (within the meaning of 8.6 of the

Commonwealth Procurement Guidelines)? If so, provide details including the name of the provider, the work involved and the cost.

13. In 2004/2005 did the Agency contract any legal firms to provide services other than legal services (such as consulting, conduct of policy reviews etc)? If so, provide details including the name of the firm, the project involved and the cost of the contract.

*Answer:*

1. As at 31 May 2005 the Department including the Office of Indigenous Policy Coordination had spent \$34.3 million. Figures are not available as yet for the full financial year.

2. \$36.6 million.

3. As at 31 May 2005 the Department including the Office of Indigenous Policy Coordination had spent \$8.3 million. Figures are not available as yet for the full financial year.

4. Yes. As at 31 May 2005 the Department including the Office of Indigenous Policy Coordination had spent \$8.3 million. The budgeted amount for 2004-05 was \$9.7 million. The budget amount for 2005-06 is \$9.2 million.

5. The total projected expenditure on legal services for the Department including the Office of Indigenous Policy Coordination for 2005-06 is \$55.2 million made up of \$46 million for outsourced legal practitioners and \$9.2 million for internal legal services.

6. Australian Government Solicitor, Blake Dawson Waldron, Clayton Utz, Phillips Fox, Sparke Helmore F.J. Purnell, Greg Borchers, Ebsworth and Ebsworth, Chalk & Fitzgerald and Corrs Westgarth.

7.	(i)	Australian Government Solicitor	\$13.8 million
	(ii)	Blake Dawson Waldron	\$4.8 million
	(iii)	Clayton Utz	\$8.5 million
	(iv)	Phillips Fox	\$1.5 million
	(v)	Sparke Helmore	\$5.5 million
	(vi)	F.J. Purnell	\$3,850.00
	(vii)	Greg Borchers	\$2,800.00
	(viii)	Ebsworth and Ebsworth	\$4,270.00
	(ix)	Chalk and Fitzgerald	\$22,247.00

(x)	Corrs Westgarth		\$102,350.00
8.	Open tendering.		
9.	Not applicable.		
10.	Not applicable.		
11.	Not applicable.		
12.	Yes.		
(i)	Ernst and Young	Probity advice	\$4,693.21
(ii)	KFPW	Property related	\$3,715.00
(iii)	Sage Legal Services	Tender process	\$37,737.00
(iv)	Walter and Turnbull	Probity advice	\$1,040.00
(v)	Greg Borchers	Assess merits of funding in relation to Native Title claim	\$2,800.00
(vi)	Ebsworth and Ebsworth	Review of Native Title Representative Body	\$4,270.00
(vii)	Chalk and Fitzgerald	Review of Native Title Representative Body	\$5,322.00
		Funding advice	\$16,925.00
(viii)	Corrs Westgarth	Legislative Reform of ACA Act	\$63,734.40
		Legal advice re Native Title litigation	\$38,616.00
13.	Yes.		
(i)	Australian Government Solicitor	Training	\$2,040.00
(ii)	Ernst and Young	Probity advice	\$4,693.21
(iii)	KFPW	Property related	\$3,715.00
(iv)	Sage Legal Services	Tender process	\$37,737.00
(v)	Walter and Turnbull	Probity advice	\$1,040.00



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**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(181) Output 1.3: Enforcement of Immigration Law**

Senator Nettle asked:

(1) Under s 5 of the Migration Act 1958 (Cth), "immigration detention" can include any place approved by the Minister in writing (such as the house in which the Bakhtiyari children were detained in Adelaide in 2004). (a) how many times (since 1998) the Minister has approved a residential location in the community as a place of immigration detention, on the basis of a detainee's special mental health needs (whether the detainee is a child or adult), (b) The duration of such placements.

(2) In *S v Secretary, DIMIA*, Finn J notes at [207] a concession by the Commonwealth that "it is under a non-delegable duty to ensure that reasonable care is taken of [persons in immigration detention]". Does the Department or Minister accept that that non-delegable duty of care may, in certain circumstances, create an obligation upon the Department and/or the Minister to ensure that an immigration detainee not be detained within a detention centre, but rather be either detained in an alternative place of detention, or be granted a visa.

*Answer:*

(1) The Department of Immigration and Multicultural and Indigenous Affairs does not have this information readily available and to collate this information would involve a manual examination of individual files, which would be an unreasonable diversion of departmental resources.

As at 3 August 2005, there were 27 persons in alternative detention arrangements in the community. Of these 27 persons, 14 persons in immigration detention were placed in mental health facilities.

(2) The Department and the Minister accept that there is a non-delegable duty of care owed to an immigration detainee. On 29 June 2005, a number of changes were made to the *Migration Act 1958* in order to ensure that the current immigration detention policy is administered with greater flexibility, fairness and in a more timely manner. These changes include:

- a statement that the Parliament affirms as a principle that a minor shall only be detained as a measure of last resort;
- a non-compellable power for the Minister to specify alternative arrangements for a person's detention and to impose conditions to apply to the detention of that person;

- a non-compellable power for the Minister to grant a visa to a person who is in detention; and
- a requirement that the Secretary report to the Commonwealth Ombudsman on persons who have been detained for two years or more, and for the Ombudsman to provide assessments and recommendations relating to those persons to the Minister, including statements to be tabled.

Detainees will be treated on their merits on a case by case basis taking into account any special needs. For example, a detainee suffering a mental illness may be transferred to a psychiatric institution, a physically disabled detainee may be the subject of a residence determination or moved to a suitable alternative place of detention. In each case, the Minister or her delegates, as the case may be, take into account information provided by immigration detention facility case managers, medical practitioners, and other persons with an interest in the well-being of the detainee.

The Department does not accept that it has breached its non-delegable duty of care to any detainee by not arranging to detain them in an alternative place of detention, nor by making a decision to refuse a visa grant.

## **QUESTION TAKEN ON NOTICE**

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(182) Output 1.3: Enforcement of Immigration Law**

Senator Nettle asked:

- (1) Provide a copy of the interview that Philippines consulate officials in Brisbane had with Vivian Alvarez at an apartment in mid-2001.
- (2) Under what name did Ms Vivian Alvarez re-enter Australia in 2001?
- (3) In regard to the letter sent to the committee by Mr Killesteyn date 31 May 2005: What prompted DIMIA make the inquiry to DFAT in September 2004 about Ms Vivian Solon Young's passport?
- (4) What was the content of this inquiry?

Answer:

- (1) There is no record of any interview involving Philippines Consulate officials.
- (2) No record has been located to indicate that Ms Vivian Alvarez re-entered Australia in 2001 under any name, known to the Department.
- (3) The Queensland Police Missing Persons Bureau inquiry in September 2004 to Central Office was referred to DIMIA Brisbane Office for further investigation to ascertain if Vivian Alvarez is identical to Vivian Young/Solon/Cook. The Brisbane office subsequently approached the DFAT office in Brisbane to obtain the passport dossier.
- (4) A request was made to check whether the Australian passport that was produced in 2000 and/or the application was still available especially in relation to photographic records and next of kin.

## QUESTION TAKEN ON NOTICE

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(183) Output 1.3: Enforcement of Immigration Law**

Senator Nettle asked:

(1) Since at least 1994 Reg 2.20 of the Migration Regulations 1994 has enabled the grant of a bridging visa to a child in immigration detention whose application for a substantive visa has not been determined, when child welfare authority of a State or Territory has certified that release from detention is in the best interests of the child.

(a) how many such bridging visas have been granted on this ground;  
(b) what procedures are in place between the Department and State/Territory child welfare authorities to ensure that assessments and certifications of children can be made in a timely fashion?

(2) More recently, Reg 2.20(9) of the Migration Regulations 1994 has also permitted the granting of a bridging visa to an immigration detainee who has a "special need (based on health or previous experience of torture or trauma when a medical specialist appointed by the Department has certified that the non-citizen cannot properly be cared for in a detention environment)", and whose application for a visa has not been finally determined.

(a) how many such bridging visas have been granted on this ground;  
(b) what procedures are in place between the Department and the detention centre service provider and any medical specialists and to ensure that persons in immigration detention who potentially have such a special need can be assessed and certified by a medical specialist appointed by the Department, in a timely fashion?

*Answer:*

1. (a) The Department of Immigration and Multicultural and Indigenous Affairs does not have this information readily available and to collate this information would involve a manual examination of individual files, which is an unreasonable diversion of departmental resources. However, as at 22 June 2005, there are 8 children currently on a Bridging E Visa (subclass 051) after being released from immigration detention. All of these children are residing with their families in the community.

(b) The Department works closely with the relevant state or territory child welfare agency to service the need of children in immigration detention. In South Australia we have established two Memoranda of Understanding that address the issues of child protection and expand the options of alternative detention by creating a framework that allows access to foster care placements. In other states, the

Department is frequently in communication with key organisations. Although there is no official Memorandum of Understanding with the state child welfare agencies the Department maintains an expectation that its officers act as mandatory notifiers to these state child welfare agencies in the event of a child being considered at risk. All events of concern are brought to the attention of these state child welfare agencies and their recommendations thoroughly considered as appropriate.

In addition the Department has issued formal procedural instructions, to departmental officers detailing the procedures for unaccompanied minors in immigration detention. The Department also has priority management and explicit tracking mechanisms in Head Office on these cases. In the case of an unaccompanied minor or where it may not be in the best interest of the child to remain with his or her parent/s because there may be significant concern regarding the child's welfare, the relevant child welfare authority is contacted to assist in determining what action is in the child's best interests.

2. (a) The Department of Immigration and Multicultural and Indigenous Affairs does not have this information readily available and to collate this information would involve a manual examination of individual files, which is an unreasonable diversion of departmental resources. However, as at 22 June 2005, there are 24 persons (including 4 families) currently released from immigration detention on Bridging E Visa (subclass 051) under regulation 2.20(9)(c). Regulation 2.20(9) refers to persons with specific needs that are unable to be met within the immigration detention environment. Of these 24 persons:

- 7 persons reside in South Australia;
- 10 persons reside in Western Australia; and
- 7 persons reside in New South Wales.

(b) Detainees have a health assessment by a trained nurse, including a broad mental health screen and a risk assessment, on arrival. Where a mental health issue is identified, the detainee is referred to a psychologist, a psychiatric nurse or psychiatrist for more comprehensive assessment and can be placed under a level of observation. General Practitioners, who provide regular clinics in detention facilities, can also refer the detainee to mental health services both within and outside a facility.

Psychological services in immigration detention centres are provided by a specialist subcontractor, Professional Support Services. Psychiatric services are provided either by visiting psychiatrists engaged by a specialist medical subcontractor, International Health Management Services, or external referral.

Mental illness is not always immediately apparent. Being alert to signs that a detainee may need additional help is managed in a multidisciplinary way. If non-medical staff have any concerns regarding a detainee's mental health, these concerns are to be immediately brought to the attention of the medical staff.

## QUESTION TAKEN ON NOTICE

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(184) Output 1.3: Enforcement of Immigration Law**

Senator Nettle asked:

1. How many children are currently on bridging visas without Medicare entitlements?
2. Have all the children in detention or living on bridging visas been properly immunised?
3. How does the department ensure children on bridging visas have access to schooling?
4. Do parents on bridging visas receive assistance with childcare? If only for some bridging visa holders, please outline which visa holders receive assistance with childcare and which visa holders do not.

*Answer:*

1. To gain access to Medicare, persons must have an unfinalised application for permanent visa and hold a valid visa with work rights in force. Some asylum seekers without work rights may qualify for Medicare if they are the spouse, child or parent of an Australian citizen or permanent resident.

A bridging visa may have work rights attached depending on individual circumstances. Generally speaking, people who do not have work rights attached to their bridging visa can apply to vary that condition. To qualify for a bridging visa with work rights they will have to demonstrate that they have a compelling need to work.

As at 22 June 2005, there are 8 children released from immigration detention on a Bridging E Visa (subclass 051). None of these children has access to Medicare. However, in accordance with legislative requirements, the Minister must be satisfied that appropriate support arrangements are in place within the community prior to a persons release from immigration detention on Bridging E Visa (subclass 051).

In addition to this the Department considers on a case-by-case basis reimbursement of some medical and health costs associated with the ongoing care arrangements for persons released from immigration detention on a Bridging E Visa (subclass 051).

2. In accordance with Australian community standards, parents of children in immigration detention decide whether they wish to have their children immunised.

On arrival at the immigration detention facility information is sought, from the parents, by the detention health care provider on the immunisation history of the child. If the parent/s consent an appropriate immunisation regime is then determined by the detention health care provider. An immunisation record is provided to the family on release from immigration detention. If the parent/s do not wish for their child to participate in an immunisation program, the detention health care provider supplies the parents with information about the immunisation program, including outlining the possible health risks to the child.

3.-4. In accordance with legislative requirements, the Minister must be satisfied that appropriate support arrangements are in place within the community prior to the release from immigration detention on a Bridging E Visa (subclass 051), including that the individual has adequate support arrangements in place within the community. This includes suitable arrangements for the ongoing education of school age children, the level of support for the parents and social activities for children. This is assessed on a case-by-case basis.

## QUESTION TAKEN ON NOTICE

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(185) Output 1.3: Enforcement of Immigration Law**

Senator Nettle asked:

The Federal Court in *Goldie* (*Goldie v Commonwealth of Australia* [2002] FCA 433) placed a strict onus on the department to justify its suspicion as “reasonable” in order to lawfully detain someone. This requires the department to make “due inquiry” at their own initiative before detaining a person.

“[A]n officer in forming a reasonable suspicion is obliged to make due inquiry to obtain material likely to be relevant to the formation of that suspicion.”

1. Does the Department believe it fulfilled the reasonable suspicion test set out in *Goldie*, in the case of Cornelia Rau?
2. What objective evidence, excluding Rau’s story, did the department base its suspicion that Rau was an unlawful non-citizen? (as opposed to evidence that she was ‘lawful’). i.e. was there no objective evidence to say she was unlawful precisely because she was lawful.
3. Did the fact that her account of arrival in Australia and her history, did not check out raise suspicions about the veracity of her story and mental health?
4. Migration Series Instruction 321: Detention of unlawful non-citizens, section 2.3.6 states: “Where there is no indication to the contrary, officers may be able to conclude that a person is an unlawful non-citizen because he or she has not provided appropriate evidence of his or her lawful status”.

Does this instruction not contradict the Federal Court ruling in *Goldie*? Federal Court in *Goldie*: “Section 196 operates upon a person detained under s.189 who is an unlawful non-citizen, not upon a person reasonably suspected of being an unlawful non-citizen.

5. Will the department amend these instructions in light of the unlawful detention of Ms Rau and others? If so, when will this happen? If not, why not?
6. Mr Farmer told the February Estimates hearing that in the case of Rau “We could not establish that she was a lawful non-citizen. That is really the point...” (p102) Does this mean that anyone who cannot prove their citizenship or lawful status will be locked up by DIMIA? Does the principle of innocence until proven guilty?



7. Given that Rau's detention was based almost exclusively on her own incorrect story, was the 'reasonableness' of DIMIA's suspicion about her status ever reviewed? Specifically,
8. Was it reviewed when she was clearly suspected of being mentally ill, or when her behaviour contradicted her account? If not, why not? Who made the decision not to review?
9. Was it reviewed given that the Honorary German Consul in Cairns said Rau's German accent indicated she was "not a naturally speaking German"? A direct contradiction of her account of being a German citizen. If not, why not? Who made the decision not to review?
10. Was it reviewed given that Ms Rau spoke in clear English with a broad Australian accent at the Brisbane Women's Correctional Centre? If not, why not? Who made the decision not to review?
11. Was it reviewed when she was referred for assessment as to possible mental illness in both Brisbane and Baxter? If not, why not? Who made the decision not to review?
12. Who is responsible for reviewing the validity of the "reasonable suspicion" to hold someone in detention whose identity has not been confirmed?
13. How often should these reviews be conducted?
14. Who decides whether issuing a bridging visa? Why wasn't Rau granted a bridging visa?

*Answer:*

1. Any decision to detain a person under the Migration Act is not taken lightly. The Migration Act does, however, provide for the detention of someone where there is a "reasonable suspicion" that they are an unlawful non-citizen.

The situation of Ms Rau (Anna Brotmeyer aka Schmidt) was different to that in *Goldie*. In *Goldie*, the officer who detained Mr Goldie based his finding that Mr Goldie was an unlawful non-citizen solely on the basis of one Departmental database, which proved to be out of date. The court found that:

- The officer concerned could and should have checked other materials available to him, which would have indicated that Mr Goldie had made a valid application for a permanent visa, and therefore would have been likely to hold a Bridging Visa.
- Mr Goldie claimed that he was a lawful non-citizen, and the officer preferred the evidence of the one database he consulted over Mr Goldie's protestations.

- The officer could have detained Mr Goldie under section 192 of the *Migration Act*, which permits a short period of detention for questioning, but did not do so.
- It is relevant to note that the Palmer inquiry concluded that the relevant DIMIA officer did have a proper and lawful basis for forming a ‘reasonable suspicion’ that Ms Rau (Anna Brotmeyer aka Schmidt) was an unlawful non- citizen.

2. Although the Department concentrated its efforts in attempting to identify Ms Rau (Anna Brotmeyer aka Schmidt) as a relatively recently arrived foreign national, inquiries were also pursued through a number of Australian Commonwealth and State government departments and agencies that an Australian citizen or resident may have come into contact with. This included:

- A number of Commonwealth and State departments; Health Insurance Commission, Centrelink, Vehicle and Driver Registration, Registrars of Births, Death and Marriages.
- The police Missing Persons Unit in Queensland. Photographs of Ms Rau were provided.
- Consular representatives in Australia.
- Australian Government representatives overseas.

3. Ms Rau (Anna Brotmeyer aka Schmidt) provided various accounts of her arrival in Australia, and the reasonableness of the suspicions of her status as an unlawful non-citizen was maintained during the ongoing investigation to verify Ms Rau’s identity and immigration status.

4. The differences between Ms Rau’s (Anna Brotmeyer aka Schmidt) case and the situation examined by the Federal Court in *Goldie* have been discussed above, in Part 1 of the response to this question.

As to MSI 321, while the majority judgment in *Goldie* states that an officer is obliged to make ‘due inquiry’ to obtain material likely to be relevant to the formation of a reasonable suspicion, it does not prescribe the precise nature and extent of the inquiry that should be made. Moreover, the judgment recognises what is reasonable in a particular case depends on the circumstances of that case. It may be, for example, that the existence of a particular fact would ground a reasonable suspicion in the mind of an officer if it were the only fact known to him or her.

The essential issue in *Goldie* was not that no information on Mr Goldie’s status was available. The court found in *Goldie* that information that would have revealed Mr Goldie’s lawful status was available to the officer concerned, but that the officer had either not consulted, or disregarded the information, and had instead based his conclusion on a single, and as it turned out, incomplete computer record. By contrast, where there is no recorded information available on an individual, it may, depending on all the circumstances of the case, be reasonable to conclude that the

person is an unlawful non-citizen. There is, therefore, no conflict between the *Goldie* decision and MSI 321.

Finally, the High Court is currently considering the exact relationship between sections 189 and 196 of the *Migration Act* in the matter of *Ruddock, Patterson and Commonwealth v Taylor*. The High Court heard this matter in March 2005 and judgement is currently reserved. MSIs such as MSI 321 may need to be further amended when this judgment is handed down.

5. Departmental instructions such as MSIs are constantly under review, and it may be that MSI 321 will be amended as a result of Ms Rau's (Anna Brotmeyer aka Schmidt) case and the matter of *Ruddock, Patterson and Commonwealth v Taylor*.

A person is not required to prove that he or she is lawful to avoid immigration detention. Instead, it is clearly up to the officer to form a reasonable suspicion that the person is unlawful. Mr Farmer's comments should be understood in the context of Ms Rau's (Anna Brotmeyer aka Schmidt) case – namely, that she herself claimed to be an unlawful non-citizen, and there was no other information available that contradicted her claim. As indicated above, the Palmer report inquiry concluded that there was a proper basis for forming a reasonable suspicion that she was an unlawful non-citizen.

7. A Detention Review Committee (DRC) meets fortnightly to:

- discuss listed cases of persons currently held in immigration detention;
- identify broader trends and issues in detention activities; and
- ensure a cooperative, coordinated approach across DIMIA Divisions to resolve detention cases.

The DRC comprises representatives from the Removals Policy and Operations Section (RPOS), Onshore Protection Branch, Enforcement and Citizenship Litigation Section (ECLS), International Cooperation Branch, Arrivals and Detention Centre Coordination Section (ADCC), Detention Case Coordination Section (DCC) and Border Control and Compliance Division, including participation by State Compliance officers when further focus on their caseload is required.

Ms Rau's (Anna Brotmeyer aka Schmidt) case was reviewed until she was identified as an Australian resident, in DRC meetings on 6 October 2004, 27 October 2004, 17 November 2004, 2 December 2004, 15 December 2004, 16 January 2005 and 28 January 2005.

8. Please refer to the details provided in part 7.

9. In reviewing Ms Rau's (Anna Brotmeyer aka Schmidt) case, the Department was aware of the advice provided by the Honorary German Consul. The Department was also in discussion with the German Consulates in Brisbane and Melbourne.

10. Ms Rau (Anna Brotmeyer aka Schmidt) was reported to be speaking European accented English. It is not possible to say whether anyone at the Brisbane

Women's Correctional Centre formed the opinion that she spoke with an Australian accent.

11. Ms Rau's (Anna Brotmeyer aka Schmidt) case remained under review during her period of detention.

12. An Executive Detention Review Committee (EDRC) was established in July 2004 to extend the effectiveness of the DRC by providing a high-level forum to deal with the most problematic detention issues and cases. The fortnightly DRC meetings identifies cases and issues suitable for escalation to the EDRC, particularly those with relevance across Divisions and matters that could not be resolved at the DRC level. Policy issues are identified in this forum.

13. The Detention Review Committee meets fortnightly.

14. There are a number of delegated officers in the Department that can make a decision on a Bridging Visa application.

It should be noted that Ms Rau did not submit a Bridging Visa application nor did any other third party on her behalf.

## **QUESTION TAKEN ON NOTICE**

**BUDGET ESTIMATES HEARING: 25-27 May 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

### **(186) Output 1.3: Enforcement of Immigration Law**

Senator Nettle asked:

1. Did the officer that conducted the interview, Aidan Moolenschot, express any doubts about Ms Rau's story or her mental state?
2. Were the claims about catching a boat from China and landing in Queensland followed up by the department? When no evidence was found to corroborate her story, did DIMIA question the basis of their 'reasonable suspicion'?
3. Did DIMIA ever question the motive behind Ms Rau's account?
4. In an answer to Question on Notice 129, DIMIA states "The Department acknowledges the role of appropriately qualified health care professionals to provide opinions in relation to an immigration detainee's state of health". Why then did the Department not seek a psychiatric assessment to check the veracity of her story until a month and a half later?

*Answer:*

1. The DIMIA Officer's record of interview does not indicate whether he had doubts about Ms Rau's (Anna Brotmeyer aka Schmidt) story or mental state.
2. Ms Rau (Anna Brotmeyer aka Schmidt) provided various accounts of her arrival in Australia, and the reasonableness of the suspicions of her status as an unlawful non-citizen was maintained during the ongoing investigation to verify Ms Rau's identity and status in Australia.
3. Official records do not indicate that Ms Rau (Anna Brotmeyer aka Schmidt) was questioned as to the motive behind her account.
4. Ms Rau's (Anna Brotmeyer aka Schmidt) day to day needs in Brisbane Women's Correctional Centre (BWCC) were managed by the Queensland Correctional Services. Decisions regarding Ms Rau's (Anna Brotmeyer aka Schmidt) health needs were made by the appropriate health care professionals within the Queensland correctional facility.