QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(207) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

(1) Why has the Removal Pending Bridging Visa been placed under ministerial discretion and does not operate through the normal application procedures?

(2) How will the department ensure that all those that are eligible for this visa are 'Invited' to apply?

(3) What procedures are available for those who meet the criteria to be eligible for this visa, but not invited to apply?

(4) Does the department envisage a situation where a person would be on a visa for the term of their natural life? After what period will it be reviewed and a person be offered a substantive visa?

(5) What provisions is the department establishing to ensure those invited to apply for this visa have access to free independent legal advice?

(6) What does 'cooperating fully' with the department actually mean and who determines whether this is has been achieved?

(7) Can someone on a Removal Pending Visa still ask for Ministerial intervention?

(8) Should new information come to light which puts a person on this visa at the risk of refoulement, can they then apply for ministerial intervention?

(9) Does the Removal Pending Visa allow for the removal to a third country? If travel document for one way entry are obtained, must a person on this visa be removed to that country even if it is a country to which they have no links?

(10) How much notice of a removal will people on a Removal Pending Bridging Visa receive? Will they receive the department's reasoning why it is now practicable to return people to that country? Will they receive any new information that such a decision will be based on?

(11) What will be the reporting requirements to DIMIA or another organisation of a person on a Removal Pending Bridging Visa?

Answer:

(1) The Bridging (Removal Pending) Visa (RPBV) is a government initiative to allow the release of longer term detainees whose removal is not reasonably practicable at this time, into the community. The Government decided that the Minister should personally examine each case.

(2) The Department will continuously review the detainee caseload to identity cases that meet the visa criteria for referral to the Minister.

(3) The power to invite an application for BV(R) is a non compellable one exercised by the Minister personally. The Department will continuously review the detainee caseload for cases that potentially meet the visa criteria and refer them to the Minister for consideration.

(4) The purpose of the RPBV is to allow a person whose removal is not currently reasonably practicable to live in the community with Government support until their removal can take place or they are granted another visa. The Migration Regulations do not prevent a person holding a RPBV for the long term or from being granted a different visa.

(5) Detainees are encouraged to obtain advice from their lawyer or migration agent after being invited to apply for a RPBV.

(6) The original RPBV eligibility criteria included the requirement that a person undertake in writing to 'cooperate fully' with all efforts to be removed from Australia. This has since been removed.

(7) Yes.

(8) Yes.

(9) The government's preference is to return people who have no legal right to remain in Australia to their country of citizenship or former residence. A person may be removed to a third country if the person has the right to enter that country.

(10) This will vary on a case by case basis. The Department would advise the person of the destination and that a travel document or other authority has been obtained to allow their travel.

(11) RPBV holders are generally required to report to a DIMIA office fortnightly.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(208) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

How many school age children have been detained by DIMIA and put into a detention centre?
(a) How many have been taken directly out of school during school hours?
(b) Are there guidelines for such compliance action? Provide a copy of such guidelines.
(c) Do any such guidelines provide guidance into the removal of a child from school during class time or during breaks or immediately following school time? Is there direction in regard to causing the least disruption involved for the child targeted by compliance action and other children at school?
(d) Is the school given forewarning of the compliance action?
(e) Is the principal of the school able to contact carers or guardians to seek their permission for the removal?
(f) Who makes the decision to detain children?
(g) What less disruptive and harsh alternatives are there to detention for school age children?

Answer:

As at 3 August 2005, there were no children in immigration detention facilities. Forty one children have been placed in the community under residence determination arrangements. Of these 41 children, 25 children are of school age.

(a) Three minors were taken out of schools during school hours at NSW schools by departmental officers in March 2005. Two were detained.

(b) The interim instructions under which compliance staff are operating is attached. The intention is to incorporate them into a major revamp of the compliance instructions.

(c) The number of cases where compliance officers have entered school premises is small and is not done lightly. In the very small number of cases where compliance officers have visited schools this has been done in a sensitive and low key manner in consultation with either the Principal or Deputy Principal. Officers have sought to engage their assistance in resolving the issues as quietly and with as little fuss as possible.

(d) When compliance officers have attended a school contact is always made with the Principal of the school and all business conducted through the Principal or Deputy Principal. Consultations have been held with the NSW Department of

Education and Training in respect of how any compliance action involving a school would be handled.

(e) Refer (b) above. A Principal is free to contact carers or guardians. However, the powers of the Migration Act are not contingent upon permission of a guardian or parent.

(f) The Migration Act requires detention of unlawful non-citizens whether or not they are subsequently taken to a detention centre. Authorised officers under the Act make the decision to detain unlawful non-citizens. In respect of children, historically only 9% entered detention and these decisions took into account the circumstances of the cases including eligibility for bridging or other visas. Recent changes in legislation require that children be detained only as a last resort.

(g) As mentioned in (f), children are detained only as a last resort. When they are detained, options for alternative detention are now routinely considered for children, including Residential Housing Projects and appropriate places in the community.

DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

MINUTE

FOLIO NO.

To: State and Territory Directors
State and Territory Compliance Managers

DRAFT INTERIM INSTRUCTION: CARE ARRANGEMENTS FOR DEPENDANTS AFFECTED BY COMPLIANCE ACTIONS

1. This is an interim instruction to DIMIA officers concerning their responsibilities in relation to the care arrangements for children affected when one or both of their parents or legal guardians are taken into immigration detention. This instruction also covers other family members, such as relatives with disabilities and elderly relatives who may be dependant on a person being taken into immigration detention for their care. More comprehensive guidelines are being developed and will be made available shortly.

2. Officers are reminded of the importance of referring to MSI 371, and the need for continued careful screening to avoid detaining women and children wherever possible.

3. Officers must make every effort to determine through interviewing a detainee and the thorough interrogation of DIMIA systems whether or not a detainee has minor children with them in Australia or whether the detainee is the primary caregiver for another person such as a disabled or elderly relative.

MINOR CHILDREN

4. Officers must identify the care arrangements for any child, and/or what the detained parent would want to see set in place for any minor child's care. It is the parent who has legal responsibility for the arrangements set in place for their children remaining in the community but given our role in detaining any parents we need to be vigilant and engaged.

5. The guiding principle to be adopted where minor children are to be left in the community in the absence of a parent or a legal guardian, is that compliance staff need to satisfy themselves that a suitable care arrangement is in place. This will involve alerting state welfare agencies. Once the parent or guardian is detained, detention staff will assume responsibility for checking on the care arrangements. Checks on the care arrangements should be made within 24 hours of detention and every 7 days following the initial check with both the parents/guardians and the care giver.

6. In order to satisfy themselves that care arrangements are suitable, compliance officers should consider are:

    - The children are being left in the care of an adult; and
    - Based on the information available to the officer, the children are not being put at risk in the care arrangements

7. Where detention of an unlawful family is required, consideration is to be given to whether one of more of the family members can meet the required criteria for the grant of a BVE to allow them to remain in the community.

8. If a parent is located separately from their child and if there is a need to go to a school or another place to locate an unlawful child, a parent should accompany officers where this can be managed effectively.

9. Where the child of a detainee is an Australian Citizen or lawful in their own right, and would otherwise be left in the community without a parent, the option of children being housed in the detention centre is to be considered as a last resort following consultation with GSL via UAD Division in Central Office (AS UADO Branch) and agreement of the parent.. Ideally this would be for a short period and for young children while alternative care arrangements are set in place by the detained parent/s. Where minor children are legal and would be left in the community without a parent, and housing them in the detention centre is not appropriate or not agreed to by the parent, and the community care arrangements are not regarded as satisfactory, the compliance officer must:

    - notify the relevant state authority for the welfare of children about the terms and details of the arrangement;

    the detentions officer must:

    - arrange to check at regular intervals (every 7 days) with the detained parent that they remain satisfied with the care arrangements; and
    - if the parent is not in touch with minor children or the caregiver, the officer must alert child welfare authorities.

10. Where a compliance or detentions officer has any concerns about the nature of the care arrangement they must:
    - seek urgent intervention from state child welfare authorities (where welfare authorities are not available officers are to contact state or territory police); and
    - if they are with the children at the time concerns are raised, they should if possible remain with the children until the appropriate welfare authorities or police arrive. However, officers can only remain with consent if their duties under the Migration Act have been completed. If consent to remain at the property is withdrawn, officers must exit the property immediately but should remain actively engaged with state authorities, preferably remaining around the site until they arrive.

11. DIMIA officers are reminded that they must make comprehensive contemporaneous note of all discussions held with parents/guardians in respect of matters to do with children and in particular of any care arrangements reached for children of detained parents. Notes should also be recorded on file and on DIMIA systems under the name/s of the parent and all children affected. Notes should include details (including names and contact numbers) of any contact made with state agencies.

12. Officers should consult their manager immediately if they have any concerns about steps that they should take to ensure appropriate care arrangements are in place. Contact can also be made with central office for further advice.

13. State and Territory offices are to review current cases where detainees have children in the community not under the care of a parent to determine and record the nature of those care arrangements and consider whether referral to welfare authorities is appropriate.

14. It is noted that children located on illegal fishing vessels may be detained. Arrangements for these children are currently being reviewed by UAD.

OTHER NON-MINOR DEPENDANTS

15. When detaining a person compliance officers must also keep in mind that the person may be the primary care-giver for a non-minor who is reliant on the detained person for their basic needs. When interviewing a person who is being detained officers should seek to identify whether they will be leaving a non-minor in the community who is dependant for their basic needs on their assistance.

16. Officers must identify the care arrangements for that third party, and/or what the detained care-giver would want to see set in place for the third parties care. It is the care-giver who has legal responsibility for the arrangements set in place for the dependant remaining in the community but given our role in detaining the care-giver we need to be vigilant and engaged.

17. Compliance staff need to satisfy themselves that a care arrangement is in place for the third party. Where an alternative care arrangement is not put in place officers will need to alert the relevant state welfare agency or hospital. In the absence of a readily identifiable agency to contact, officers are to contact state or territory police. Officers are reminded of the importance of making comprehensive notes of any arrangements put in place.

Vincent McMahon
Executive Coordinator
Border Control and Compliance

April 2005

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(209) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

Do all children of school age currently in detention have access to schooling at a regular school including the opportunity for socialisation with peers?
(a) What form of schooling does the department provide?
(b) Has a review been conducted into the adequacy of this form of schooling?
(c) What were the conclusions of any such review?

Answer:

All school-age children in immigration detention have access to schooling. All school-aged children who are likely to be in immigration detention for more than three weeks are assessed to determine whether it is appropriate for them to attend an external government school.

Where it is not possible or not appropriate for a school-aged child to attend a State school an in-centre education program is made available.

Schooling provided to school-aged children in IDFs is based on State/Territory school curricula but also takes into account the children's variable lengths of stay in detention and addresses their abilities, any learning difficulties they may have and the level of their English language skills.

Trained and qualified teachers, focusing on English as a second language (ESL), are employed at all facilities.

The Department provides age-appropriate social and education programs to all children in detention. Wherever possible, children attend local schools outside of detention facilities. In some cases, such as very short detention, a school curriculum based program is provided within detention facilities. Social and recreational activities are also organised, as well as televisions, videos and video games, sports and playground equipment, toys, games and excursions to the movies, beach, parks and swimming pools.

The Department also provides structured recreational and educational activities for children including an after school program, weekend program, and holiday program.

The Department monitors education services provided to children in immigration detention including the auditing of education materials that are provided to school-age children and assessing whether education is being provided by a qualified education provider.

The Department also seeks to ensure that parents can be involved in their child's education. They are, for example, encouraged to attend parent/teacher meetings to discuss the educational progress of their child.

The Department had planned to commission a member of its Expert Panel to review the full scope of educational services provided to detainee children at Villawood IDC, both internal and external to the centre. This would include after-school and school holiday programs.

The review has been suspended due to recent changes in Government policy on detention arrangements.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(210) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

(1) How many detainees have been prescribed the drug *Tramal*?

(2) What percentage of long-term detainees (over one year in detention) are being prescribed *Tramal*?

(3) What is the longest period of time that a detainee has been prescribed *Tramal*?

(4) What programs are in place to prevent detainees becoming addicted to *Tramal* or helping detainees with an addiction to *Tramal* or another drug?

(5) What programs are in place to help former detainees with any dependence on drugs once they are released from detention?

Answer:

(1) As at 23 June 2005 four detainees have been prescribed Tramal.

(2) No detainees who have been in detention for longer than one year have been prescribed Tramal.

(3) Six months (since December 2004).

(4) All detainees identified with a drug dependency are referred for counselling and, if required, to external state agencies for review and treatment.

(5) All detainees are provided with a discharge summary on discharge for a general practitioner who can refer the individual to appropriate services as required. If methadone or buprenorphine are being prescribed, arrangements are made with external services at the time of discharge to ensure timely follow-up and care.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(211) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

Wrongful Detention
(i.e. who had legal visa status or citizenship and should not have been held in immigration detention)

1. How many people have been wrongfully detained each year since mandatory detention was put in place?

2. What nationality are these people?

3. How much has been spent on incarcerating people wrongfully?

4. How much have you had to spend on compensating people who have been detained wrongfully?

5. How many people have been deported without their identity having been established since 1998? Provide a breakdown of nationality.

Answer:

1. Since 1 July 1993, from which time data is available, there have been 11 matters where damages have been awarded in respect of wrongful detention.

2. The 11 matters involve citizens of Afghanistan, Australia, Bangladesh, China, Fiji, France, Malaysia, South Korea, and the United Kingdom.

3. This information is not readily available. The current average daily detention cost is $189 per person.

4. The total amount of compensation paid in respect of these 11 matters was around $0.92m.

5. Records of people deported without conclusively establishing their identity is not available.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(212) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

1. Has there been a delegation under the Immigration (Guardianship of Children) Act 1946 – section 6 to any officers of the Department of Community Services in NSW and, if so, what powers have been delegated? Has any similar delegation been made in South Australia?

2. What procedures are in place to ensure child protection clearance of DIMIA and GSL or subcontracted officers who have access to children in detention?

3. How many cases is DIMIA aware of in which children in immigration detention have been assaulted or abused in any way? What actions have they taken to involve state child protection authorities?

4. What protection is in place to prevent children in detention witnessing acts of self-harm by other detainees? What has been done to assist children who have witnessed such acts?

Answer:

(1) Yes. The Minister has delegated her powers under section 6 of the *Immigration (Guardianship of Children) Act 1946* (IGOC Act) to the following officers of the Department of Community Services (DOCS) in NSW:

Director-General
Deputy Director-General
Executive Director, Out of Home Care
Director, Adoption and Permanent Care Services

Section 6 provides that:

> The Minister shall be the guardian of the person, and of the estate in Australia, of every non-citizen child who arrives in Australia after the commencement of this Act to the exclusion of the father and mother and every other guardian of the child, and shall have, as guardian, the same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have, until the child reaches the age of 18 years or leaves Australia permanently, or until the provisions of this Act cease to apply to and in relation to the child, whichever first happens.

That is, the Minister has the same rights and responsibilities in relation to a "non-citizen child", as defined by the IGOC Act, as any other parent or legal guardian in Australia. The effect of the delegation is that the officers of DOCS, noted above, are also able to exercise these powers in relation to non-citizen children resident in NSW. However, the Minister retains the overall responsibility for all non-citizen children for which she is the guardian.

The following officers of the South Australian Department for Families and Communities (DFC) have been delegated with the Minister's powers under section 6 of the IGOC Act, in relation to non-citizen children resident in South Australia:

- Chief Executive
- Deputy Chief Executive
- Director, Children, Youth and Family Services
- Regional Director, Northern Metropolitan Region, Children, Youth and Family Services
- Manager, Adoption and Family Information Service
- Supervisor, Adoption and Family Information Service

(2) Both the Commonwealth and GSL are bound by child protection laws in the relevant State or Territory. That is, DIMIA and GSL officers, as well as employees of GSL's subcontractors, must meet the State requirements for working with children, including police and character checks where required.

People based at IDFs who work specifically with children, such as teachers or day care co-ordinators, must also meet specific State and Territory legislative requirements for workers in those professions. DIMIA and GSL also act as mandatory notifiers of suspected abuse of children, by operation of State or Territory law where such law is applicable, and by operation of the Detention Services Contract (DSC) where it is not.

Officers are not permitted to work in IDFs without first obtaining all clearances required by State or Territory child welfare laws.

(3) Compiled statistics concerning allegations of assault against minor children in immigration detention are not readily available. To collate this information would involve the manual examination of large numbers of files and reports, which is an unreasonable diversion of departmental resources.

Allegations of assault are reported to appropriate authorities, including the DSP, child welfare, police etc, for investigation. In every case where a child is the victim, the police and the relevant child welfare agency are to be notified. Where authorities believe that allegations are substantiated, charges may be laid and the offenders are prosecuted in accordance with the law.

(4) There are currently no children in Immigration Detention Facilities (IDFs). However, when children are detained in IDFs and where the infrastructure of the IDF allows, they are accommodated in family compounds. These compounds accommodate family groups and other low-risk detainees, significantly reducing the risk that children will be exposed to acts of self-harm by other detainees.

The Department takes its duty of care towards detainee minors very seriously. It also supports parents to take responsibility for ensuring that their children are not exposed to potentially traumatic events.

Counsellors who treat children in detention have specific training in dealing with children. Children who **do** witness acts of self-harm are referred to such counsellors, and to psychologists as required. There is also a range of mental health services available on site or by referral to specialists.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(213) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

How many cases of assaults by DIMIA, GSL or subcontracted staff, on detainees is the department aware of? How many actions have been taken, or are pending, against the Department/GSL or subcontracted staff? What have been the outcomes of any such actions?

Answer:

There have been two instances where a DIMIA, GSL or subcontractor has been convicted of assault on a detainee. The Detention Services Provider (DSP) records provide the following background on these instances:

An ACM officer was convicted in the Adelaide Magistrates Court on 21 October 2004, in relation to an assault on a detainee at Baxter Immigration Detention Facility (IDF) in April 2003. He pleaded guilty to common assault and was sentenced to two months imprisonment, which was suspended upon him entering into a good behaviour bond in the amount of $100 for 12 months.

An ACM Officer appeared at the Port Hedland Court on 26 April 2001. He was convicted of assaulting a detainee at the Port Hedland Immigration Reception and Processing Centre (IRPC) on 20 January 2001. He pleaded guilty to assault occasioning actual bodily harm and was sentenced to prison terms of nine and fifteen months to be served concurrently, but instead received a two year suspended sentence.

In both cases referred to above, the ACM officers were dismissed by the DSP prior to the convictions.

The Department has contacted the former DSP, GEO (formerly known as ACM), and current DSP, GSL (Australia) Pty Ltd, and these organisations have confirmed that there have been no other convictions of assault.

Both GEO and GSL have advised that when an allegation is received that an officer has assaulted a detainee, the officer is suspended on full pay pending a formal investigation. The DSP has the option to dismiss the officer if the matter is proven.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(214) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

How many acts of self-harm and/or serious suicide attempts have occurred in immigration detention? Provide a breakdown for the past three years and by nationality, age and gender. How are such incidents currently managed?

Answer:

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 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.

For the past three years there have been 499 incidents reports of attempted or actual self harm involving 860 detainees.

From time to time, some detainees engage in acts of self harm in groups as a form of protest. In these situations, one incident report may be submitted by the Detention Services Provider (DSP), however, may refer to several detainees.

The following tables identify the Immigration Detention Facilities (IDFs) where the incidents of self harm have occurred since July 2002.

Nationality, age and gender have not been included in the tables as 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.

Self Harm during 2004–05 (YTD 10 June 2005)

Facility	No. of incident reports of self harm	Detainees involved
Maribyrnong IDC	9	9
Perth IDC	10	16
Villawood IDC	13	82
Christmas Island IRPC	3	3
Baxter IDF	66	92
Port Augusta RHP	1	1
Total	102	203

Self Harm during 2003–04

Facility	No of incidents reports of self harm	Detainees involved
Port Hedland IRPC	21	54
Woomera RHP	0	0
Maribyrnong IDC	7	7
Perth IDC	22	28
Villawood IDC	15	15
Christmas Island IRPC	6	6
Baxter IDF	144	305
Port Augusta RHP	0	0
Total	215	415

Self Harm during 2002–03

Facility	No of Incidents reports of self harm	Detainees involved
Curtin IRPC	11	16
Port Hedland IRPC	9	14
Woomera IRPC	62	68
Woomera RHP	2	2
Maribyrnong IDC	7	7
Perth IDC	12	14
Villawood IDC	27	37
Christmas Island IRPC	1	9
Baxter IDF	51	75
Total	182	242

Incidents of attempted or actual self harm are managed in a variety of ways. Detainees are provided with medical assistance as soon as possible. They are also provided with post-incident and ongoing appropriate treatment including counselling, psychological and psychiatric services.

Detainees who engage in acts of self harm are placed on Suicide and Self Harm (SASH) watch and monitored regularly by the DSP and health care professionals. Assessment of vulnerability is seen as an ongoing multi-disciplinary responsibility, involving the Department, DSP staff, medical, psychological, relevant community specialists and other stakeholders.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(215) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

How many health staff currently working in detention centres, have specific training in child and adolescent mental health?

Answer:

Refer to Senate Estimates Question on Notice No. 135.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(216) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

What is DIMIA's response to the motion passed by the Australian Medical Association (AMA) at its 2005 annual conference, that it is unethical for a psychiatrist to work for or be employed by a provider of immigration detention and that all children and detainees with mental health issues should be released? Will DIMIA follow the advice of the AMA?

Answer:

The Department is disappointed that the AMA would act in this way. This type of action makes the provision of appropriate health services to immigration detainees difficult. Detainees are held under laws passed by the Australian parliament and such a motion can only work to the detriment of the welfare of detainees.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(217) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

Outline any difficulties that DIMIA has had in finding psychiatrists or mental health workers to work in immigration detention centres?

Answer:

The Detention Services Provider has trained and qualified psychiatrists and mental health care providers in Immigration Detention Facilities. Mental health care is provided either onsite or through referral to external health specialists.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(218) Output 1.3: Enforcement of Immigration Law

Senator Nettle asked:

1 How often are trafficked women and their children held in detention centres?

2. What systems are in place for DIMIA to detect the possible victims of trafficking?

3. What alternative processing mechanisms are being developed to avoid detention for these victims?

Answer:

1. Rarely. There have been cases of women who claimed to have been trafficked exhausting all stay options and becoming unlawful non-citizens. Where indicators of trafficking are identified the suspected victims are referred to the Australian Federal Police (AFP) for assessment and if supported by the AFP, granted a Bridging F Visa.

In rare cases where DIMIA is unable to verify the identity of a suspected victim or other security issues are raised, the client may be placed in Immigration Detention Facility for a period of time. The most appropriate accommodation has been the women's centre at the Villawood Immigration Detention Centre. Alternatives include family accommodation areas in other centres as well as residential housing projects. Suspected victims of trafficking will have an individualised care plan.

2. DIMIA conducts extensive field operations nationally to locate persons who are unlawful or are in breach of visa conditions. During these operations, where there are any indications of suspected people trafficking, DIMIA immediately refers the matter to the AFP for assessment and possible investigation under the agreed referral protocols.

DIMIA officers in the field are trained to look for signs of trafficking, some of which can be quite subtle. Interviews are also conducted at various stages during the location, detention and removal processes. At any stage where any indicators of trafficking come to light, the matter is referred immediately to the AFP.

Under current practices, DIMIA's role is to identify indicators of trafficking and to immediately refer persons to the AFP. DIMIA's referral threshold is very low and the AFP response is rapid. These procedures are now well established. The system is premised on existing strong inter-agency cooperation.

3. New visa arrangements in place since January 2004 provide a balanced and comprehensive visa regime that supports Australia law enforcement agencies in combating people trafficking and serves to protect those suspected trafficking victims in genuine need of protection.

The Bridging F Visa (BVF) allows up to 30 days for law enforcement agencies to assess whether or not a person is able to assist in an investigation or prosecution of a people trafficking matter. The existing Criminal Justice Visas (CJVs) enable a person who is assisting with an investigation or prosecution to remain in Australia lawfully. The Witness Protection (Trafficking) Visas (temporary and permanent), also introduced on 1 January 2004, provide protection to a person who has assisted in an investigation or prosecution of a people trafficking matter and who is at risk of danger should they return to their home country.

Where a suspected victim either chooses not to assist law enforcement authorities or the person's evidence is insufficient to assist a trafficking investigation or prosecution, the person is assisted in returning to their home country.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(219) Output 1.3: Enforcement of Immigration Law.

Senator Ludwig asked:

1. How many people have been detected working without work rights in this financial year?
2. Can you provide a break down of the countries these people came from?
3. Of this number of people how many had their visas cancelled?
4. Of this number how many people were deported?
5. Are there any people that were found to be working with a work permit, but were not deported? If not why not?

Answer:

1. From June 2004 to 30 April 2005, 3,346 people were located by DIMIA and confirmed to be working illegally. The true number of illegal workers is likely to be much higher as not all people located admit to working illegally and it is not always possible to confirm this at the time of location.

2. A breakdown is attached.

3. About one-third had their visas cancelled, either prior to location or at the time of location. The remainder were mostly people who had overstayed their visas.

4. As at 30 April 2005, 1,917 had been removed from Australia.

5. People working with work rights are generally not subject to compliance action.

Attachment

Persons Located by DIMIA and Confirmed to be Working Illegally 2004-05 (to 30 April 2005)

Nationality			
China, Peoples Republic of	604	Ecuador	5
Malaysia	538	Mongolia	5
India	238	Portugal	5
Indonesia	226	Stateless	5
Philippines	193	Hungary	4
Korea, Republic of	188	Jordan	4
Thailand	187	Kazakhstan	4
Fiji	136	Mauritius	4
United Kingdom	120	Poland	4
HKSAR of the PRC	92	Solomon Islands	4
Vietnam	80	Ukraine	4
Bangladesh	61	Zambia	4
Sri Lanka	61	Zimbabwe	4
Unknown	52	Bulgaria	3
Pakistan	45	Colombia	3
Irish Republic	39	Denmark	3
United States of America	37	New Zealand	3
Tonga	35	Albania	2
Nepal	27	Austria	2
Japan	24	Chile	2
Singapore	22	Korea, Dem Peoples Rep Of	2
Canada	17	Macau Spec Admin Rgn	2
South Africa, Republic of	16	Peru	2
Lebanon	14	Romania	2
Burma (Myanmar)	13	Russian Federation	2
Taiwan	12	Tanzania	2
Israel	11	U.S.S.R.	2
Kenya	11	Angola	1
Samoa	11	Bolivia	1
Egypt, Arab Republic of	10	Cyprus	1
Germany, Federal Rep. Of	10	El Salvador	1
Netherlands	10	Greece	1
Fmr Yugo Rep of Macedonia	9	Lithuania	1
Ghana	9	Maldives	1
France	8	Morocco	1
Turkey	8	Palestinian Authority	1
Lao Peoples Democratic Rep	7	Sudan	1
Nigeria	7	Sweden	1
Papua New Guinea	7	Switzerland	1
Slovakia	7	Uganda	1
Spain	7	Vanuatu	1
Czech Republic	6	Venezuela	1
Italy	6	Yugoslavia, Fed Rep	1
Syria	6	**TOTAL**	**3,346**
Afghanistan	5		
Brazil	5		
Cambodia, the Kingdom of	5		

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(220) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. How many people on tourist visas were found to be working illegally?
2. What is the breakdown of the countries these people came from?
3. How many of these people had their visas cancelled?
4. Of these people, how many were deported?

Answer:

1. In 2004-05 (to the end of April 2005), of the 3,346 people who were confirmed as working illegally, 1,181 or 35 per cent were recorded as either in breach of the conditions of their visitor visa or having overstayed their visitor visa.

2. A breakdown of the 1,181 people by country of nationality is attached.

3. Of the 1,181 people who were confirmed as working illegally in 2004-05 (to the end of April 2005) and last held a visitor visa, 564 had their visas cancelled for breaching the conditions of those visas. The remainder were people who had overstayed their visas.

4. As at 30 April 2005, of the 1,181 people who were confirmed as working illegally in 2004-05 (to the end of April 2005) and last held a visitor visa, 838 had been removed from Australia.

Attachment

Persons Last Holding a Visitor Visa Located by DIMIA and Confirmed to be Working Illegally 2004-05 (to 30 April 2005)

Nationality			
Malaysia	417	New Zealand	1
China, Peoples Republic of	109	Papua New Guinea	1
Philippines	83	Poland	1
Korea, Republic of	82	Portugal	1
Thailand	78	Slovakia	1
HKSAR of the PRC	56	Sri Lanka	1
United Kingdom	55	Sweden	1
Fiji	31	Switzerland	1
Vietnam	30	Syria	1
United States of America	24	Turkey	1
Indonesia	21	Zimbabwe	1
Unknown	21	**TOTAL**	**1181**
Singapore	16		
India	15		
Japan	14		
Irish Republic	13		
Canada	10		
Israel	8		
Germany, Federal Rep. Of	7		
Tonga	7		
Netherlands	6		
South Africa, Republic of	6		
Spain	6		
Czech Republic	5		
Italy	5		
Lao Peoples Democratic Rep	5		
Ecuador	4		
Brazil	3		
France	3		
Pakistan	3		
Samoa	3		
Stateless	3		
Taiwan	3		
Cambodia, the Kingdom of	2		
Hungary	2		
Korea, Dem Peoples Rep Of	2		
Macau Spec Admin Rgn	2		
Austria	1		
Bulgaria	1		
Burma (Myanmar)	1		
Cyprus	1		
Denmark	1		
Fmr Yugo Rep of Macedonia	1		
Ghana	1		
Lebanon	1		
Mauritius	1		
Nepal	1		

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(221) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. How many people on student visas were found to be in breach of their working conditions?

2. What is the breakdown of the countries these people came from?

3. How many of them had their visas cancelled?

4. Of these student's found to be working in breach of their visa work conditions, how many were deported?

Answer:

1. From 1 July 2004 to 30 April 2005, 145 student visa holders were located by DIMIA and found to be working in breach of the work condition of their visa.

2. A breakdown by nationality is attached.

3. All had their visas cancelled.

4. As at 30 April 2005, 29 had been removed from Australia.

Attachment

Persons Last Holding a Student Visa Located by DIMIA and Confirmed to be Working Illegally 2004-05 (to 30 April 2005)

Nationality	
China, Peoples Republic of	30
India	22
Korea, Republic of	20
Malaysia	11
HKSAR of the PRC	10
Bangladesh	9
Thailand	8
Slovakia	3
Sri Lanka	3
Vietnam	3
Indonesia	2
Japan	2
Taiwan	2
Turkey	2
Ukraine	2
Czech Republic	1
Fiji	1
France	1
Hungary	1
Kenya	1
Lebanon	1
Netherlands	1
Pakistan	1
Philippines	1
Poland	1
Portugal	1
Spain	1
Tanzania	1
United Kingdom	1
Unknown	1
Zimbabwe	1
Total	145

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(222) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. Can you estimate the number of people that are currently illegal in Australia?

2. Of this number, can you estimate how may of these are working?

Answer:

1. As at 31 December 2004, it is estimated that there were approximately 49,400 overstayers in the Australian community.

2. The Department does not have figures on this.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(223) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. How do you identify sites to raid?

2. Do you revisit past places that you have raided before?

3. Have you found illegal workers at sites which have been raided on more than one occasion?

4. Were any of the employers prosecuted? If not, why not?

Answer:

1. Sources used to support compliance operations include departmental systems, referrals from employers and educational institutions, departmental investigations, community information and information from other government agencies.

2. A particular location may be revisited if further information is received that may lead officers to believe that an unlawful non-citizen may be located there.

3. Yes.

4. There are no specific offences contained in the Migration Act 1958 relating to the employment of illegal workers. Employers who "aid and abet" a non-citizen to work in breach of section 235 of the Migration Act can be prosecuted under section 11.2 of the Criminal Code. However, this rarely occurs because of the difficulty in proving that an employer knew their employee was working illegally. The Government is considering the development of employer sanctions legislation.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(224) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. Who gets a bridging visa if they are detained as working without a work rights?

2. Who makes the decision as to the granting of a bridging visa?

Answer:

1. An unlawful non-citizen may apply for a bridging visa if they:

- have made an application for a substantive visa which has not been decided;
- have applied for merits review and awaiting a decision;
- have applied for judicial review in relation to a substantive visa;
- are awaiting the outcome of a request for the exercise of the Minister's intervention powers;
- are making, or is the subject of, arrangements to depart Australia.

Each case is assessed on a case by case basis.

2. Officers who are delegated under s496 of the Migration Act 1958 make the decision to grant a bridging visa.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(225) Output 1.3: Enforcement of Immigration Law

Senator Ludwig asked:

1. What penalties are in place for employers that employ workers without work rights?
2. Are there any plans to introduce sanctions for employers who knowingly employ people without work rights?

Answer:

1. There are no specific offences in the Migration Act 1958 concerning the employment of illegal workers. Employers who "aid and abet" a non-citizen to work in breach of section 235 of the Migration Act 1958 can be prosecuted under section 11.2 of the Criminal Code. However, this rarely occurs because of the difficulty in proving that an employer knew their employee was working illegally.

   DIMIA issues administrative warning notices to employers and labour suppliers who employ illegal workers and provides guidance on the process of checking work entitlements. The Migration Regulations also contain provisions that prevent organisations with a history of employing illegal workers from sponsoring applicants for certain business visas.

2. New offences for employers of illegal workers are under consideration. A bill relating to employer sanctions is on the Government's agenda.