

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

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

Senator Bartlett (L&C 95) asked:

I raised an issue a year ago about the identity checking unit in Afghanistan and visa cancellations due to identity fraud. In answer a year or so ago the department said it had cancelled 27 temporary protection visas on identity grounds, all of whom had claimed to be Afghans. Firstly, have any of those 27 Afghans or any subsequent cancellations been reversed following challenges to the cancellations? To clarify, you are taking on notice these further figures about any other cancellations or reversals of cancellations.

Answer:

Department records indicate that 14 Afghan visa cancellation cases have been remitted to the Department for further processing following consideration by the Refugee Review Tribunal.

Beyond the group of 27 claimed Afghans referred to in the question, departmental systems do not capture information on grounds for protection visa cancellations or protection visa refusal in a reportable fashion.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(52) Output 1.3: Enforcement of immigration law

Senator Nettle (L&C 110) asked:

In relation to the MOUs, is the Minister raising, in relation to the provision of this document, a public interest immunity claim and, if so, on what particular grounds?

Answer:

The Memorandum of Understanding of 17 May 2005 with the Islamic Republic of Afghanistan is confidential to the parties.

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BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

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

Senator Bartlett asked:

1. Please supply statistics on the number of children travelling to Australia as unaccompanied minors who were intercepted enroute and returned to Indonesia.
2. To date how many asylum seekers have been intercepted enroute to Australia and are still in Indonesia?
3. What visas have they applied for (if any); outcome of visa applications; average length of time spent in Indonesia and where the children were ultimately sent.

Answer:

1. Such statistics are not held by the Australian Government.
2. The Australian Government has available to it statistics on persons cared for under the regional cooperation arrangements. Under these arrangements, Indonesian authorities permit potential illegal immigrants to remain in Indonesia while their situation is addressed. IOM advises such persons of their options and provides practical support. Any person who signals a potential protection need is referred to UNHCR. UNHCR assesses any protection claims and seeks durable solutions for those determined to be refugees, including referral internationally for resettlement. As at 31 May 2005, of a total of 3961 persons to whom care has been provided under these arrangements, 127 persons were under IOM care.
3. The table below outlines destination countries for those determined to be refugees as at 31 May 2005. For those resettled in Australia most receive a secondary movement (temporary) visa or temporary humanitarian visa. Detailed statistics are not available on length of time spent in Indonesia of those resettled, but it would compare favourably with refugees awaiting durable solutions in other parts of the world. Of those that have been resettled to Australia, four have been unaccompanied minors.

Destination	No. of Refugees Resettled
Australia	245
Canada	190
Finland	10
Denmark	27
Sweden	184
Norway	119
Netherlands	7
UK	24
USA	51

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BUDGET ESTIMATES HEARING: 25-27 May 2005

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

Senator Ludwig asked:

1. Are security checks on refugees conducted by ASIO?
2. At what stage in the humanitarian entrance process are the checks conducted?
3. How many were conducted in 2000-01, 01-02, 02-03, 03-04 and 04-05?
4. What is the average time for these checks?
5. Please provide a breakdown of how many of these checks took...
 - a) Less than one month.
 - b) One to two months
 - c) Two to three months
 - d) Three to four months
 - e) Four to six months
 - f) Six months or more (please specify length in these cases)
6. For those security checks that take four months or more, please indicate the reasons for the length.
7. How many times is an individual the subject of security checks, how much does this vary and what are the reasons for it varying?

Answer:

1. Yes, security checks are conducted on both refugee and special humanitarian (RSHP) visa applicants in the Offshore Humanitarian Program. The national security criterion (PIC 4002), which is one of the public interest criteria set out in Part 1 of Schedule 4 of the Migration Regulations, is a prescribed requirement in all RSHP visa subclasses.
2. For offshore humanitarian applications security checks are usually instigated after interview, at the stage in visa processing when an applicant is assessed as meeting most primary criteria (apart from health and character criteria) as set out in Schedule 2 of the Regulations.
3. In 2000-01 13,733 people were granted visas under the humanitarian program offshore and onshore. In 2001-02 12,349 people, 2002-03 12,525 people, and 2003-04 13,851 people were granted visas and would have undergone checks in accordance with required procedures.

4. Consolidated statistics on total security checks on all Humanitarian applications is not available as this information is contained on individual case files. DIMIA is unable to provide information on the average time taken for applicants to undergo security checking. However, for offshore applications, currently 8 weeks are allowed before following up an outstanding check.
5. A breakdown of the numbers of security clearances that took the amounts of time in a, b, c, d, e, and f would require an examination of individual files, which would be a major diversion of resources.
6. The time taken to undertake necessary checks is a matter for ASIO.
7. A security clearance is valid for 12 months for offshore applicants so most applicants will only undergo security checking once in the humanitarian visa application process. All Public Interest Criteria clearances must be valid at the time of entry to Australia.

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

Senator Ludwig asked:

1. Has the Immigration Department implemented any part of the Ayers report?
2. If so, when and which parts?
3. Has the Department updated any of its procedures as a result of the Ayers report?
4. Since 2000, how many pregnant women have been deported?
5. Are there any special procedures for these deportations? If so, what are they?

Answer:

1. The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has implemented three of the four recommendations from the Ayers report in full and the fourth recommendation in part.

2. The four recommendations and details of their implementation by DIMIA are as follows:

Recommendation (i): A 'plain English' version should be produced of the letter to persons whose purported application for a Protection Visa was invalid;

A plain English version of this letter was developed and distributed to Onshore Protection Program areas in November 1995. The revised version omitted all but the most essential legal references in the version of the letter that had been sent in August 1995 to the Chinese woman who was the subject of the Ayers enquiry. Since then there have been further revisions to this letter to make it clearer and more concise. Departmental standard letters are continually revised to ensure conformity with 'plain English' principles.

Recommendation (ii): A medical certificate of fitness to travel should be required for any woman who is at least seven months pregnant. The senior DIMIA officer in charge of a removal charter flight should be required to sight this document and a copy kept on the individual's file;

This recommendation was implemented in full after the Ayers Report issued in September 1999, and was in place for the next charter removal from Australia on 26 November 1999.

Recommendation (iii): The Secretary of DIMIA should examine the staffing needs of the Unauthorised Arrivals and Onshore Protection areas. Certainly in 1997 the resources were inadequate. He should then have a review of file management and record keeping in the areas with the aim of introducing appropriate procedures and

training to remedy deficiencies;

This recommendation has been implemented in full.

In relation to funding for the Onshore Protection and Unauthorised Arrivals areas, since commencement of the 1999-2000 financial year both the Unauthorised Arrivals and Onshore Protection programs have been funded via a range of agreements with the Department of Finance and Administration. These agreements allows these areas to be properly funded, and within the limits of available trained case officers on the Onshore Protection program, to respond to caseload variations.

DIMIA file management and records keeping procedures have undergone a number of reviews since the Ayers report was issued. The comments in the report have been taken into account during these assessments in order to achieve continuous improvement of the department's file management and records keeping procedures.

Recommendation (iv): DFAT should seek the cooperation of the PRC Ministry of Foreign Affairs to maintain an occasional but regular contact with Ms Zhu to monitor her welfare. This is a delicate issue but the Chinese authorities have been very cooperative to date.

DIMIA supported this recommendation in part. The Australian Government does not, as a matter of course, maintain contact with failed asylum seekers once they are removed from Australia as they are not removed where this would place Australia in breach of its international obligations.

In this case, however, in response to allegations about the welfare of the Chinese woman who was the subject of the Ayers report, extensive follow-up and liaison occurred between Australian Government officials in the People's Republic of China (PRC) and the PRC Government. A package of measures to address the woman's position and that of her daughter was then negotiated and accepted.

Furthermore, the Consulate General advised on 14 June 1999 that a Chinese official had "agreed that the Consulate could keep in touch with (the woman), perhaps every three to six months". On 14 September 1999 members of the Australian Consulate in Guangzhou visited the woman and similarly found that the promised arrangements had been put in place. However, the Australian Government did not consider that persistent, overt monitoring of the woman would necessarily be in her best interests as it could be detrimental to her effective reintegration into Chinese society.

3. The Department has updated its procedures in light of the recommendations in the Ayers report. See the answers to part 2 for details.

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

5. Under the Immigration Detention Standards, which are part of the Detention Services Contract, removees are medically assessed for their fitness to travel before being removed. This includes pregnant detainees. Airlines also have their own guidelines governing travel approval for pregnant women.

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

Senator Ludwig asked:

Form 80s (personal particulars)

How many times are asylum seekers required to submit these forms, and why if the forms require the same information?

Answer:

This form is designed to capture information required by ASIO to conduct its security assessments of visa applicants. The information sought in the form and the number of occasions on which a visa applicant is required to complete the form are matters for that agency.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

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

Senator Nettle asked:

- (1) How many protection visa claims were processed, per year since 2000, while the applicant lived in the community on a bridging or other visa? How many of these were successful? How many were rejected?
- (2) How many protection visa claims were processed, per year since 2000, while the applicant was detained in immigration detention? How many of these were successful? How many were rejected?
- (3) What was the rate of absconding for people with applications for protection visas with the department or RRT who were on a bridging visa in the community, per year since 2000?

Answer:

(1) and (2) The following tables provide statistics on the final outcomes on Protection Visa applications from persons in the community and in detention.

An application is considered to be finally determined if DIMIA grants the visa or if the visa is refused and any merits review has concluded.

Finally determined Protection Visa outcomes on community applications

Finally Determined Decision Year	Protection Visa Granted (Persons)	Protection Visa Refused (Persons)	Total Final Determinations
1999-00	759	6663	7422
2000-01	999	5242	6241
2001-02	805	5171	5976
2002-03	708	7003	7711
2003-04	582	6072	6654
2004-05	479	1812	2291

Source: Manually amended ICSE data of 31 March 2005

Finally determined outcomes on detention applications

Finally Determined Decision Year	Protection Visa Granted (Persons)	Protection Visa Refused (Persons)	Total Final Determinations
1999-00	1616	1150	2766
2000-01	4513	1845	6358
2001-02	3131	1785	4916
2002-03	186	1385	1571
2003-04	173	999	1172
2004-05	142	282	424

Source: Manually amended ICSE data of 31 March 2005

(3) Nil. Protection Visa applicants on bridging visas in the community are not considered to be absconding as they are lawful.

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

Senator Nettle asked:

Provide statistics on TPV holders applying for protection visa applications - applications submitted, success and rejections. Provide a breakdown across the country, by state and by nationality.

Answer:

The following tables provide statistics on final outcomes on applications for further Protection Visas lodged by Temporary Protection Visa (TPV) holders.

An application is considered to be finally determined if DIMIA grants the visa or if the visa is refused and any merits review has concluded.

The following tables show only finally determined Protection Visa applications. The balance of the Protection Visa applications lodged by TPV holders are at various stages of primary, review and post-Refugee Review Tribunal processing.

Finally determined further Protection Visa outcomes for TPV grantees by citizenship as at 17 June 2005

Citizenship	Protection Visa Applications Lodged	Protection Visa Granted (Persons)*	Protection Visa Refused (Persons)*
IRAQ	4462	1186	342
AFGHANISTAN	3720	2559	188
IRAN	508	268	11
SRI LANKA	126	95	nil
PALESTINIAN AUTHORITY	99	21	*
STATELESS	45	27	*
TURKEY	38	21	*
PAKISTAN	31	16	*
SYRIA	25	18	*
BURMA	15	*	nil
SOMALIA	15	*	nil
KUWAIT	11	*	*
OTHER* (42)**	105	34	13
TOTAL	9200	4245	554

Source: FPV Proc Status table of 17 June 2005

*Citizenships, where there are fewer than 10 PV applicants, have been aggregated.

** The number of citizenships for PV lodgements less than 10 is shown in brackets

Finally determined further Protection Visa outcomes for TPV grantees by residence state as at 17 June 2005

Residence State	Protection Visa Applications Lodged	Protection Visa Granted (Persons)	Protection Visa Refused (Persons)
ACT	42	28	4
NSW	4491	2122	275
NT	17	8	2
QLD	427	199	24
SA	1134	579	41
TAS	29	14	3
VIC	2223	996	137
WA	776	284	47
NOT REPORTABLE*	61	15	21
TOTAL	9200	4245	554

Source: FPV Proc Status table of 17 June 2005

* In some cases the state of residence is recorded in individual file records but cannot be reported statistically from DIMIA electronic data holdings.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

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

Senator Nettle asked:

1. In relation to section 417 applications, are the guidelines MSI 386 still current and in use?
2. Please provide up-to-date statistics on rejections and success for both 417 and 48B applications. Provide a breakdown by detention and non-detention.
3. The discrepancy between the 2003/2004 figures for ministerial intervention at a rate of about 20% and the 2004 - 31 January figures were about 5.5% - is this discrepancy explained solely by the East Timorese applications, or factoring these applications out, is there still a discrepancy and how can this discrepancy be accounted for?
4. What is the average length of time between the lodging of a 417 and a decision by the Minister? Provide a breakdown by year over the past three financial years.
5. What percentage of 417 and 48B applications are passed onto the Ministers for them to exercise or not exercise their power?
6. How much time does the Minister typically spend assessing a 417 or a 48B - average and median?
7. How many departmental officers are employed to process 417 and 48Bs? How many hours do applications take to process - average and median?

Answer:

1. The Migration Series Instruction 386 is still current and in use.
2. Departmental systems do not currently provide information on s48B applications as individual requests.

With regard to s417 requests, for the time period 1 July 2004 to 31 May 2005, there have been some 2230 community cases requesting Ministerial intervention, and of those referred to the Minister, 115 received visas. In the same time frame, 620 detention cases requested Ministerial intervention and, of those referred to the Minister, 24 received visas.

3. The variation between the 2003-04 Ministerial Intervention figures and those for 1 July 2004 until 31 January 2005 can be accounted for by the number of East Timorese visa grants.
4. Departmental systems do not enable this to be calculated. The power of the Minister to intervene is exhausted only if the power is used.
5. All Ministerial Intervention requests which meet the guidelines for the exercise of the Minister's public interest powers are referred to the Ministers.
6. The Department has no records of the time spent by the Ministers assessing s417 or s48B matters.
7. Currently there are some 36 officers in NSW, Victoria and ACT Ministerial Intervention Units who handle s417 and s48B requests. In addition, there are some 65 Onshore Protection Officers who also process s48B requests as part of their role in assessing protection visa applications. Each request is assessed on its merits and it is not possible to obtain an average processing time.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

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

Senator Nettle asked:

(1) How long will the Iranian and the Afghanistan Memorandums of Understanding be in effect?

(2) Is the funding of the housing project in Afghanistan at 5.29 million (4 Million USD), tied to the return of a certain number of persons? (as mentioned in the Minister's announcement of the MOU - VPS 059/2005)

(3) What kind of monitoring system is in place to ensure that these funds will be allocated to this project?

(4) Will the housing project be in one geographic area or be available where ever people decide to return?

Answer:

(1) The Memorandum of Understanding on Consular Matters between the Government of the Islamic Republic of Iran and the Government of Australia signed on 12 March 2003 does not contain a termination date.

The Memorandum of Understanding between the Government of Australia and the Islamic Republic of Afghanistan signed on 17 May 2005 does not contain a termination date.

(2) No. The funding of the housing project in Kabul is not tied to the return of a certain number of persons.

(3) A project steering committee, which includes DIMIA and AusAID officers, will be formed in Australia to oversee the project. DIMIA will also engage a project manager in Kabul to represent Australia's interests and assist with the disbursement of approved funding.

(4) The housing project will be built in Kabul.

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

Senator Nettle asked:

1. If asylum seekers who have been rejected on the basis of uncertain nationality, but claim to be Afghan, are deemed Afghan by the Afghanistan government, will their cases for asylum be reviewed?
2. Who will make the decision to re-classify these people as Afghan and on what basis?

Answer:

1. Section 48B of the Migration Act allows the Minister to exercise a personal non-compellable power to allow a person previously refused a protection visa to lodge a fresh application for a protection visa.
2. The Minister has issued instructions to the Department on the circumstances in which cases are to be referred to her for possible consideration under her s.48B power.

Decisions on whether to use the power are made on the circumstances of the individual case. However, where a person is refused a protection visa on the sole grounds that they are not of the nationality claimed, and that nationality is subsequently confirmed authoritatively, the circumstances would fall within the Minister's guidelines for referral to her attention for possible use of her s.48B power. Where the authoritative advice does not enhance the person's chances of making a successful claim for protection – for example, where it confirms conclusions or possibilities already taken into account in the protection visa decision – then the advice on nationality would not, generally, fall within the guidelines for referral to the Minister.

Where the Minister uses her s.48B power to allow a fresh protection visa application to be lodged, the subsequent visa application is decided by a DIMIA protection visa decision-maker. The merits review avenues available to persons refused a protection visa are available should the Department refuse the fresh visa application.

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

Senator Nettle asked:

1. Please provide statistics on 'return pending visas'. Provide a breakdown across the country, by state and by nationality.

Answer:

1. DIMIA systems indicate that as at 22 July 2005 the following return pending visas (RPVs) have been granted:

Nationality	Number (persons)
Afghan	80
Iraq	154
Other (10)*	40
TOTAL	274

* The number of nationalities included under 'Other' is shown in brackets.

RPVs do not come into effect unless the individual holding the RPV has their application for a further protection visa finally determined as refused. 57 RPVs are currently in effect as at 22 July 2005.

A breakdown by state is not available as applicants are free to travel within Australia.

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

Senator Ludwig asked:

- (1) How many people are current holders of TPVs and which countries are they from?
- (2) Have any of these TPV's expired?
- (3) If so, what visa are they currently holders of, if their TPV has expired?
- (4) To date, how many TPV's have been granted?
- (5) How many people have been granted Permanent Residency, and which countries are they from?
- (6) How many are still under consideration?
- (7) How long is the average processing time to determine TPV applications?
- (8) How long have those people whose TPV applications have not been finalised, been waiting for?

Answer:

(1) DIMIA records as at 17 June 2005 indicate that there are an estimated 4,690 current Temporary Protection Visa (TPV) holders remaining in Australia. The breakdown by citizenship is provided in the following table. Data includes children born in Australia to TPV holders but does not include Temporary Humanitarian visa holders. Citizenships, where there are fewer than 10 TPV holders, have been aggregated and the number of citizenships is shown in brackets.

Citizenship	Estimated number of remaining TPV holders
IRAQ	2965
AFGHANISTAN	1048
IRAN	301
PALESTINIAN AUTHORITY	82
SRI LANKA	36
CHINA, PEOPLES REPUBLIC OF	23
STATELESS	22
BURMA	17
PAKISTAN	16
TURKEY	16
SOMALIA	15
VIETNAM	13
RUSSIAN FEDERATION	10
OTHER (51)	126
TOTAL	4690

Source: T1992 report of 17 June 2005

(2) As at 17 June 2005, some 1,800 of the 4,690 estimated TPV holders in (1) above were granted their TPV more than 3 years ago. In these cases TPV eligibility has been extended because a valid further PV application was lodged before the original TPV expiry date.

(3) All 4,690 estimated TPV holders in (1) above are current TPV holders. However, as at 17 June 2005 it is estimated that some 210 former TPV holders remaining in Australia have had their TPV eligibility cease. This is because either they were found not to be owed protection and had not sought review or their review application was affirmed by the Refugee Review Tribunal (RRT), or they did not lodge a valid application for a further PV before the TPV expiry date. These former TPV holders would normally be holding a bridging visa or Return Pending Visa (VA695).

(4) As at 17 June 2005, some 9,410 TPVs have been granted.

(5) As at 17 June 2005, some 4,200 permanent Protection Visas (PVs) have been granted to TPV grantees as a result of their application for a further PV.

(6) As at 17 June 2005, some 4,400 applications for a further PV from TPV grantees were still under consideration either awaiting a departmental decision at primary stage, awaiting a RRT decision or had been remitted by the RRT and were undergoing further departmental assessment.

(7) and (8) Processing of applications for further PVs from TPV grantees would not normally commence until 30 months have passed since the grant of the TPV. Processing of further PV applications from Iraqi nationals was also deferred by Australia's decision, in line with many other countries, to defer decision making on claims by Iraqi nationals for protection following the events of March 2003 until accurate and detailed country information became available. Australia recommenced decision making on the Iraqi caseload in April 2004.

Using the date of interview as a marker for the commencement of processing, as at 17 June 2005 the average time taken from interview date to primary decision on applications for further Protection Visas was 117 days. This is the most reliable indicator of the time these people have waited for a decision from DIMIA once their application was available for decision in the normal manner.

On 17 June 2005 the Prime Minister announced that the Department will complete all primary assessments of applications for permanent protection visas from the existing caseload of temporary protection visa holders by 31 October 2005. The Department is implementing a range of streamlining measures to ensure that this commitment is met.

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

Senator Ludwig asked:

What specific sources of country information is DIMIA using to make the assessments on applications for further refugee status?

Answer:

Protection Visa decision makers are able to use any country information they consider to be relevant and reliable.

The specific information used in each case is disclosed to the relevant visa applicants. DIMIA systems do not enable collated reporting on this matter. However, country information used in decisions is required to be registered in DIMIA's Country Information Service for future reference.

In addition to a range of hard copy human rights-related reports published by other sources, DIMIA's Country Information Service holds electronically some 85,000 country information documents in a database which can be accessed by decision makers from their desktop personal computers. These documents are drawn from non-governmental and inter-governmental organisations dealing with human rights concerns (such as Amnesty International and Human Rights Watch), individual country experts, and academic and media sources. Information is also included from the Department of Foreign Affairs and Trade network of overseas posts as well as the equivalent governmental country research agencies in Europe and North America.

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

Senator Ludwig asked:

- (1) What is the number of protection visa applications made in the last year?
- (2) How many were lodged in detention, and how many in the community?
- (3) What is the total number of asylum seekers living in the community at the end of 2004?
- (4) What is the number of visa overstayers compared to the number of protection visa applications made at the end of 2004, at the end of 2003, and at the end of 2002 (not counting the applications made in the detention centres)?

Answer:

(1) There were 2,291 initial Protection Visas (PV) lodged in 2004-05 to 31 March 2005. In addition, some 520 applications for a further PV were lodged in the same period (some 330 from Temporary Protection Visa (TPV) grantees and some 190 from Temporary Humanitarian Visa (THV) grantees.

(2) There were 348 initial PV applications lodged by detainees and 1,943 lodged by community applicants in 2004-05 to 31 March 2005.

Applicants for a further PV are generally lawful in the community when they lodge their application as they have previously been granted a TPV or THV.

(3) As at 31 March 2005 there were an estimated 1,990 initial PV applications from community applicants that were not finally determined at the end of 2004.

(4) Meaningful comparisons between the estimated number of overstayers and the number of PV applications lodged in each year are not possible.

This is because the estimated overstay number is a point in time figure and PV applications are counted over a year.

Data on PV community applications and estimated overstayers by calendar year is provided below.

PV Lodgement Year	PV Community Applications	Total Estimated Overstayers*
2002	4676	59900
2003	3447	59300
2004	2698	49400

Source: Manually amended ICSE data as at 31 March 2005

*Total estimated overstayers is an estimate only of unlawful non-citizens as at the end of the relevant calendar year.

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

Senator Ludwig asked:

1. In the last year, of all the applicants denied refugee protection visas, how many are s417 appeals to the minister on humanitarian grounds?
2. How many have exhausted all their legal means of appeal?

Answer:

1. Departmental systems do not capture this information in a reportable format. However, from 1 July 2004 to 30 April 2005 there were 1622 cases where a protection visa refusal was affirmed by the Refugee Review Tribunal. Over the same period the Department received 2503 requests for s417 intervention.
2. It is not possible to conclusively identify how many persons refused refugee protection visas have exhausted all their legal means of appeal.

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

Senator Ludwig asked:

- (1) In the last year, what are the top 10 nationalities and their numbers of visa overstayers who have applied for protection visas?
- (2) What are the most common visas categories that people are on when they make the application for a protection visa?

Answer:

- (1) DIMIA systems do not hold data in such a way as to enable these statistics to be reported.

The top 10 nationalities of Protection Visa applicants, irrespective of whether they were lawful or visa overstayers at the time, are set out in the following table.

Nationality	Number of initial Protection Visa applications lodged in 2004-05 to 31 March 2005
CHINA, PEOPLES REPUBLIC OF	667
INDIA	129
SRI LANKA	123
MALAYSIA	115
INDONESIA	95
BANGLADESH	83
AFGHANISTAN	82
KOREA, REPUBLIC OF	77
IRAN	70
PHILIPPINES	68
All Others (90)	782
Total Lodged	2291

Source: Manually amended ICSE data of 31 March 2005

- (2) The most common visa held by people applying for an initial Protection Visa, is a Visitor Visa followed by Business Visa and Student Visa.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25-27 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

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

Senator Ludwig asked:

What is the average length of time in the last year, that it takes for people to complete the full legal claim process up to and including appeals to the Minister on s417 humanitarian grounds?

Answer:

The Department is unable to calculate the period specified. The Minister's s417 power remains available in respect of all cases decided by the Refugee Review Tribunal until and unless the Minister uses it to intervene in a specific case. As a result, for the majority of the RRT cases, there is no identified "end point" for potential Ministerial Intervention, from which an average time can be calculated.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(69) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 9) asked:

Could you get the time line subsequent to Ms Leong's detention?

Answer:

- 22 June 1996 Ms Peck Ngah (Virginia) LEONG (born 21 September 1974), a Malaysian national, entered Australia on a short stay tourist visa on a Malaysian passport;
- 11 September 1996 Ms Leong applied for a Protection visa (PV);
- 11 September 1996 Ms Leong granted a Bridging A Visa (BVA) with work rights and access to Medicare.
- 22 September 1996 Ms Leong's short stay tourist visa expires. Ms Leong's BVA takes effect;
- 18 April 1997 PV application refused by the Department;
- 27 June 1997 Ms Leong lodges an application with the Refugee Review Tribunal (RRT) for merits review of the refusal of her application for a protection visa;
- 11 November 1997 RRT determined Ms Leong's application was made out of time and as such had no jurisdiction and was unable to make a decision on this merits review application;
- 12 July 1998 Ms Leong gives birth to a son, Griffith YAN, an Australian citizen, currently living in the community with his paternal grandmother;
- 16 August 2000 Ms Leong departs Australia. Ms Leong's Bridging Visa A ceases;
- 22 August 2000 Ms Leong re-enters Australia on a different passport and in the name of Virginia YAN;
- 4 June 2001 Ms Leong's Malaysian passport expires;

- 11 October 2001 Detained at Villawood IDC after coming to the Department's attention through her use of an Australian passport that was fraudulently obtained attempting to depart Australia;
- 20 November 2001 Ms Leong commences judicial review in the Federal Court relating to immigration release from detention under the name of Virginia YAN.
- 6 February 2002 Ms Leong withdraws from Federal Court litigation.
- 5 May 2002 Miss Naomi Leong born; Naomi resides with Ms Leong in the detention centre.
- 30 September 2002 Ms Leong applies to the Family Court for orders for the daily care and control of her two children. This matter was finalised on 16 May 2005 after the applicant withdrew from the matter.
- 1 October 2002 A Family Court application was made by Ms Leong for contact with her older child. This matter was finalised on 26 February 2004 by a decision in the Minister's favour.
- 7 November 2002 Section 417 request for Ministerial intervention was sought on behalf of Ms Leong (Minister has no power available as there is no RRT decision);
- 23 May 2005 Briefed by DIMIA officers as to the refusal of her protection visa application made in 1997. A bridging visa E 050 (BVE) was granted to Ms Leong. Her daughter, Naomi, was granted a BVE 051. They were both released from Villawood IDC at 9pm. Ms Leong is formally notified of the refusal of her protection visa application which was made in 1997.
- 24 May 2005 Bridging visa WA/010 is granted to Ms Leong
- 1 June 2005 RRT proceedings seeking merits review of her PV refusal commenced.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(70) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 10) asked:

In relation to Ms Virginia Leong and the Family Court injunction, was the Department represented in the High Court?

Answer.

The Department has no record of this family having a matter before the High Court.

The Family Court granted an interim order in February 2004 restraining the Australian Government from removing Ms Leong and her daughter from Australia. This order was set aside in August 2004 following the decision in respect of another High Court matter. The Department was represented in that High Court matter.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(71) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 10) asked:

In relation to Naomi Leong, outline the series of events that led up to the point where you required the Malaysian authorities to register the child.

Answer:

Since the birth of Naomi Leong on 5 May 2002, her mother has been encouraged to register the birth of her child with NSW Births, Deaths and Marriages and to complete a Declaration of Citizenship form for Naomi at the Malaysian Consulate.

In the event, the Department of Immigration and Multicultural and Indigenous Affairs registered Naomi with NSW Births, Deaths and Marriages as Ms Leong failed to do so. The Department is unable to lodge a Declaration of Citizenship form with Malaysian authorities without the cooperation of Ms Leong. This situation continues as at 1 August 2005.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(72) Output 1.3: Enforcement of Immigration Law

Senators Kirk and Chris Evans (L&C 12, 19, 20) asked:

- Do young children have access to legal advice, especially in circumstances where their case is quite different to their parents?
- How does the child request legal advice?
- Is it not the case that DIMIA has some responsibility, or duty of care at least, to suggest or make a recommendation as to who a lawyer may be?
- The situation I am talking about is that of a child who is one or two years of age and clearly not in a position at that age to even be able to comprehend what legal advice is, let alone request it for herself. I am interested in whether or not you then go to the child's mother or father, as the case may be, and ask them whether or not the child would appreciate separate legal advice or whether or not, in circumstances where a child cannot ask for their own legal advice, you would take the word of the mother or father in those circumstances. This is especially so where you have two separate cases; the cases are quite different here.
- What are the rights of the child, and what are your obligations to the child if the child may not be getting rational, proper advice or guardianship from the parent and is not necessarily employing the best lawyer in town?
- Does the child rot in detention because of that failure, and whose obligation is that?
- What are the responsibilities of the lawyer acting for a guardian and at what point does the lawyer have an obligation to say, 'I can't act for both of these people'?
- At what point do we expect the Department to say, 'You no longer have rights that you would have if you were outside detention; we' – the immigration department – 'are going to overtake those rights'?

Answer:

It is the obligation of the Department, under s 256 of the *Migration Act 1958* to, at a detainee's request, afford any person in immigration detention all reasonable facilities for obtaining legal advice or for taking legal proceedings in relation to his or her detention. The Department interprets 'in relation to his or her detention' to include legal advice or legal proceedings to do with a detainee's visa or visa application.

Given the Department's responsibility for administering Australian migration laws, it would be inappropriate for the Department to make suggestions to any person about

who their representative should be. A child has the same rights as any other person in Australia to access legal assistance. These rights are exercised on a child's behalf by their parents or guardians.

The rights and responsibilities of parents and guardians are the same in immigration detention as they are outside that detention.

As with anyone in the community, a parent or guardian is responsible for a child and takes actions on behalf of their child or the child in their care. Australian domestic law recognises the right of a person legally responsible for a child to make decisions on behalf of that child, including decisions about the provision of legal assistance. Although there are specific statutory provisions at domestic law modifying those rights (such as those in the fields of child guardianship and child protection, which are typically the responsibility of States and Territories), DIMIA has no power to intervene and assume the responsibilities, rights and obligations incumbent on those legally responsible for a child, especially where it is clear that there is a person who is legally responsible for that child. However, the Department will not permit the abuse of children by those legally responsible for the child, even where the abuse is claimed to be justified under the mantle of the parent or guardian's rights and responsibilities.

The Department is also cognisant that Australia is a party to certain international conventions which contain articles consistent with the recognition of the fundamental role of the family unit and the responsibilities, rights and obligations incumbent on those who are legally responsible for children.

Where legal practitioners are representing two parties, they may continue to act for both parties where the interests of those parties do not conflict. It is a matter for any legal practitioner to identify any possible conflict of interest and to act consistently with his or her ethical obligations.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(73) Output 1.3: Enforcement of Immigration Law

Senator Nettle (L&C 24) asked:

Did the Department seek any psychiatric assessment in relation to Ms Leong and Naomi?

Answer

The Department takes the responsibility for the care of people in immigration detention as a serious commitment and acts on the advice of health care professionals. Persons in immigration detention facilities have access to a range of health care services that are in line with Australian community standards, including access to a psychologist. The Department can confirm that this family availed themselves of this service.

In respect of any psychiatric assessments, Ms Virginia Leong was transferred to Bankstown Hospital on 15 July 2004 for a psychiatric assessment. Ms Leong was scheduled under the provision of the Mental Health Act for a period of 48 hours later that day.

Miss Naomi Leong did not undergo any psychiatric assessments. However, Miss Naomi Leong was examined on several occasions by paediatricians and child psychologists who assessed her as normal for her age.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(74) Output 1.3: Enforcement of Immigration Law

Senator Nettle (L&C 25) asked:

Can you tell us what other equipment or activities for children of that age are available in Villawood, aside from what is accessed in the visitors centre?

Answer:

Aside from what is accessed in the visitors centre, there is a variety of activities and equipment available to detainee children at Villawood Immigration Detention Centre (IDC), including the following:

- 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.
- Structured recreational and educational activities for children including an after school program, weekend program, and holiday program.
- School-age children at Villawood IDC attend external schooling five days per week. Those detainees who are of an appropriate age attend external preschool one day per week. The Department is considering increasing this to include additional days per week.
- An onsite preschool is located in Stage 2 and operates Monday to Friday 9.30am to 11.00am.
- The 'Rainbow Room' Youth Centre is located in Stage 2 and operates on weekends. It is run by Australian League of Immigration Volunteers (ALIV) volunteers. This room has a Nintendo, TV, video, toys, books, paints etc.
- An arts and craft program is run for three hours each Tuesday afternoon in the Youth Centre.
- A drama program is run for three hours each Thursday afternoon in the Youth Centre.
- A movie night is held each Friday night in the Youth Centre.
- A playgroup program is run each Friday morning from 9.00am to 11.00am out of the Youth Centre.

- A new program commenced in June 2005 called 'The Buddy Program' and is run by ALIV volunteers. This includes external excursions for children on a monthly basis. The excursions are for children who attend external schooling. Children choose where they wish to go.
- 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.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 25 May 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(75) Output 1.3: Enforcement of Immigration Law

Senator Nettle (L&C 27) asked:

Could you give examples of changes that you have made in relation to the detention of children post HREOC?

Answer:

As at 29 July 2005, all children in detention had been released from immigration detention facilities and residential housing projects to detention arrangements in the community.

These arrangements were implemented in accordance with a number of changes made to the law and handling of immigration detainees, announced by the Prime Minister on 17 June 2005. In particular, the community detention arrangements support a new power provided to the Minister to make residence determinations to allow detainees to reside in the community subject to reporting and other conditions.

While they were accommodated in immigration detention facilities and residential housing projects, children in immigration detention benefited from a range of improvements to detention services, including enhancements to health services and recreational activities.