QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 22 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

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

Senator Nettle (L&C 98) asked:

Is it possible to get an understanding of how that process, the 'closely modelled on the UNHCR process', differs from the process that would be used for an onshore refugee application?

Answer:

Note: A similar question was taken on notice from Senator Brown at the public hearing of the Senate Legal and Constitution Legislation Committee inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill, 2006, held on Tuesday, 6 June 2006. Senator Brown queried how the rules, laws or guidelines used for processing refugee applications differ between the onshore and offshore regimes.

The test for assessing refugee status is essentially the same onshore and offshore.

Arrangements for decision making differ in that, in Australia, decisions about refugee status are made as a component of a broader decision about whether a person qualifies for the grant of a protection visa. This onshore visa decision incorporates a range of considerations, such as whether a visa application has been validly made and whether health and character requirements have been met. In the offshore refugee process, the assessment focuses on the issue of whether the person is a refugee under the Refugees Convention. If a person found to be a refugee is to be considered for resettlement to Australia from an offshore processing centre, there is a separate decision-making process on an application for an offshore humanitarian visa.

The offshore refugee determination process used to date incorporates arrangements at review stage to identify possible non-Refugees Convention related reasons for providing protection to an individual. For example, paragraphs 38, 39 and 40 of the Onshore Protection Interim Processing Advice (OPIPA) No.16: *Refugee Status Assessment Procedures For Unauthorised Arrivals Seeking Asylum On Excised Offshore Places And Persons Taken To Declared Countries* set out arrangements to identify possible international obligations under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR), as well as possible humanitarian issues such as family links with Australia. None of these considerations are included in the decision on whether a person in Australia is eligible for a protection visa in the onshore process.

By comparison the onshore process is more heavily reliant on documentation of claims by,

and written communications with, the applicant.

In the offshore processing arrangements used to date, the Department can at any time reopen and reconsider cases previously found not to be refugees, if there are significant changes to the individual's claims or in the home country (paragraphs 50 and 51 of the OPIPA, refer). In the onshore process, a person who is conclusively found not to be eligible for a protection visa is unable to make a further application for a protection visa if there are changes in circumstances, unless the Minister uses a personal, non-compellable power to allow this to occur.