

## QUESTION TAKEN ON NOTICE

### BUDGET ESTIMATES HEARING: 22 May 2006

#### IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

#### (151) Output 1.2: Refugee and Humanitarian Entry and Stay

Senator Ludwig asked:

When assessing a protection, what constitutes 'persecution'?

*Answer:*

*Note:* A similar question was taken on notice from Senator Ludwig 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 Ludwig asked what definition of 'persecution' does the Department use.

The Department uses the definition of persecution set down in international law, as interpreted by the Australian courts and in key elements of the definition which are codified in Section 91R of the *Migration Act 1958*. Section 91R is set out below.

#### **Section 91R. Persecution**

- (1) For the purposes of the application of this Act and the regulations to a particular person, Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless:
  - (a) that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution; and
  - (b) the persecution involves serious harm to the person; and
  - (c) the persecution involves systematic and discriminatory conduct.
- (2) Without limiting what is serious harm for the purposes of paragraph (1)(b), the following are instances of *serious harm* for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (3) For the purposes of the application of this Act and the regulations to a particular person:
  - (a) in determining whether the person has a well-founded fear of being persecuted for one or more of the reasons mentioned in Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol;  
disregard any conduct engaged in by the person in Australia unless:
  - (b) the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol.