

## QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 22 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

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

Senator Ludwig (L&C 107) asked:

Is there a decision made as to who is not billed? Is it those who receive a protection visa or who are turned around in a short time—or is everyone billed?

It would be helpful if you could break it down so that I understood it. Obviously, some of these questions have been asked in the past but, if you would not mind, could you update the answers about which categories are billed. Could you let us know if there are any exceptions or waivers to that. In other words, if there is a category where it is usual to bill but there has been a decision to waive, you could perhaps express that as well. I know from experience that on occasion debts are waived.

Could you provide the number that have been waived and at what level the decision is made to waive those debts.

Can you confirm how many are provided to the Department of Finance by the department which are then not waived?

*Answer:*

All non citizens who are detained in immigration detention are liable for the costs of that detention under Division 10 of Part 2 of the *Migration Act 1958*. Government policy is that all reasonable steps should be taken to ensure that these costs are borne personally by the non-citizens detained, removed or deported, rather than by the Australian community. Under s 208(2), this amount must be no more than the actual cost to the Commonwealth of detaining a person at that place in that period.

It is departmental policy that the costs of detention owed by persons granted refugee or humanitarian visas **must not** be pursued. An invoice in respect of these costs is therefore not forwarded to the debtor and the debt is written-off in accordance with section 47(1)(c) of the *Financial Management and Accountability Act 1997*.

Departmental policy with respect to seeking waivers of detention debts is detailed in Migration Series Instruction 396, "Liability Of Non Citizens To Repay Costs Of Detention, Removal Or Deportation". Section 6.3 of this instruction deals with waivers of immigration detention and removal debts. It states:

".....6.3.3 Departmental policy is that consideration should be given to requesting a waiver of debts where:

- a non-citizen is subsequently granted a protection visa

- a non-citizen accepts a reintegration package offered by the department
- a non-citizen was detained on reasonable suspicion of being an unlawful non-citizen, but was later found to be lawfully in Australia
- the Minister has exercised her powers under s 351, 391, 417, 454 or 501J of the Act to substitute a more favourable decision for a non-citizen than a decision made by a tribunal
- a lawful non-citizen was detained so that they could be deported, but the Minister revoked the deportation order or
- there are other compelling reasons on equity or hardship grounds.

6.3.4 **Hardship** grounds may arise where there is a genuine and continuing inability to make repayments without the debtor's standard of living declining to the point where they can no longer sustain themselves with the necessities of life.

6.3.5 **Equity** grounds may arise where there is a moral obligation on the Commonwealth to waive recovery of the debt."

Only the Parliamentary Secretary to the Minister for Finance and Administration (Finance), the Finance Minister, or his delegates in the Department of Finance and Administration, have the power to waive debts for immigration detention costs.

During the 2005-06 financial year, the Department has received, and forwarded to the Department of Finance, 33 requests for waivers of immigration detention costs. Of these requests, 13 have been approved, five were not approved and 15 have not yet been finalised.