



Australian Government
Department of Immigration and Citizenship

SECRETARY

15 June 2010

Ms Julie Dennett
Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Ms Dennett

Clarification of evidence provided on 27 May 2010

I am writing to clarify a reference I made to section 80 of the *Migration Act 1958* (the Migration Act) during the Department of Immigration and Citizenship's appearance before the Committee as part of Budget Estimates on 27 May 2010.

On page L&C 63 of the transcript of the hearing, I am quoted as stating:

It would be useful if I referred you, Senator, to section 5 of the Migration Act, which contains the definitions for an offshore entry person and the definitions for a transitory person. I refer you to section 46A, which provides for offshore entry persons being unable to make a visa application unless the ministerial non-compellable power is exercised, and I refer you to section 80, which provides that, if a person with offshore entry person status is transferred to the mainland, that transfer does not affect that status, as I described earlier—that underlying status that attaches to them as a person—even if that person travels through international waters.

...

I also refer you to section 198B, which is used to bring a transitory person to Australia, and section 198C, which provides that, if a person, being a transitory person, is brought to Australia, the person may request the RRT for an assessment as to whether that person is a refugee. I confirm that those provisions have not changed since they were introduced in 2001 and 2002.

I would like to clarify my reference to section 80 as providing that if a person with offshore entry person status is transferred to the mainland, that transfer does not affect that status.

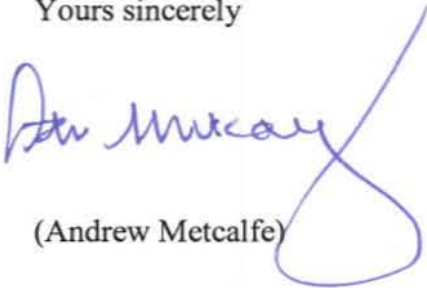
It is in fact a combination of the definition of 'offshore entry person' in section 5(1) of the Migration Act and the declaration in section 80 that a person is taken not to leave Australia in certain circumstances, which means that an offshore entry person who is transferred to the mainland and remains in detention does not lose the status of offshore entry person.

The definition in section 5(1) refers to a person who entered Australia at an 'excised offshore place' and became an unlawful non-citizen because of that entry. The effect of section 80 is that the transfer of such a person from Christmas Island to the Australian mainland does not result, for the purposes of the Act, in the person leaving Australia upon departing Christmas Island and re-entering Australia upon arriving on the Australian mainland. The person's original entry, as a result of which they became an offshore entry person, therefore remains operative and they retain the status of an offshore entry person.

To avoid doubt, I would also like the Committee to be aware that section 80 of the Migration Act was inserted into the Act in 1992 and most recently amended in 1994, and was not, as my statement might have given the impression, included in the package of amendments introduced in 2001 and 2002.

Please let me know if you require any further information.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Andrew Metcalfe", with a large, stylized flourish extending from the end of the signature.

(Andrew Metcalfe)