

## QUESTION TAKEN ON NOTICE

### SUPPLEMENTARY BUDGET ESTIMATES HEARING: 1 November 2005

#### IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

##### **(57) Output 1.3: Enforcement of Immigration Law**

Senator Nettle (L&C 29) asked:

We are talking about who has been affected by the Nystrom decision – some people in detention – and I imagine there would also be some people, and maybe you can tell me, who might have accepted a voluntary return or were deported but would also have been affected by the Nystrom case. Is the department doing anything to identify those cases, and can an individual who is in such a situation now come back to Australia? If they are deported before the Nystrom case occurred but would not have been had the case occurred before they were deported, what is their status now with regard to being able to come back to Australia?

*Answer:*

Assessment of whether someone holds an absorbed person visa is a complex legal and evidentiary task and can only be determined after a comprehensive review of a range of information relating to the individual in question. Such assessments therefore are only done where it is necessary to determine the immigration status in Australia of the person. Once a person has been removed, their immigration status is not necessary to determine.

Once a full analysis of the Federal Court decision had been completed, including its implications for other persons who could be in a similar situation, the department commenced a case by case review of persons whose visas had been cancelled under section 501 and who were in immigration detention to see if they were affected by the *Nystrom* decision. As a result, twelve people in immigration detention and two in prison were identified as likely holders of an absorbed person visa that was not considered in the cancellation process. Apart from the two persons in prison, all were released immediately the assessment had been completed. The two persons in prison have been notified that they are likely holders of an absorbed person visa. In a small number of these cases, involving very serious crimes, action has commenced to consider again whether to cancel the visa under section 501. Individuals identified and assessed as affected by the decision are notified of their immigration status, and the Department's intention to appeal against the decision and the consequences of a successful appeal.

The legal situation of persons who have been removed and who are likely to be affected by the *Nystrom* decision in the Federal Court is particularly complex. The Department is currently seeking legal advice about this situation.