

## QUESTION TAKEN ON NOTICE

**SUPPLEMENTARY BUDGET ESTIMATES HEARING: 1 November 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

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

Senator Kirk asked:

According to the Refugee Advocacy Service of South Australia (RASSA), and despite the provisions of section 256 of the Migration Act, DIMIA does not advise detainees of their rights to obtain legal advice. What is being done to rectify this?

*Answer:*

*Migration Series Instruction 234: General Detention Procedures* requires that detainees be informed as soon as practicable of their entitlement to seek legal advice, with the exception of certain detainees referred to in s 193(1) of the Act, such as unauthorised arrivals and certain character cancellation cases.

Upon arrival at an immigration detention facility detainees are informed, as part of the induction process, of their right to receive visits from their legal representatives, contact them by phone and to receive and send material to them via fax or post.

The Department provides detainees with all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to their immigration detention. Section 256 of the *Migration Act 1958* ("the Act") in fact obliges the Department to provide such assistance at the detainee's request.

People in detention who seek a protection visa or a review by a merits review tribunal of a protection visa decision are offered publicly funded professional assistance with those processes through the Immigration Advice and Application Assistance Scheme (IAAAS). IAAAS assistance must be provided either by a Registered Migration Agent (RMA) or, in the case of Legal Aid Commission IAAAS providers, a person who is an "official" within the meaning of section 275 of the Act. Individuals are not obliged to take up the offer of IAAAS assistance. They may choose privately funded alternatives and can change their privately funded representation.