

QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES HEARING: 15 October 2012

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(SE12/0249) PROGRAM – 1.1: Visa and Migration

Senator Cash (written) asked:

SkillSelect: I refer to 'PAM3: SkillSelect – Expressions of Interest Register', and under section 15 of that instruction, which is headed 'Issuing of invitations', it states: 'Issuing of invitations by the Minister is an automated process under s495A of the Migration Act and is based upon objective criteria. Departmental staff will not be involved in the issuing of invitations because the Minister has not delegated this power'. However s495A (1) only allows the Minister to make a decision via a computer program if it is under the 'designated migration law'. Section 495A (3) defines 'designated migration law' as the provisions under Subdivisions A, AA, AB and AC of Division 3 of Part 2 (other than section 48B) or as determined under legislative instrument. Is there a legislative instrument stating that an invitation to apply is part of the 'designated migration law'?

Answer:

The Minister's power to issue invitations arises under certain items in Schedule 1 to the *Migration Regulations 1994*. Schedule 1 is established under regulation 2.07 which was made pursuant to sections 45 and 46 of the *Migration Act 1958*. Sections 45 and 46 are located in Subdivision AA of Division 3 of Part 2 of the Act. The Minister's power to issue an invitation therefore is derived from Subdivision AA and comes under the *designated migration law* as defined in subsection 495A(3) of the Act. No legislative instrument has been made by the Minister to determine that the power to issue an invitation is a part of the designated migration law, as no instrument is required.