QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(1) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

In the past five years, how many applicants with HIV, a disability or another serious illness has Australian taken in its off-shore refugee and humanitarian intake'.

Answer:

All permanent visa applicants are required to meet public interest health criteria, as specified in Australia's migration legislation, the Migration Act (the Act) 1958 and the *Migration Regulations 1994*. The health requirement is designed to minimise the public health and safety risk to the Australian community, to contain public expenditure on health care and services and to maintain the access of Australian residents to those services. No disease, condition or disability, with the sole exception of tuberculosis, is specifically identified in the Migration Regulations as necessarily leading to refusal of a visa.

The health requirement and associated screening process that the Department of Immigration and Multicultural and Indigenous Affairs has adopted is based on advice from the Department of Health and Ageing.

All applications are assessed case-by-case, based on the circumstances and information available. Where a Medical Officer of the Commonwealth (MOC) determines that a visa applicant does not meet the health requirement, waiver of the health finding can be considered in compelling and compassionate circumstances.

Health waiver provisions exist for a number of visa categories, including close family, spouse, children and refugee and humanitarian applicants.

Each year 300,000 - 400,000 visa applicants are required to undergo health examinations. Of these approximately 1% of visa applicants are assessed as not meeting the health criteria.

Based on manual reports maintained for waivers of health conditions costing over $200,000, it is estimated that at least 51 refugee and special humanitarian cases costing over $200,000 were waived during the last five financial years 2000 to 2005.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(2) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked: Please provide the reason why health and security checks are not conducted when an asylum seeker applicant first arrives in Australia. Why are health and security checks only proceeded with after an applicant has been accepted for a protection visa?

Answer:

Health and Security checks are not delayed until a protection visa applicant is at the approval stage of the process:

- In line with new processes announced by the Minister in March 2004, all applicants applying for a visa for further stay in Australia are requested to undergo medical examinations as soon as possible after a visa application is made. This policy applies to all initial onshore community Protection Visa applicants. The purpose of this early health examination is to ensure that communicable diseases are identified in Australia at an early stage so that they can be treated appropriately. This is meant to protect the health of the applicant and that of the Australian community. The request for early health examination has no impact on the determination of refugee claims.
- On 17 June 2005, the Prime Minister announced, amongst other things, that in future all primary protection visa decisions taken by the department will need to occur within three months of application. A range of streamlining arrangements is being implemented to deliver the commitments on protection visa processing timelines. Under these revised processing arrangements, security checks are "front-end-loaded" rather than wait until approval stage.

Depending on the circumstances of the case, there are small numbers of protection visa applications where health or security checks may need to be redone at a later stage of processing.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(3) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Please provide the total cost of re-assessing and re-processing TPV holders after their initial TPV has expired.

Answer:

DIMIA financial systems do not allow processing costs of further protection visas to be disaggregated from the other protection visas processing costs incurred by the Department.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(4) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

How many Freedom of Information applications has DIMIA received over the past three years? What is the average turn around time on these applications? What turn around time does DIMIA aim to achieve on these applications?

Answer:

There has been a 46% increase in FOI requests received over two years (to 2004), as indicated in Table 1. The Department now receives more FOI requests than any other agency.

Table 1 – Total FOI Requests 2001 - 2004

Year	2002/03	2003/04	2004/05
Total DIMIA FOI requests[1]	12 390	15 446	11 636

Response times for DIMIA have been as follows:

Table 2 - Attorney General's Department FOI Annual Report stats

Year	<30 days	31-60 days	61-90 days	Over 90 days	Total finalised
2002-03	6 234	2 795	1 353	1 292	11 674
2003-04	9 839	1 942	1 054	1 365	14 200
2004-05	4 658	2 076	1 170	2 196	10 642[2]

[1] Data obtained from Freedom of Information Act 1982, Annual Reports 2001 - 2004

[2] Total includes requests which were transferred to other agencies or withdrawn (542 in total)

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(5) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Are deportees ever gagged during deportations? If so, who makes the decision to use a gag and under what authority?

Answer:

On occasions it has been considered that further measures may be required to effect a removal, for example, oral restraint (such as mouth taping) to prevent serious injury from biting. Oral restraint is only considered as an option in exceptional circumstances and it is not employed without the approval of either the Assistant Secretary, Case Management Support Branch or the Assistant Secretary, Detention Contract and Services Branch.

Oral restraint (eg. mouth taping) may only be used if the aircraft commander directs that this be done aboard the aircraft. It is not to be used in any other circumstances.

Before approving the use of oral restraint either the Assistant Secretary, Case Management Support Branch or the Assistant Secretary, Detention Contract and Services Branch, would need to seek specific medical and security advice. Restraints are used only as a last resort and for the minimum time allowed.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(6) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Please provide a detailed summary of the deportation of seven year old daughter of Mastipour (an Iranian referred to submission 184 received by the Committee) was deported? Did the daughter have a current application for asylum at the time of the deportation? Who made the decision, and under what authority, about the custody of the child?

Answer:

Miss Mastipour was removed from Australia on Wednesday 23 July 2003.

Prior to the removal the Department arranged for her mother to contact Miss Mastipour to explain and reassure her that she was going to be reunited with her in Iran. Her mother had been in frequent telephone contact with Miss Mastipour for the preceding two and a half years.

Miss Mastipour was accompanied from the detention centre to Iran by two female escorts; a departmental officer and a detention officer she knew and trusted.

To ensure that Miss Mastipour was handed over to her mother, departmental officers from the Australian Embassy in Tehran arranged for Miss Mastipour to be met by her mother in Tehran. The officers who had dealt with Miss Mastipour's mother in this matter were present at the reunification and advised that mother and child were happy to be reunited.

The table below provides a brief account of Miss Mastipour and her father's immigration case history:

8 March 2001	Detained as unauthorised boat arrivals
3 May 2001	Application for a Temporary Protection Visa lodged
15 June 2001	Primary application refused
20 June 2001	Refugee Review Tribunal (RRT) appeal lodged
22 October 2001	RRT affirmed the primary decision
13 November 2001	Federal Court appeal lodged
18 January 2002	Federal Court – Minister win
5 March 2002	Full Federal Court application Extension of Time (EOT)
13 March 2002	EOT granted

13 March 2002	Full Federal Court appeal lodged
20 December 2002	Full Federal Court- Minister win
20 January 2003	Application lodged with the High Court for Special Leave to Appeal the decision of the Full Federal Court.

The Department received legal advice that it was able to legally remove Miss Mastipour even though she was attached to her father's application for special leave to the High Court

Special Counsel advised that unless and until such leave is granted and the jurisdiction of the Court is invoked, there can be no question of removal interfering with judicial proceedings.

It is standard departmental policy not to remove persons with outstanding litigation in relation to protection claims, including before the High Court. However, the fact that Miss Mastipour's mother in Iran had custody of the child and, taking into account the best interests of the child, the Department decided to facilitate her return.

The Department became aware of an allegation of child abduction when a person who claimed to be the mother of Miss Mastipour, visited the Australian Embassy in Tehran on 23 October 2001 for the second time seeking information and contact with her daughter.

The mother presented her Iranian identity card and that of Miss Mastipour. These documents confirmed that the person was Miss Mastipour's mother. The child's father is named as Mr Mastipour. The mother also presented a divorce certificate stating that her marriage to Mr Mastipour ended on 18 April 1999 and that she was given custody of Miss Mastipour until the child reached the age of seven. She later advised the Department that she had ongoing custody of the child now that the child had reached the age of seven. All documents that were presented by the mother were original documents and certified translations were provided.

Miss Mastipour's mother also advised that she had lodged a complaint with the Shiraz Family court about her daughter's removal from Iran. On 13 October 2001, the court handed down an order requiring Mr Mastipour to return Miss Mastipour to her mother. The original court order was sighted and a translation was provided.

The return of the child was at the behest of the custodial parent, her mother in Iran. The Iranian authorities determined that because the custodial parent had authorised it, they could issue the child with a travel document.

The Department contacted the Family and Youth Services (FAYS) of the South Australian Department of Human Services and sought its support for the removal on the basis that it was in best interests of the child. FAYS, who were familiar with the case, agreed with the Department's decision.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(7) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

What is the process and procedure for airport 'turn-arounds' for people claiming asylum? What fact checking and interviews take place? Are applicants entitled to receive legal advice? Are they informed of these and other entitlements? How many turn-arounds have occurred in the past three years?

Answer:

Persons who may be in need of Australia's protection at the border undergo an interview and are then assessed by a senior officer representing the Onshore Protection area of the Department to determine whether they raise information or claims which, prima facie, may engage Australia's protection obligations. The interview is designed to determine the person's claimed identity, the circumstances surrounding their travel to Australia and any reasons the individual may have for not wanting to return to their homeland. If the individual raises information which prima facie may engage Australia's protection obligations, they are provided with information about avenues to apply for a protection visa and are offered publicly funded migration agent assistance with such an application. The individuals are not removed while they consider whether to apply for a protection visa, but generally remain in immigration detention until any protection visa application is lodged and resolved.

Irrespective of these active inquiries conducted by DIMIA, the individual remains able to request protection visa application forms and lodge a protection visa application. Where they request a protection visa form, they are offered publicly funded migration agent assistance with that application.

Persons refused immigration clearance at the border are in immigration detention. There are statutory obligations under the Migration Act which require the immigration officer to provide application forms for a visa upon request and to provide reasonable facilities for the person to access legal advice should they ask for this. If a person wishes to seek legal advice of their own, this will be facilitated through the provision of a telephone directory and a telephone. DIMIA officers do not advise the person to obtain the services of a specific lawyer.

Air Arrivals Refused Immigration Clearance (RIC) at Australian Airports for the 2002-03 to 2004-05 financial years:

	Persons RIC
2002-03	937
2003-04	1241
2004-05	1632

Of those persons refused immigration clearance at Australian airports in 2004-05, there were 40 persons who raised claims or information which prima facie may have engaged Australia's protection obligations. In 2002-03 and 2003-04 there were 21 and 23 respectively.

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SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(8) Inquiry into the Administration of the Migration Act 2958

Senator Nettle asked:

In regard to Christmas Island Immigration Reception and Processing Centre:

(i) Has the department conducted any research into potential problems that will occur due to the remoteness of its location? What has been the result of such studies?
(ii) How does DIMIA plan to deal with the problems that occur because of remoteness, particularly access to legal and health services?
(iii) Was the remoteness taken into account when deciding on the location?
(iv) Who will be housed in the detention centre – anyone who is picked up within the migration zone or only those who are picked up in 'excised areas' outside the migration zone?

Answer:

(i) Christmas Island has been used to detain unauthorised arrivals for many years and as a result the government has a very good understanding of the issues that might arise.

The Department has contracted the detention services provider to ensure that the day-to-day needs of detainees are met. This involves the provision of medical services, food, clothing items if required, accommodation, and many other services.

When operational, the CIIRPC will be staffed with immigration officers who will closely monitor the detention services provider to ensure that the needs of detainees are met in accordance with the detention services contract.

(ii) In relation to health services, there is an obligation upon the detention services provider to ensure that adequate health services including mental health services are available to detainees. In the event that health service providers on the island are unable to treat a detainee on-island, the detainee will be transferred to the mainland to receive treatment there.

The Department always facilitates contact with a client's legal adviser(s). When operational, a detainee's legal adviser(s) will be welcome to make appropriate arrangements to visit CIIRPC. Further, detainees and their legal adviser(s) will be able to contact each other by telephone, mail or fax.

Pursuant to section 256 of the *Migration Act 1958 (Cth)* where a person is in

immigration detention, the person responsible for his or her immigration detention shall, at the request of the person in immigration detention, afford him or her all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her immigration detention.

(iii) The original facility on Christmas Island was recently mothballed by the Department. This facility is a key part of measures to ensure the security of Australia's borders. While the government's policies have been successful in stemming the flow of unauthorised boat arrivals, the capacity needs to be available should unauthorised arrivals re-emerge.

At present, the centre on Christmas Island is a contingency for unauthorised boat arrivals arriving in areas excised from the migration zone. There are no plans to change this.

A purpose-built Immigration Reception and Processing Centre (IRPC) is currently being constructed on Christmas Island. It will have a capacity of 400 permanent places and an additional 400 contingency places.

(iv) At present, both the current (now mothballed) facility and the new IRPC on Christmas Island are a contingency for unauthorised boat arrivals arriving in areas excised from the migration zone. There are no plans to change this.

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SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(9) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

It is understood that a detainee, Mokhtar Lahmeche, was transferred from Baxter detention centre to Glenside on Monday evening (26/9). It is also understood that he was given a pill before the journey and two cannulas were inserted into his arm (one in each arm).
(i) Is this correct?
(ii) What drug was administered to Mokhtar before the journey and why?
(iii) Was this a voluntary administration?
(iv) Why were the cannulas inserted into his arms?
(v) Under what authority was this done and who performed this operation (DIMIA or a contractor)?
(vi) Is this usual practice with transfers?

Answer:

On Monday 26 September 2005, Mr Mokhtar Lakmeche was detained under the South Australian Mental Health Act and transferred via ambulance to the Lyell McEwin Hospital in Adelaide. On Tuesday 27 September 2005 Mr Lakmeche was transferred to the Glenside Campus, Royal Adelaide Hospital.

Prior to his transfer to the Lyell McEwin Hospital the medical professional who detained Mr Lakmeche under the Mental Health Act felt there were clinical grounds for him to be medicated. Mr Lakmeche was orally medicated with 1mg of Clonazepam. The administration of medications is at the discretion of the detaining medical professional and is only undertaken when clinical grounds are present.

It is worth noting that South Australian Ambulance policy dictates that persons detained under the SA Mental Health Act for persons who are transferred via air, administration of sedative medication is required. For persons transferred via road administration of sedative medication is recommended.

As per South Australian Ambulance policy regarding persons detained under the SA Mental Health Act, intravenous cannulae were inserted into Mr Lakmeche's arms to allow for the administration of medication if deemed necessary. The cannulae were inserted by the onsite IHMS Health Services Manager prior to the ambulance leaving the Baxter Immigration Detention Facility (IDF).

The Department is not involved in decisions relating to medical treatment or hospital admissions. The decision to transfer and the subsequent decision to medicate Mr Lakmeche was taken by the treating medical professional and the Department follows their recommendations.

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SENATE LEGAL AND CONTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(10) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

In relation to Mokhtar Lahmeche, has he been invited to apply for a Removal Pending Bridging Visa? If not, why not?

Answer:

Mr Lakmeche has been referred to the Minister for possible consideration under her new detention intervention powers. The Department is seeking her views on whether she would like to consider him for the grant of a Removal Pending Bridging Visa under section 195A.

QUESTION TAKEN ON NOTICE

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(11) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Are detainees in detention centres allowed to access the internet? If not, why not?

Answer:

Detainees in immigration detention facilities (IDFs) do not currently have access to the internet. However, the Department has recently decided to make internet access available in IDFs. The Department is preparing to install the appropriate hardware and is in the process of developing relevant policies.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(12) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

What qualifications are required of people who do language analysis for DIMIA?

Answer:

The Department uses the services of specialised language analysis agencies established in other countries.

Analysts employed by these agencies possess a range of relevant qualifications and experience. Typically, they are native speakers in their particular language of expertise and are matched to individual cases to provide language skills that relate as closely as possible to those of the claimed place of origin in each particular case.

Analysts employed by these agencies may possess academic qualifications in the languages in question or the study of linguistics. Analysts periodically return to their homeland to maintain current understanding of language trends.

Prospective analysts are subjected to rigorous test procedures before gaining employment with these agencies. Each analyst's work is regularly cross-checked by other experts, such as linguists, so that the agency has confidence in the value of their work.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(13) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Please provide the guidelines used when considering whether to detain and deport someone under section 501 of the Migration Act.

Answer:

A decision as to whether to cancel a visa under section 501 consists of two stages:

- First, the decision-maker must find that the visa holder does not pass the 'character test' (defined in s501(6) of the Act).
- Second, if it is found that the visa holder does not pass the character test, then the decision-maker must decide whether it is appropriate to cancel the visa, given all of the relevant circumstances.

Direction No.21 (issued by the former Minister) provides guidance to decision-makers considering the exercise of the power under section 501. This Direction is binding upon all delegates of the Minister (by virtue of section 499).

A copy of this Direction is attached.

MIGRATION SERIES INSTRUCTION

Instructions in this **Migration Series (MSI)** relate to the ***Migration Act 1958***, the ***Migration Regulations 1994*** and other related legislation [as amended from time to time]. For information on the status of this MSI see the latest **Instructions and Legislation Update** or contact Instructions and LEGEND Section (ILS).

Title:	**ESTABLISHING MIGRATION STATUS IN THE FIELD AND IN DETENTION**
MSI no.:	
Date of issue: [Refers to the date the instruction first appears on LEGEND].	
File no.:	**PCF2005/000898**
Author Section:	**Compliance Section**
Effect on other instructions:	

CONTENTS

1 INTRODUCTION

1.1 Purpose of this instruction

1.1.1 This instruction gives officers an understanding of the legal requirements and policy guidelines that apply when deciding whether a person must or may be detained, or kept in detention, under the *Migration Act 1958* (the Act).

1.1.2 In broad terms, detention is required under section 189 of the Act in circumstances where an officer knows or reasonably suspects that a person in Australia is an unlawful non-citizen.

1.1.3 Although this power is mandatory in nature, its exercise depends wholly upon whether an officer knows or reasonably suspects that a person is an unlawful non-citizen.

1.1.4 That is, the requirement to detain a person only comes into play once an officer has formed one of the following states of mind:

- knowledge that the person is an unlawful non-citizen or
- reasonable suspicion that the person is an unlawful non-citizen.

1.1.5 Similarly, the continued detention of a person will only be lawful if an officer continues to hold one of these states of mind.

1.1.6 To hold such a state of mind, officers must address the following fundamental question:

- what is this person's migration status?

1.1.7 In most cases, it will be easy to answer this question and the person's migration status will be clear.

1.1.8 However, there are times when it can be extremely difficult to establish a person's migration status, in particular, where the person:

- actively seeks to hide details
- is unable to provide details or
- provides conflicting details.

1.1.9 It is not possible to set out the precise checks to be carried out in all circumstances where it is difficult to establish a person's migration status because different checks may be relevant, depending on what information the person provides and the surrounding circumstances.

1.1.10 However, this instruction sets out the minimum checks officers should undertake to establish, or try to establish, a person's migration status. In addition, officers should make their own sound judgements as to what checks are necessary in a particular case in order to know or reasonably suspect that a person is an unlawful non-citizen.

1.1.11 Ultimately, every decision should be made in the knowledge that the power to detain involves the deprivation of a person's liberty, a right that the common law has gone to great lengths to protect.

1.1.12 Because establishing a person's migration status will often involve establishing his/her identity, this instruction should be read in conjunction with the MSI on *Establishing Identity in the Field and in Detention*.

1.2 Obligations of officers

1.2.1 Officers are obliged to:

- resolve questions about a person's migration status as quickly as possible
- fully document the process of identifying the person's migration status (and the conclusion), even in straightforward cases and
- regularly review detention cases to ensure that reasonable suspicion that a person is an unlawful non-citizen persists.

2 ESTABLISHING MIGRATION STATUS IN THE FIELD

2.1 Overview

2.1.1 An officer must either know or reasonably suspect that a person of interest in the field is an unlawful non-citizen before he or she is required to detain the person under section 189.

2.1.2 As a general rule, officers should make all reasonable efforts to identify a person of interest before deciding whether the person must be detained under section 189 based on knowledge or reasonable suspicion that he or she is an unlawful non-citizen.

2.1.3 This is the case even though an officer does not always have to know who a person is to reasonably suspect that he or she is an unlawful non-citizen.

2.1.4 For guidance on establishing a person's identity in the field see the MSI on *Establishing Identity in the Field and in Detention*.

2.1.5 Once an officer has addressed the question, "who is this person?", he or she can then more easily address the question "what is this person's migration status".

2.1.6 In response to both these questions, an officer may:

- be satisfied that he or she knows who the person is, and that he or she is a lawful or unlawful non-citizen
- be satisfied that he or she knows who the person is, and reasonably suspect that he or she is an unlawful non-citizen
- be satisfied that he or she knows who the person is, but not know whether he or she is an unlawful non-citizen
- reasonably suspect who the person is, and reasonably suspect that he or she is an unlawful non-citizen
- reasonably suspect who the person is, but not know whether he or she is an unlawful non-citizen
- not know who the person is, but reasonably suspect that he or she is an unlawful non-citizen or
- not know who the person is, and not know whether he or she is an unlawful non-citizen.

2.1.7 Establishing a person's identity will be the only way an officer *knows* that a person is an unlawful non-citizen and will generally form an integral part of deciding whether the person is or is not reasonably suspected of being an unlawful non-citizen.

2.1.8 However, an officer may reasonably suspect that a person is an unlawful non-citizen regardless of whether the officer knows, reasonably suspects, or does not know, the person's identity.

2.1.9 For guidance on the checks to be conducted in the field to know or reasonably suspect that a person is an unlawful non-citizen see Attachment 1 to the MSI on *Establishing Identity in the Field and in Detention*. For guidance on the further checks to be conducted once a person has been detained on reasonable suspicion of being an unlawful non-citizen see Attachments 2 and 3 to the MSI on *Establishing Identity in the Field and in Detention*.

2.2 What is "reasonable suspicion"?

2.2.1 Reasonable suspicion is a state of mind. It must be formed, or held, by an officer who detains a person under section 189.

2.2.2 A suspicion is:

- less than certainty, a reasonable belief or a belief based on the balance of probabilities
- more than mere speculation or idle wondering and
- probably best described as a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation as to whether an event has occurred or not.

2.2.3 For a suspicion to be reasonable it must be:

- a suspicion that a reasonable person could hold in the particular circumstances and
- based on an objective examination of all relevant material.

2.2.4 Further, it will be judged on the facts that are available to an officer, not what the officer *actually* knows. Therefore, the officer forming the state of mind is responsible for carrying out sufficient checks to establish a person's migration status. For example, if an officer formed a suspicion that a person was an unlawful non-citizen on the basis of checking one departmental system, but did not check another departmental system when it would have been reasonable to do so, he or she may not have carried out sufficient checks to make the suspicion a reasonable one.

2.2.5 In summary, although the test of reasonable suspicion involves an officer making a subjective assessment of whether he or she has formed the required state of mind, it is also an objective test because it will be judged on whether it was a state of mind that a reasonable person could have held.

2.3 Obtaining evidence to form a reasonable suspicion

Section 188 – power to require evidence of lawful status

2.3.1 Section 188 of the Act provides that an officer may require a person known or reasonably suspected to be a non-citizen to show evidence of being a lawful non-citizen.

2.3.2 It is departmental policy that evidence of lawful status may be documentary evidence or verbal evidence. Whether such evidence is enough to satisfy an officer of a person's legal status will depend on the circumstances.

2.3.3 It is not necessary to exercise this power before detaining a person under section 189. However, it may assist an officer to form a view about whether the person is a lawful or unlawful non-citizen.

2.3.4 Regardless of whether an officer exercises the power in section 188, he or she must ensure that any suspicion about a person's migration status is based on objective evidence such as:

- information held in departmental systems
- the person's inability to provide satisfactory documentary evidence of being a lawful non-citizen and a lack of credible explanation for this and/or
- the person evading or attempting to evade officers.

Documentary evidence

2.3.5 Generally, an officer should require persons to produce documentary evidence to establish whether they are lawfully in Australia. Officers should tell the person what sort of documentary evidence is required to establish his or her migration status.

2.3.6 It is departmental policy that:

- generally, only documents that are original (ie not copies) and current (ie not expired) should be accepted as evidence of a person's migration status
- documents that contain a photograph of the person are preferred and
- officers should check these documents against departmental systems (particularly where passports do not include visa labels or where Certificates of Evidence of Residence Status are offered as evidence of lawful migration status).

2.3.7 The types of documents that may provide evidence of lawful migration status include:

- passports (whether or not they include visa labels)
- Certificates of Evidence of Residence Status (provided they were issued not longer than 2 years ago)
- Certificates of Evidence of Australian Citizenship and/or
- documents showing citizenship by birth (for example, an Australian birth certificate for persons born before 20 August 1986).

2.3.8 An officer may accept a copy of a document, or an expired document, as evidence of migration status if it is appropriate in the circumstances (for example, where the person only has a copy of his or her passport in his or her possession and the information on the copy matches information on departmental systems). Of course, if it turns out that the copy is not a true copy of the original or otherwise does not actually provide evidence of migration status, the officer may need to require other documentary evidence from the person.

2.3.9 There is no power in the Act that enables an officer to retain or seize a document provided under section 188. However, an officer may keep such a document for the period it takes to check the document against departmental records (for example, if an officer is in the field, the time it takes to phone a colleague at the office and ask for a check of departmental systems to be made).

What to do if the person has no documentary evidence to support an oral account

2.3.10 If the person is able to give a credible oral account that supports the conclusion that the person is a lawful non-citizen then it is not always necessary for the officer to require the person to produce documentary evidence.

2.3.11 An officer can confirm the person's oral account by checking departmental systems.

2.3.12 However, where an officer is not satisfied with a person's oral account and the person does not have any documentary evidence as to his or her migration status in his or her possession, officers should give the person a reasonable opportunity to produce that documentary evidence.

2.3.13 For example, a family member located at the place where the documents are stored may be able to bring the documents to the person.

2.3.14 In these cases, officers should tell the person that he or she is not in immigration detention (unless the officer already reasonably suspects that the person in an unlawful non-citizen).

2.3.15 Where officers have formed a reasonable suspicion that the person is an unlawful non-citizen even though the person has refused or been unable to provide identity documents, they should detain the person.

Search warrants

2.3.16 It is departmental policy that officers should apply for a search warrant to enter premises to seize identity documents where they have reason to believe that passports or documents of identity relating to an unlawful non-citizen may be found at the premises.

2.3.17 For guidance on search warrants, see the MSI on *Powers of Entry, Search and Seizure*.

What to do if the person claims Australian citizenship

2.3.18 If a person claims to be an Australian citizen, it is reasonable to ask the person to provide evidence of being an Australian citizen. However, there is no power in the Act to require this evidence, other than in the immigration clearance context. The power in section 188 applies only to persons known or reasonably suspected to be non-citizens.

2.3.19 It is clearly in a person's interests to produce evidence to clarify their lawful status.

2.3.20 Although documentary evidence of Australian citizenship will not normally be immediately available, an officer can check departmental systems to quickly verify the *grant* of Australian citizenship.

2.3.21 If a person refuses to cooperate by providing evidence of Australian citizenship, an officer should ask the person why he or she cannot or will not provide such evidence.

2.3.22 If the reason for not cooperating does not satisfy the officer, he or she should:

- inform the person that failure to produce evidence of citizenship or give a satisfactory explanation may result in further inquiries about whether he or she is lawfully in Australia
- inform the person that if an officer knows or reasonably suspects that the person is an unlawful non-citizen, he or she must be detained under the Act
- ask the person if he or she fully understands what has been said and
- ask the person to cooperate by providing evidence about their claim of citizenship.

Departmental systems

2.3.23 Officers should carry out checks of relevant departmental systems to check a person's claimed migration status.

2.3.24 Relevant departmental systems may include:

- the Integrated Client Service Environment (ICSE) database – this records, among other things, grants of Australian citizenship, onshore visa grants and departmental actions such as location, cancellation, detention and removal
- the ICSE Offspring database – this records, among other things, offshore visa grants
- the Movement Reconstruction (MR) database – this records arrivals in, and departures from, Australia
- the Passenger Card Imaging System (PCIS) – this contains images of passenger cards filled in (and signed) by people who arrive in and leave Australia
- the Travel and Immigration Processing System (TRIPS) database - this records, among other things, Australian and New Zealand passport details
- the TRIM database – this records, among other things:
    - whether a client file has been created (which may include photographs taken as part of a medical examination) and
    - the file's current location (for example, if it has been marked to the Migration Review Tribunal, this may indicate the person has lodged an application for review of a visa decision)

- the Passenger Card Index microfiche – this records arrivals and departures between 1973 and 1989
- the Migration Program Management System (MPMS) – this records permanent visas granted offshore and
- the Overstayers' Cube database (which has replaced the National Overstayers' Search Interface Engine (NOSIE) database) – this records overstayers according to broad profiles.

2.3.25 The number of systems to be checked, and which ones, may differ depending on the circumstances (in particular, whether the checks can be conducted in field). Officers should check as many of the systems as they need to until they know or reasonably suspect a person is an unlawful non-citizen.

2.3.26 Officers should be aware that:

- departmental systems may be inaccurate or not up-to-date and
- some people may require special consideration because they are members of a class of people affected by certain court decisions, such as *Srey* (see the MSI on *Procedures for detaining persons of interest* for further information on what to do in relation to these caseloads).

2.3.27 If a person claims to be lawfully in Australia, but the departmental systems show otherwise, officers should conduct all reasonable systems checks and, where practicable, arrange for the person's client file to be checked.

2.4 Circumstances where it may be reasonable to suspect that a person is an unlawful non-citizen

2.4.1 It may be reasonable to form a suspicion that a person is an unlawful non-citizen in the following examples.

Example 1

Each of the following applies:

- a third party provides credible information that an unlawful non-citizen is at a particular location
- on arrival at the location, an officer sees a person matching the description provided by the third party
- the officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act
- the person refuses, or is unable, to provide documentary evidence of their lawful status and
- the person evades or attempts to evade the officer.

Example 2

Each of the following applies:

- an officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act
- the person refuses, or is unable, to provide documentary evidence of their lawful status and
- the person does not have an appropriately detailed level of knowledge regarding his or her lawful status in Australia (for example, he or she cannot provide a credible explanation of how he or she came to Australia, why he or she visited Australia, where he or she has stayed in Australia, when he or she is leaving etc).

Example 3

Each of the following applies:

- an officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act and
- the person provides a document that purports to be evidence of their lawful status in Australia but the documentary evidence:
    - is listed on the Document Alert List (DAL)
    - appears to be fraudulent, forged or tampered with
    - relates to a person who is recorded on departmental systems as being outside Australia (and other checks do not resolve the issue) or
    - was not issued by the responsible authority.

Example 4

Each of the following applies:

- an officer executes a search warrant on premises where there is reasonable cause to believe a number of unlawful non-citizens will be located
- the officer requires a person found at the location to show evidence of being a lawful non-citizen under section 188 of the Act
- the person refuses, or is unable, to provide documentary evidence of their lawful status and
- there is evidence that the person is known to, or involved with, other persons located at the same time who are known or reasonably suspected to be unlawful non-citizens.

2.5 Circumstances where it would not be reasonable to suspect that a person is an unlawful non-citizen

2.5.1 It would not be reasonable for an officer to suspect that a person is an unlawful non-citizen based ***solely*** on:

- the person's English language proficiency
- the person's ethnicity
- the person's inability to immediately produce documentary evidence of his or her lawful status in Australia or
- the fact that the person's identity cannot be established.

2.5.2 In addition, it would not be reasonable for an officer to suspect that a person is an unlawful non-citizen where all of the following apply:

- the person has an appropriately detailed level of knowledge regarding his or her lawful status in Australia
- the person provides a good reason why he or she is not able to produce documentary evidence to support the claim and
- departmental systems confirm the person's oral account.

2.5.3 Also a need to act quickly to detain a person does not make a suspicion reasonable. An officer must not detain a person until he or she reaches the conclusion that it is reasonable to suspect the person is an unlawful non-citizen.

2.6 What to do if you are unsure whether your suspicion is reasonable in the circumstances

2.6.1 Where an officer suspects that a person is an unlawful non-citizen but is unsure whether there is sufficient evidence to make this suspicion reasonable, the officer must do one or more of the following:

- undertake further relevant inquiries until the officer reaches the level of reasonable suspicion
- seek advice from a supervisor about whether there is enough information/evidence to make the suspicion reasonable in the circumstances and/or
- decide not to detain the person under section 189.

2.6.2 For example, it may be necessary to undertake further inquiries or seek advice from a supervisor in circumstances where:

- an officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act
- the person is unable to provide documentary evidence of their lawful status but provides a credible account of how they came to Australia and what visa they hold and
- the officer is unable to carry out full checks of the departmental systems at that time.

2.6.3 In a case such as this, where the officer does not have the full story, further information will be necessary to form a reasonable suspicion that a person is an unlawful non-citizen. An officer cannot ignore gaps in information or conflicting facts and must consider all the available material when forming a reasonable suspicion.

2.7 What to do if there is a claim of Australian citizenship or permanent residence

2.7.1 If an officer reasonably suspects that a person is an unlawful non-citizen, but the person claims to be an Australian citizen or permanent resident, the officer should consult with the most senior compliance officer on-site (or the state/territory compliance manager) before deciding whether to detain the person.

3 CONTINUING OBLIGATION TO KNOW OR REASONABLY SUSPECT THAT A PERSON IN DETENTION IS AN UNLAWFUL NON-CITIZEN

3.1 Overview

3.1.1 The exercise of power under section 189 involves not only taking a person into immigration detention but also keeping a person in immigration detention.

3.1.2 This is because subsection 196(1) provides that an unlawful non-citizen detained under section 189 must be kept in detention until he or she is removed or deported from Australia, or is granted a visa.

3.1.3 Subsection 196(2) makes it clear, however, that subsection 196(1) does not prevent the release from immigration detention of a citizen or a lawful non-citizen.

3.1.4 Therefore, there is an ongoing obligation to continue to reassess the lawfulness of the detention where a person has been detained under section 189 based on a reasonable suspicion that he or she was an unlawful non-citizen.

3.1.5 It is departmental policy that the case manager and the relevant compliance manager are responsible for reviewing the person's circumstances and resolving issues as to their migration status as soon as possible.

3.1.6 The outcomes of any further inquiries that are made may either strengthen the reasonable suspicion that the person is an unlawful non-citizen or bring into question whether the person should remain in detention.

3.1.7 If an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to knowing that he or she is an unlawful non-citizen, then the detainee must remain in immigration detention until he or she is granted a visa or removed from Australia.

3.1.8 If an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to knowing that the person is a lawful non-citizen or an Australian citizen, then the person **must be released from immigration detention immediately.**

3.1.9 Equally, if an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to no longer reasonably suspecting it, then the person **must be released from immigration detention immediately**.

3.1.10 If paragraphs 3.1.8 and 3.1.9 apply, the officer should immediately:

- inform the relevant compliance manager and case manager and
- arrange for the person's release from immigration detention.

3.1.11 In addition, it is departmental policy that any officer (not necessarily the original detaining officer) who believes that a detainee can no longer be reasonably suspected of being an unlawful non-citizen should immediately inform:

- the original detaining officer
- the relevant compliance manager and
- the case manager.

3.1.12 The relevant compliance manager, in conjunction with the case manager, will decide whether the detainee can no longer be reasonably suspected of being an unlawful non-citizen. This decision may also involve the state or territory director.

3.1.13 Ultimately, officers must be able to demonstrate at any particular point in time that:

- they know that a detainee is an unlawful non-citizen or
- that any suspicion that the detainee is an unlawful non-citizen persists and is reasonably held.

3.2 Specific responsibilities in relation to claims of Australian citizenship or permanent residence

3.2.1 It is departmental policy that the officer who detained the person is responsible for reviewing the person's circumstances and resolving issues as to their migration status as soon as possible.

3.2.2 If an officer who detains a person who claims, either before or after being detained, to be an Australian citizen or permanent resident, he or she should refer the claim to the compliance manager as soon as practicable but in any case within 24 hours of the claim being made.

3.2.3 This is the case unless the person withdraws the claim and the officer is satisfied that the claim was false.

3.2.4 When referring a claim to the compliance manager, officers should set out, in writing:

- the circumstances of the person's location and detention
- all claims made by the person about his or her migration status
- all steps taken in attempts to establish the person's migration status and
- proposed further efforts to establish the person's migration status.

3.2.5 Compliance managers should:

- review all cases where detainees have claimed that they are Australian citizens or permanent residents – within 24 hours of the claim being referred to them (unless the claim is withdrawn and the detaining officer is satisfied that it was false) and
- refer these cases to the National Identity Verification and Advice Section in National Office – within 48 hours of the claim being referred to them.

3.2.6 If the compliance manager accepts a person's claim of Australian citizenship or permanent residence:

- the person must be immediately released from immigration detention and
- the compliance manager should review how and why the person was detained.

3.2.7 Where migration status remains unresolved despite this initial review of the case, compliance managers should continue to review the case every 7 days from the date of detention for the purposes of:

- considering whether it is reasonable to continue to suspect that the person is an unlawful non-citizen and
- ensuring that all relevant inquiries to establish the migration status of the person have been or are being pursued.

4 DOCUMENTING ACTIONS

4.1.1 Officers must ensure that all actions taken in attempting to establish a person's migration status are accurately and comprehensively documented.

4.1.2 This should include actions taken during the initial location and detention of persons, or actions taken later.

4.1.3 This should be done by including a file note on an individual's case file, and creating appropriate records in the relevant departmental processing systems (such as ICSE), as soon as possible after the action is taken.

4.1.4 In particular, the following should be included in the relevant case file and as a case note under the enforcement permission request in ICSE:

- inquiries that are actually undertaken, including conversations with the person concerned, to establish the person's migration status
- the thought process (and conclusions reached) in establishing a person's migration status and
- management advice that determines actions to be taken in attempting to establish a person's migration status.

Neil Mann
First Assistant Secretary
Compliance Policy and Case Coordination Division

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(14) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

When security bonds are imposed as a condition of granting a bridging visa, how is the bond amount decided? Who makes this decision? Please provide the guidelines under which this is decided.

Answer:

Bonds (or "securities") can be attached to Bridging Visa Es (subclass 050). If a delegate decides to grant a BVE, he or she has the power to impose conditions on the visa.

If a decision is made to impose conditions on the visa, the delegate must determine whether the non-citizen will abide by the conditions without lodging a security.

If, in the decision-maker's opinion, an additional incentive by way of a security is required to ensure the non-citizen complies with the conditions attached to the visa, he or she can then determine what amount of security would be needed to act as a sufficient incentive to encourage compliance with the condition(s).

There is no set limit on the amount of security a delegate may require from a Bridging E visa applicant. Section 269 of the Act merely requires the amount of the security to be such that it ensures compliance with the Act and Regulations and any conditions imposed in accordance with the law.

In determining the amount, delegates are required to take into account the individual circumstances of the applicant, the nature of the conditions, and the applicant's record of compliance with migration laws in the past.

As a general rule an amount of less than $5,000 would not be considered to act as a strong incentive for an applicant to comply. Higher amounts may be used in circumstances where there are indicators that an applicant may not abide by a condition(s).

Only officers, who are authorised under Section 269 of the *Migration Act 1958,* can decide whether a security is to be required and, if so, in what amount.

A copy of the relevant Migration Series Instruction Number 388 is attached.

MIGRATION SERIES INSTRUCTION

Instructions in this **Migration Series (MSI)** relate to the ***Migration Act 1958***, the ***Migration Regulations 1994*** and other related legislation [as amended from time to time]. For information on the status of this MSI see the latest **Instructions and Legislation Update** or contact Instructions and LEGEND Section (ILS).

Title:	**ESTABLISHING MIGRATION STATUS IN THE FIELD AND IN DETENTION**
MSI no.:	
Date of issue: [Refers to the date the instruction first appears on LEGEND].	
File no.:	**PCF2005/000898**
Author Section:	**Compliance Section**
Effect on other instructions:	

CONTENTS

1 INTRODUCTION

1.1 Purpose of this instruction

1.1.1 This instruction gives officers an understanding of the legal requirements and policy guidelines that apply when deciding whether a person must or may be detained, or kept in detention, under the *Migration Act 1958* (the Act).

1.1.2 In broad terms, detention is required under section 189 of the Act in circumstances where an officer knows or reasonably suspects that a person in Australia is an unlawful non-citizen.

1.1.3 Although this power is mandatory in nature, its exercise depends wholly upon whether an officer knows or reasonably suspects that a person is an unlawful non-citizen.

1.1.4 That is, the requirement to detain a person only comes into play once an officer has formed one of the following states of mind:

- knowledge that the person is an unlawful non-citizen or
- reasonable suspicion that the person is an unlawful non-citizen.

1.1.5 Similarly, the continued detention of a person will only be lawful if an officer continues to hold one of these states of mind.

1.1.6 To hold such a state of mind, officers must address the following fundamental question:

- what is this person's migration status?

1.1.7 In most cases, it will be easy to answer this question and the person's migration status will be clear.

1.1.8 However, there are times when it can be extremely difficult to establish a person's migration status, in particular, where the person:

- actively seeks to hide details
- is unable to provide details or
- provides conflicting details.

1.1.9 It is not possible to set out the precise checks to be carried out in all circumstances where it is difficult to establish a person's migration status because different checks may be relevant, depending on what information the person provides and the surrounding circumstances.

1.1.10 However, this instruction sets out the minimum checks officers should undertake to establish, or try to establish, a person's migration status. In addition, officers should make their own sound judgements as to what checks are necessary in a particular case in order to know or reasonably suspect that a person is an unlawful non-citizen.

1.1.11 Ultimately, every decision should be made in the knowledge that the power to detain involves the deprivation of a person's liberty, a right that the common law has gone to great lengths to protect.

1.1.12 Because establishing a person's migration status will often involve establishing his/her identity, this instruction should be read in conjunction with the MSI on *Establishing Identity in the Field and in Detention*.

1.2 Obligations of officers

1.2.1 Officers are obliged to:

- resolve questions about a person's migration status as quickly as possible
- fully document the process of identifying the person's migration status (and the conclusion), even in straightforward cases and
- regularly review detention cases to ensure that reasonable suspicion that a person is an unlawful non-citizen persists.

2 ESTABLISHING MIGRATION STATUS IN THE FIELD

2.1 Overview

2.1.1 An officer must either know or reasonably suspect that a person of interest in the field is an unlawful non-citizen before he or she is required to detain the person under section 189.

2.1.2 As a general rule, officers should make all reasonable efforts to identify a person of interest before deciding whether the person must be detained under section 189 based on knowledge or reasonable suspicion that he or she is an unlawful non-citizen.

2.1.3 This is the case even though an officer does not always have to know who a person is to reasonably suspect that he or she is an unlawful non-citizen.

2.1.4 For guidance on establishing a person's identity in the field see the MSI on *Establishing Identity in the Field and in Detention*.

2.1.5 Once an officer has addressed the question, "who is this person?", he or she can then more easily address the question "what is this person's migration status".

2.1.6 In response to both these questions, an officer may:

- be satisfied that he or she knows who the person is, and that he or she is a lawful or unlawful non-citizen
- be satisfied that he or she knows who the person is, and reasonably suspect that he or she is an unlawful non-citizen
- be satisfied that he or she knows who the person is, but not know whether he or she is an unlawful non-citizen
- reasonably suspect who the person is, and reasonably suspect that he or she is an unlawful non-citizen
- reasonably suspect who the person is, but not know whether he or she is an unlawful non-citizen
- not know who the person is, but reasonably suspect that he or she is an unlawful non-citizen or
- not know who the person is, and not know whether he or she is an unlawful non-citizen.

2.1.7 Establishing a person's identity will be the only way an officer *knows* that a person is an unlawful non-citizen and will generally form an integral part of deciding whether the person is or is not reasonably suspected of being an unlawful non-citizen.

2.1.8 However, an officer may reasonably suspect that a person is an unlawful non-citizen regardless of whether the officer knows, reasonably suspects, or does not know, the person's identity.

2.1.9 For guidance on the checks to be conducted in the field to know or reasonably suspect that a person is an unlawful non-citizen see Attachment 1 to the MSI on *Establishing Identity in the Field and in Detention*. For guidance on the further checks to be conducted once a person has been detained on reasonable suspicion of being an unlawful non-citizen see Attachments 2 and 3 to the MSI on *Establishing Identity in the Field and in Detention*.

2.2 What is "reasonable suspicion"?

2.2.1 Reasonable suspicion is a state of mind. It must be formed, or held, by an officer who detains a person under section 189.

2.2.2 A suspicion is:

- less than certainty, a reasonable belief or a belief based on the balance of probabilities
- more than mere speculation or idle wondering and
- probably best described as a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation as to whether an event has occurred or not.

2.2.3 For a suspicion to be reasonable it must be:

- a suspicion that a reasonable person could hold in the particular circumstances and
- based on an objective examination of all relevant material.

2.2.4 Further, it will be judged on the facts that are available to an officer, not what the officer *actually* knows. Therefore, the officer forming the state of mind is responsible for carrying out sufficient checks to establish a person's migration status. For example, if an officer formed a suspicion that a person was an unlawful non-citizen on the basis of checking one departmental system, but did not check another departmental system when it would have been reasonable to do so, he or she may not have carried out sufficient checks to make the suspicion a reasonable one.

2.2.5 In summary, although the test of reasonable suspicion involves an officer making a subjective assessment of whether he or she has formed the required state of mind, it is also an objective test because it will be judged on whether it was a state of mind that a reasonable person could have held.

2.3 Obtaining evidence to form a reasonable suspicion

Section 188 – power to require evidence of lawful status

2.3.1 Section 188 of the Act provides that an officer may require a person known or reasonably suspected to be a non-citizen to show evidence of being a lawful non-citizen.

2.3.2 It is departmental policy that evidence of lawful status may be documentary evidence or verbal evidence. Whether such evidence is enough to satisfy an officer of a person's legal status will depend on the circumstances.

2.3.3 It is not necessary to exercise this power before detaining a person under section 189. However, it may assist an officer to form a view about whether the person is a lawful or unlawful non-citizen.

2.3.4 Regardless of whether an officer exercises the power in section 188, he or she must ensure that any suspicion about a person's migration status is based on objective evidence such as:

- information held in departmental systems
- the person's inability to provide satisfactory documentary evidence of being a lawful non-citizen and a lack of credible explanation for this and/or
- the person evading or attempting to evade officers.

Documentary evidence

2.3.5 Generally, an officer should require persons to produce documentary evidence to establish whether they are lawfully in Australia. Officers should tell the person what sort of documentary evidence is required to establish his or her migration status.

2.3.6 It is departmental policy that:

- generally, only documents that are original (ie not copies) and current (ie not expired) should be accepted as evidence of a person's migration status
- documents that contain a photograph of the person are preferred and
- officers should check these documents against departmental systems (particularly where passports do not include visa labels or where Certificates of Evidence of Residence Status are offered as evidence of lawful migration status).

2.3.7 The types of documents that may provide evidence of lawful migration status include:

- passports (whether or not they include visa labels)
- Certificates of Evidence of Residence Status (provided they were issued not longer than 2 years ago)
- Certificates of Evidence of Australian Citizenship and/or
- documents showing citizenship by birth (for example, an Australian birth certificate for persons born before 20 August 1986).

2.3.8 An officer may accept a copy of a document, or an expired document, as evidence of migration status if it is appropriate in the circumstances (for example, where the person only has a copy of his or her passport in his or her possession and the information on the copy matches information on departmental systems). Of course, if it turns out that the copy is not a true copy of the original or otherwise does not actually provide evidence of migration status, the officer may need to require other documentary evidence from the person.

2.3.9 There is no power in the Act that enables an officer to retain or seize a document provided under section 188. However, an officer may keep such a document for the period it takes to check the document against departmental records (for example, if an officer is in the field, the time it takes to phone a colleague at the office and ask for a check of departmental systems to be made).

What to do if the person has no documentary evidence to support an oral account

2.3.10 If the person is able to give a credible oral account that supports the conclusion that the person is a lawful non-citizen then it is not always necessary for the officer to require the person to produce documentary evidence.

2.3.11 An officer can confirm the person's oral account by checking departmental systems.

2.3.12 However, where an officer is not satisfied with a person's oral account and the person does not have any documentary evidence as to his or her migration status in his or her possession, officers should give the person a reasonable opportunity to produce that documentary evidence.

2.3.13 For example, a family member located at the place where the documents are stored may be able to bring the documents to the person.

2.3.14 In these cases, officers should tell the person that he or she is not in immigration detention (unless the officer already reasonably suspects that the person in an unlawful non-citizen).

2.3.15 Where officers have formed a reasonable suspicion that the person is an unlawful non-citizen even though the person has refused or been unable to provide identity documents, they should detain the person.

Search warrants

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2.3.18 If a person claims to be an Australian citizen, it is reasonable to ask the person to provide evidence of being an Australian citizen. However, there is no power in the Act to require this evidence, other than in the immigration clearance context. The power in section 188 applies only to persons known or reasonably suspected to be non-citizens.

2.3.19 It is clearly in a person's interests to produce evidence to clarify their lawful status.

2.3.20 Although documentary evidence of Australian citizenship will not normally be immediately available, an officer can check departmental systems to quickly verify the *grant* of Australian citizenship.

2.3.21 If a person refuses to cooperate by providing evidence of Australian citizenship, an officer should ask the person why he or she cannot or will not provide such evidence.

2.3.22 If the reason for not cooperating does not satisfy the officer, he or she should:

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- the person evades or attempts to evade the officer.

Example 2

Each of the following applies:

- an officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act
- the person refuses, or is unable, to provide documentary evidence of their lawful status and
- the person does not have an appropriately detailed level of knowledge regarding his or her lawful status in Australia (for example, he or she cannot provide a credible explanation of how he or she came to Australia, why he or she visited Australia, where he or she has stayed in Australia, when he or she is leaving etc).

Example 3

Each of the following applies:

- an officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act and
- the person provides a document that purports to be evidence of their lawful status in Australia but the documentary evidence:
    - is listed on the Document Alert List (DAL)
    - appears to be fraudulent, forged or tampered with
    - relates to a person who is recorded on departmental systems as being outside Australia (and other checks do not resolve the issue) or
    - was not issued by the responsible authority.

Example 4

Each of the following applies:

- an officer executes a search warrant on premises where there is reasonable cause to believe a number of unlawful non-citizens will be located
- the officer requires a person found at the location to show evidence of being a lawful non-citizen under section 188 of the Act
- the person refuses, or is unable, to provide documentary evidence of their lawful status and
- there is evidence that the person is known to, or involved with, other persons located at the same time who are known or reasonably suspected to be unlawful non-citizens.

2.5 Circumstances where it would not be reasonable to suspect that a person is an unlawful non-citizen

2.5.1 It would not be reasonable for an officer to suspect that a person is an unlawful non-citizen based ***solely*** on:

- the person's English language proficiency
- the person's ethnicity
- the person's inability to immediately produce documentary evidence of his or her lawful status in Australia or
- the fact that the person's identity cannot be established.

2.5.2 In addition, it would not be reasonable for an officer to suspect that a person is an unlawful non-citizen where all of the following apply:

- the person has an appropriately detailed level of knowledge regarding his or her lawful status in Australia
- the person provides a good reason why he or she is not able to produce documentary evidence to support the claim and
- departmental systems confirm the person's oral account.

2.5.3 Also a need to act quickly to detain a person does not make a suspicion reasonable. An officer must not detain a person until he or she reaches the conclusion that it is reasonable to suspect the person is an unlawful non-citizen.

2.6 What to do if you are unsure whether your suspicion is reasonable in the circumstances

2.6.1 Where an officer suspects that a person is an unlawful non-citizen but is unsure whether there is sufficient evidence to make this suspicion reasonable, the officer must do one or more of the following:

- undertake further relevant inquiries until the officer reaches the level of reasonable suspicion
- seek advice from a supervisor about whether there is enough information/evidence to make the suspicion reasonable in the circumstances and/or
- decide not to detain the person under section 189.

2.6.2 For example, it may be necessary to undertake further inquiries or seek advice from a supervisor in circumstances where:

- an officer requires the person to show evidence of being a lawful non-citizen under section 188 of the Act
- the person is unable to provide documentary evidence of their lawful status but provides a credible account of how they came to Australia and what visa they hold and
- the officer is unable to carry out full checks of the departmental systems at that time.

2.6.3 In a case such as this, where the officer does not have the full story, further information will be necessary to form a reasonable suspicion that a person is an unlawful non-citizen. An officer cannot ignore gaps in information or conflicting facts and must consider all the available material when forming a reasonable suspicion.

2.7 What to do if there is a claim of Australian citizenship or permanent residence

2.7.1 If an officer reasonably suspects that a person is an unlawful non-citizen, but the person claims to be an Australian citizen or permanent resident, the officer should consult with the most senior compliance officer on-site (or the state/territory compliance manager) before deciding whether to detain the person.

3 CONTINUING OBLIGATION TO KNOW OR REASONABLY SUSPECT THAT A PERSON IN DETENTION IS AN UNLAWFUL NON-CITIZEN

3.1 Overview

3.1.1 The exercise of power under section 189 involves not only taking a person into immigration detention but also keeping a person in immigration detention.

3.1.2 This is because subsection 196(1) provides that an unlawful non-citizen detained under section 189 must be kept in detention until he or she is removed or deported from Australia, or is granted a visa.

3.1.3 Subsection 196(2) makes it clear, however, that subsection 196(1) does not prevent the release from immigration detention of a citizen or a lawful non-citizen.

3.1.4 Therefore, there is an ongoing obligation to continue to reassess the lawfulness of the detention where a person has been detained under section 189 based on a reasonable suspicion that he or she was an unlawful non-citizen.

3.1.5 It is departmental policy that the case manager and the relevant compliance manager are responsible for reviewing the person's circumstances and resolving issues as to their migration status as soon as possible.

3.1.6 The outcomes of any further inquiries that are made may either strengthen the reasonable suspicion that the person is an unlawful non-citizen or bring into question whether the person should remain in detention.

3.1.7 If an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to knowing that he or she is an unlawful non-citizen, then the detainee must remain in immigration detention until he or she is granted a visa or removed from Australia.

3.1.8 If an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to knowing that the person is a lawful non-citizen or an Australian citizen, then the person **must be released from immigration detention immediately.**

3.1.9 Equally, if an officer goes from reasonably suspecting that a detainee is an unlawful non-citizen to no longer reasonably suspecting it, then the person **must be released from immigration detention immediately**.

3.1.10 If paragraphs 3.1.8 and 3.1.9 apply, the officer should immediately:

- inform the relevant compliance manager and case manager and
- arrange for the person's release from immigration detention.

3.1.11 In addition, it is departmental policy that any officer (not necessarily the original detaining officer) who believes that a detainee can no longer be reasonably suspected of being an unlawful non-citizen should immediately inform:

- the original detaining officer
- the relevant compliance manager and
- the case manager.

3.1.12 The relevant compliance manager, in conjunction with the case manager, will decide whether the detainee can no longer be reasonably suspected of being an unlawful non-citizen. This decision may also involve the state or territory director.

3.1.13 Ultimately, officers must be able to demonstrate at any particular point in time that:

- they know that a detainee is an unlawful non-citizen or
- that any suspicion that the detainee is an unlawful non-citizen persists and is reasonably held.

3.2 Specific responsibilities in relation to claims of Australian citizenship or permanent residence

3.2.1 It is departmental policy that the officer who detained the person is responsible for reviewing the person's circumstances and resolving issues as to their migration status as soon as possible.

3.2.2 If an officer who detains a person who claims, either before or after being detained, to be an Australian citizen or permanent resident, he or she should refer the claim to the compliance manager as soon as practicable but in any case within 24 hours of the claim being made.

3.2.3 This is the case unless the person withdraws the claim and the officer is satisfied that the claim was false.

3.2.4 When referring a claim to the compliance manager, officers should set out, in writing:

- the circumstances of the person's location and detention
- all claims made by the person about his or her migration status
- all steps taken in attempts to establish the person's migration status and
- proposed further efforts to establish the person's migration status.

3.2.5 Compliance managers should:

- review all cases where detainees have claimed that they are Australian citizens or permanent residents – within 24 hours of the claim being referred to them (unless the claim is withdrawn and the detaining officer is satisfied that it was false) and
- refer these cases to the National Identity Verification and Advice Section in National Office – within 48 hours of the claim being referred to them.

3.2.6 If the compliance manager accepts a person's claim of Australian citizenship or permanent residence:

- the person must be immediately released from immigration detention and
- the compliance manager should review how and why the person was detained.

3.2.7 Where migration status remains unresolved despite this initial review of the case, compliance managers should continue to review the case every 7 days from the date of detention for the purposes of:

- considering whether it is reasonable to continue to suspect that the person is an unlawful non-citizen and
- ensuring that all relevant inquiries to establish the migration status of the person have been or are being pursued.

4 DOCUMENTING ACTIONS

4.1.1 Officers must ensure that all actions taken in attempting to establish a person's migration status are accurately and comprehensively documented.

4.1.2 This should include actions taken during the initial location and detention of persons, or actions taken later.

4.1.3 This should be done by including a file note on an individual's case file, and creating appropriate records in the relevant departmental processing systems (such as ICSE), as soon as possible after the action is taken.

4.1.4 In particular, the following should be included in the relevant case file and as a case note under the enforcement permission request in ICSE:

- inquiries that are actually undertaken, including conversations with the person concerned, to establish the person's migration status
- the thought process (and conclusions reached) in establishing a person's migration status and
- management advice that determines actions to be taken in attempting to establish a person's migration status.

Neil Mann
First Assistant Secretary
Compliance Policy and Case Coordination Division

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(15) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Does DIMIA provide funding to any organization helping people on bridging visas? If so, how much has DIMIA provided and to what organisations over the past three years?

Answer:

DIMIA provides payments to the Australian Red Cross to operate the Asylum Seeker Assistance Scheme (ASAS). The ASAS is directed to eligible applicants for protection visas who are in the community on bridging visas and in financial hardship.

The Scheme provides income support (based on 89% of Centrelink Special Benefits) to cover basic needs for food, accommodation and clothing, with additional provision for healthcare if necessary, torture and trauma counselling.

The Department has provided the Australian Red Cross with the following funding to operate the ASAS:

2004-05	$3.4 million
2003-04	$4.467 million
2002-03	$9.566 million.

The bulk of the funding provided to the Australian Red Cross for the ASAS is paid to asylum seekers. The reductions in payments reflect significant reductions in the numbers of protection visa applicants awaiting decisions.

In addition funding may be provided to a NGO should a person be released from immigration detention on a Bridging Visa E (subclass 051). When considering releasing a person from immigration detention on a Bridging Visa E (subclass 051), the delegate has to be satisfied that adequate arrangements have been made for the person's entry into and ongoing support while in the community. Adequate care arrangements are usually coordinated and developed by a reputable Non Government Organisation (NGO) and detailed in a 'Care Plan'.

DIMIA recognises that the cost of care arrangements may be significant and community organisations may find it difficult to meet all of the associated costs. As such, DIMIA contributes towards these costs, by providing the NGO a weekly living allowance and the reimbursement of some medical and health costs.

Requests to meet these costs are considered on a case-by-case basis in partnership with the NGO. To date, these NGOs include: Coalition for Asylum Seekers, Refugees and Detainees Inc., The House of Welcome and The Australian Refugee Association.

The Department does not have the information requested over the last 3 years readily available and sourcing the data would be an unreasonable diversion of departmental resources. However, from beginning August 2004 to end September 2005, departmental records indicate that some $167,000 has been paid to relevant NGOs to assist with the associated costs for certain Bridging Visa E (subclass 051) holders.

In addition the Department also provides funding to relevant NGOs in relation to relevant administrative costs.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(16) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Why are people on bridging visa E prevented from participating in voluntary work?

Answer:

This restriction applies to voluntary work where the nature of the work would normally attract remuneration. Once off or irregular voluntary activities that would not normally attract payment may be permitted. Considerations could include the length of time the activity is pursued; nature and purpose of the activity and also the motives of the person in performing the activity.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(17) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Does DIMIA or GSL administer the "points" system where detainees can earn points (that they can use to purchase phone cards, tobacco etc) by doing voluntary tasks in detention centres? Is this system audited and by whom?

Answer:

The provision of the 'merit points' system is required under the contract between DIMIA and GSL. It is administered by GSL and operates within a framework agreed by the Department. This includes an operational procedure which addresses the practical implementation of the merits points system.

The Meaningful Activities program at each detention centre is regularly monitored by DIMIA staff. Monitoring ensures that GSL is complying with the agreed operational procedures and covers area such as:

- suitability of the activities made available through the program;
- detainee access to the program;
- the allocation and redemption of 'merit points' by detainees; and
- training and OHS issues arising from detainees participating in the program.

Any issues arising from the monitoring are raised directly with GSL to ensure that they are addressed.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(18) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

How many detainees have been placed in the management unit at Villawood over the past year? What is the longest period of time that a detainee has been placed in the Management Unit?

Answer:

Over the past year, eight detainees have been placed in the Management Support Unit (MSU) at Villawood IDC.

In the past year, the longest continuous placement in the MSU was 30 days, as at 7 October 2005.

Placement in the MSU occurs where there is no viable alternative for ensuring the good order and security of the facility and the safety of those within it, including for the detainee being placed there.

Detainees in the MSU are assessed daily by a health and mental health professional. Reviews of the detainee's placement are conducted regularly to ensure that no other, more appropriate, alternative exists.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(19) Inquiry into the Administration of the Migration Act 1958

Senator Nettle asked:

Prior to a removal, who make the decision to give or not to give 48 hours notice or warning of the pending removal? What guidelines are used in making this decision? Who is informed of the decision when a warning is given?

Answer:

There is a Migration Series Instruction on Removals, which provides removals officers guidance in providing notification of removal to unlawful non-citizens.

All detainees are notified of the Department's obligation to remove them from Australia by means of a notice provided by the department upon their induction into detention. Detention case managers also raise the issue of removal with detainees at regular meetings.

There is no legislative requirement that detainees be notified of their removal arrangements. However, once arrangements are in place, the detainee is generally advised in advance of their removal by way of a removals notice. This notice also outlines the exclusion periods which may apply (ie. time restrictions on their re-entry to Australia).

A notice outlining debts to the Commonwealth may also be provided at this time.

The timing of delivery of these notices will depend upon the particular circumstances of the removal. Generally, for low risk compliant removals, the detainee can be advised 48 hours prior, or whenever the arrangements are in place.

If a removals officer believes that the early notification of a removal to a detainee may pose a significant risk to the effective removal of the person, and/or to the detainee's or other person's safety, notification can be deferred until just prior to the commencement of the actual removal process.

If a removee has immediate family in Australia (eg. a spouse or parent) then it will be the removee's responsibility to notify their family of their removal.

If a removee is unable to do this because he or she is notified of their removal immediately before it occurs, officers ask the removee if he or she wants their immediate family in Australia to be notified of the removal. If the removee requests that their family be notified of the removal, officers notify the family as soon as practicable after the removee has departed Australia.

Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Report from the Secretary

To
Senator the Hon Amanda Vanstone
Minister for Immigration and Multicultural and Indigenous Affairs

IMPLEMENTATION OF THE RECOMMENDATIONS OF THE PALMER REPORT OF THE INQUIRY INTO THE CIRCUMSTANCES OF THE IMMIGRATION DETENTION OF CORNELIA RAU

September 2005

people our business

Contents

1. Background

In February 2005, the Minister for Immigration and Multicultural and Indigenous Affairs, Senator the Hon Amanda Vanstone (the Minister) commissioned Mr Mick Palmer AO APM to investigate the circumstances of the immigration detention of Ms Cornelia Rau.

The Inquiry was conducted in accordance with the terms of reference issued to Mr Palmer on 9 February and 2 May 2005. The report was highly critical of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). The 49 recommendations go to specific issues raised by Ms Rau's case and Mr Palmer's preliminary examination of the Vivian Alvarez/Solon case. Mr Palmer's findings also point to the need for broader cultural change in DIMIA across leadership, governance, training, client service, openness, quality assurance, values and behaviour. On 14 July 2005, the Australian Government indicated that it accepted the thrust of the findings and the recommendations. Clearly mistakes were made. This report shows the very substantial commitment the Government is making to address the concerns Mr Palmer has raised.

This report has also been informed by my discussions with the Commonwealth Ombudsman and Mr Neil Comrie AO APM on the draft report of the inquiry into the circumstances of the Vivian Alvarez matter. The initiatives described below are consistent with both the recommendations of the Palmer Report and those in the draft report by the Commonwealth Ombudsman on Ms Alvarez's case.

This Plan indicates action the Government has taken to date, and measures that will be taken, to address both the specific recommendations in the Palmer Report and the need to achieve cultural change in DIMIA.

I will provide a progress report to the Minister in September 2006 that will be tabled in Parliament.

2. Achieving cultural change in DIMIA: values, standards, stronger accountability and governance

The Prime Minister announced my appointment as Secretary to DIMIA on 10 July 2005. On 14 July 2005 Dr Peter Shergold, Secretary, Department of the Prime Minister and Cabinet announced the appointment of two Deputy Secretaries and a Change Management Taskforce (CMTF) to lead DIMIA in a process of administrative reforms. This process must shift DIMIA from an organisation described by Mr Palmer as 'process rich and outcomes poor', 'overly defensive', 'assumption driven' and 'unwilling to engage in genuine self-criticism or analysis' to one which is client-focused and effective in its decision-making and operational roles.

On 8 August 2005, I briefed all DIMIA staff on the direction for change and the three major themes that emerge from the Palmer Report. In order to meet the expectations of the Government, the Parliament and the wider community, DIMIA must:

- become a more open and accountable organisation;
- deal more reasonably and fairly with clients; and
- have staff that are well trained and supported.

Change is needed at the most fundamental levels if these objectives are to be met. It is not a short term agenda. DIMIA is an organisation of approximately 5,600 people who work on a range of activities across Australia and in approximately 60 countries around the world. Changing the culture in an organisation this size will take time, resources and ongoing commitment. Strong leadership, vision and direction from the DIMIA executive, appropriate governance arrangements, clear lines of communication, including expectations from senior management and a supportive environment will be fundamental aspects of the change.

A strong theme in the Palmer Report was the need for substantially enhanced training for staff undertaking operational roles and exercising powers under the *Migration Act 1958* (the Migration Act), and the need for a substantial investment in appropriate systems and other support for their activities. Together with the governance and accountability measures described above, better training and support will result in much better case management and a firmer client focus for the Department.

3. Implementing change

The response to the Palmer Report is complex. It addresses both the specific recommendations and the need for broader cultural change. The plan places each recommendation and project under broad themes in line with the spirit of the Palmer recommendations. These are that DIMIA will be a more open and accountable organisation, it will ensure and demonstrate fairer and more reasonable dealings with clients, and will have well trained and supported staff who actively embrace the first two themes.

Some initiatives were underway before Mr Palmer reported, which have improved the handling of DIMIA compliance and detention cases. These were announced by the Minister in Parliament on 25 May 2005. A range of new initiatives will be delivered by the end of 2005 and further measures will be developed during that period for implementation in 2006. These are listed in Attachment A.

3.1 An open and accountable organisation

DIMIA's broad objectives against this theme are to improve the structure and governance of the Department, to focus on clients as individuals, to ensure quality decision-making, and to communicate better with the wider community.

Part of the solution lays in improving departmental structures and governance frameworks. Change in DIMIA is underway and will be fully implemented by the end of December 2005. The new structure will establish clear lines of responsibility and accountability through:

- three Deputy Secretaries (this includes an additional Deputy Secretary position);

- improved governance arrangements - in particular, there will be a high level Values and Standards Committee with external representation (including from the Commonwealth Ombudsman's Office and the Australian Public Service Commission) to ensure the organisation is meeting community expectations and focusing on meeting the Australian Public Service values;
- a new branch led by a Chief Internal Auditor, with a significantly expanded budget, to manage an enhanced internal audit programme that will strengthen compliance checking (i.e. are DIMIA officers actually doing what the law or our instructions require?) and areas identified as high risk by Mr Palmer, and to implement a national quality assurance framework, particularly around decision-making;
- a new Strategic Policy Group to monitor and report on the implementation of the Palmer programme and to better coordinate the development and delivery of policy in DIMIA; and
- examining State and Territory Office arrangements, with a particular emphasis on appropriate funding levels for operations, training and support.

As recommended by Mr Palmer, there has been a particular focus on the detention and compliance areas of the Department:

- a consultant has been engaged to review the functions and operations of detention and compliance activities (to report by end December 2005);
- the consultant will also review the detention services contract (also reporting by the end of December);
- the Unauthorised Arrivals and Detention Division and the Border Control and Compliance Division (at the centre of Mr Palmer's criticism) have been split into three new divisions that will provide a better balance of responsibility and accountability; and
- two key senior executives have been recruited from other agencies to perform critical roles leading the new Detention Services Division and the Compliance Policy and Case Coordination Division.

Quality decision-making is fundamental to the success of DIMIA operations. Measures to address this issue include:

- Detention Review Managers (DRM) have been established in all State Offices where people are detained. They review all detention cases and ensure compliance with standard procedures. DRMs are alerted of all cases within 48 hours of a person's detention, but within 24 hours where the identity is in doubt. DRM arrangements will be assessed as part of the review of the functions and operations of detention and compliance activities;
- the new Chief Internal Auditor will develop a national quality assurance programme, an expanded and retargeted internal audit programme, and improved risk management processes; and
- the DIMIA Chief Lawyer will examine the legislative framework to identify any amendments that would minimise the prospect of illegal detention and anticipate possible legal defects.

Public confidence in DIMIA's implementation of policy is an important indicator of the Department's overall effectiveness. The executive of DIMIA will work closely with the new National Communications Manager to drive more open engagement with the public and key individuals and organisations. The Immigration Detention Advisory Group (IDAG) will be expanded in membership and scope and additional resources will be provided in DIMIA to support IDAG. The DIMIA internet website will be redeveloped to ensure better public access to information. There will be improved engagement with agencies that have a role in external scrutiny through a new Review Coordination Branch and the involvement of external agencies and the community in the Department's governance framework (e.g. the Audit Committee will have an external chairman and the Values and Standards Committee will have external members).

3.2 Fair and reasonable dealings with clients

DIMIA has a very broad client base and receives multiple contacts from individuals in a range of ways: face to face, by telephone, by email, and through electronic and traditional means of lodging applications. Because of DIMIA's international network, this contact goes on 24 hours a day, seven days a week all around the world. In 2004-05, DIMIA handled:

- over 4.5 million visa applications;
- over 4.2 million temporary entry grants;
- over 130,000 permanent migration grants;
- nearly 100,000 citizenship grants;
- 1.9 million telephone inquiries; and
- over 22 million people travelling across the border.

Case management

The majority of cases handled by DIMIA are relatively simple and finalised quickly. A very small proportion become complex for a range of reasons. Mr Palmer criticised DIMIA for its lack of holistic case management and a sufficiently flexible and responsive approach that allows for effective management of the more complex cases.

A high level taskforce has been established in DIMIA to provide advice on the handling of complex and sensitive cases. It will have an ongoing role under the new DIMIA structure.

A national case management framework will be developed in the new Compliance Policy and Case Coordination Division that will involve better organisational arrangements, better systems support and a more clearly defined role for the non-government sector. The framework will be developed by the end of 2005 for implementation during 2006.

An important aspect of the framework is development of a pilot community care model for immigration detainees assessed as eligible for alternative detention arrangements and for others of particular compliance interest (e.g. those who have multiple bridging visas). The model will be developed in partnership with the community sector. Services such as counselling, assessment, care and community placement will be considered for certain individuals while DIMIA decisions are made regarding removal or, where

appropriate, temporary or permanent settlement. The model will address concerns about the health impact of placing low risk unlawful non-citizens in detention centres while their cases are being resolved. The model will be developed by the end of December 2005 and the pilot will be conducted over the 12 months from January to December 2006, with further implementation to be considered by the Government once the pilot has been assessed.

Health and well being of detainees

A Detention Health Services Taskforce has been established in DIMIA, led by a policy expert on mental health issues, which is working closely with the Department of Health and Ageing and relevant State health authorities. The Taskforce will develop a long term detention health services delivery strategy by the end of December 2005 aimed at providing better mental health care arrangements and a transparent governance framework for health services delivery. The governance framework will include the enhanced role of the Commonwealth Ombudsman as Immigration Ombudsman. The strategy will address all of the specific health related recommendations made by Mr Palmer. In the meantime the following measures are already in place or are being addressed:

- a multidisciplinary mental health clinical team is in place at Baxter Immigration Detention Facility (BIDF), with an equivalent capacity in other detention facilities to be established;
- a Memorandum of Understanding with the South Australian Department of Health is close to finalisation to formalise the current clinical protocols currently in place at BIDF;
- access to private psychiatric facilities has been established for immigration detainees;
- Professor Harvey Whiteford (one of the Government's key mental health advisers) has been engaged to advise DIMIA on detainee health strategies;
- clinical audits of health services have been commissioned and will be undertaken by members of the Royal Australian and New Zealand College of Psychiatrists and the Royal Australian College of General Practitioners; and
- additional expertise has been recruited by the detention service contractor (GSL).

The new Detention Services Division in DIMIA is developing a detention services strategy that will address infrastructure issues. The strategy will be developed by the end of 2005, for delivery in 2006. The Minister has already announced a major development programme for Baxter that addresses the infrastructure issues raised in the Palmer Report. Mr Palmer's recommendation regarding arrangements for the handling of female detainees in the management unit at Baxter has already been addressed. The provision of immigration detention facilities in Queensland is under consideration. Negotiations are underway with the CEO of the Shaftesbury Campus near Brisbane, who has offered the facility to assist with accommodation of people in immigration detention. However, the Queensland Government has indicated it has concerns about whether the CEO is entitled to sublease

campus facilities for immigration detention purposes. DIMIA is very keen to take up the offer, but cannot proceed until this issue is resolved between the Queensland Government and the lessee.

Identity issues

The National Identity Verification and Advice (NIVA) Section was established in DIMIA in May 2005 to ensure identity issues in relation to persons of compliance interest are resolved as quickly as possible. NIVA is progressively expanding its role to other relevant migration business processes across DIMIA. Updated instructions on identity checking (including an identity checklist) are being trialled by DIMIA officers before being finalised in the near future. State and Territory Police will be able to pursue immigration inquiries through a dedicated 24 hour a day hotline, which will allow rapid resolution of issues in the majority of cases and capacity to escalate complex issues should that be necessary. The hotline facility will also operate for consular officials seeking information regarding immigration detainees.

Amendments to the Migration Act are currently before Parliament that will allow publication of photographs and related information to assist in identifying a person of immigration interest where other reasonable steps to identify that person have not succeeded.

Client service

DIMIA has significant client service responsibilities. A new Client Services Division will lead implementation of a better client service focus and will enhance client service delivery across DIMIA's operations. DIMIA has been consulting widely on a new Client Services Charter and Client Services Strategy for Visa and Citizenship Services. Both documents will be finalised by the end of December 2005 along with arrangements to centralise the recording, tracking, management and reporting on client feedback. DIMIA has already implemented improved protocols, scripts and training for call handling in contact centres to ensure that information is correctly recorded and followed up. A programme of client surveys will commence early in 2006.

3.3 Well trained and supported staff

Training

Specialist technical immigration training will be enhanced. A model for a College of Immigration Border Security and Compliance (the College) will be developed by mid-December 2005 and established by mid 2006. All new compliance and detention staff will be required to complete a 15 week induction training programme at the College with five streams available: compliance, investigation, detention management, border management and immigration intelligence. Existing staff will be required to complete regular refresher training each year. Ahead of the physical establishment of the College, the curriculum will be established. Enhanced training for compliance and detention staff will be provided in the interim, focusing on the application of 'reasonable suspicion', emerging legal issues, identity investigations, search warrant training and capacity to search and interrogate all DIMIA systems.

Migration Series Instructions (MSIs) are an important part of the support provided to staff in the operation of their responsibilities and a component of the training programmes. Key compliance and detention MSIs will be reviewed and reissued before the end of 2005, with remaining MSIs to follow.

Changing the culture in DIMIA goes to values, ethics and standards and excellence in leadership. A new national training strategy will be implemented in DIMIA. A national executive leadership programme commenced in September 2005 and will be provided to all executive level staff in DIMIA over the next 18 months. Management training for APS staff and training in a range of departmental systems, records management, visa cancellation, and name searching will all be rolled out by the end of 2005.

Information and systems issues

As recommended by both Mr Palmer and Mr Comrie, DIMIA has tendered for an independent review of its information requirements and systems, to be completed by the end of January 2006. The consultant will recommend medium and long term action for Government consideration. A second review will provide a 'health check' in regard to the appropriateness of the mix and deployment of DIMIA's technical platform to support current and future business needs. The focus of both reviews will be to ensure that DIMIA systems adequately support decision-making and case management in the longer term.

In the meantime systems improvements to support decision-making and case management are underway. A single entry client search facility is being developed to improve access to all information about an individual client (the pilot, using existing search capabilities will be in place by the end of December 2005, a second phase incorporating new search tools will be available in March 2006). There will be substantially enhanced training in ICSE (Integrated Client Services Environment, DIMIA's primary transaction processing system) available for all staff who undertake case and client related activity. Pilot programmes to better support DIMIA staff on field operations will be undertaken.

Records management

A records management improvement plan is being developed by DIMIA in consultation with the National Archives of Australia. The plan will include a strong training component (to be delivered to all staff undertaking case and client related activity by the end of 2005), a systems upgrade for the DIMIA records management system (by the end of June 2006), and redeveloped policies and practices. The plan will particularly focus on the links between electronic and paper records and archiving arrangements.

Links between DIMIA and the Refugee Review Tribunal and the Migration Review Tribunal information systems will be established as soon as the current tribunal systems upgrades have been completed. In the meantime DIMIA client records are updated on a daily basis to reflect client status when a client has an appeal on foot with either tribunal.

4. Governance

The response to the Palmer Report is being managed as a single programme in DIMIA. The Palmer Programme Office (PPO) has been established, reporting directly to the Secretary (while it currently sits within the Change Management Taskforce, it will become a permanent part of the new Strategic Policy Group, once the new DIMIA structure has been implemented). Each initiative which is being implemented to address either a specific Palmer recommendation or the broader themes for change will be monitored by the PPO and progress against key milestones and expenditure will be reported to the Secretary and Minister. Each project will have an assigned project manager who will manage the day-to-day activities of the project. They will identify, monitor and resolve project issues and identify and mitigate project risks. Each project will be oversighted by a steering committee chaired by a senior executive and will draw members from other key business areas across the Department. Each steering committee is likely to oversight a number of projects. DIMIA will report quarterly to the Government on implementation of the Palmer Programme, through the Cabinet Implementation Unit. A further progress report will be provided to Parliament in September 2006.

This is clearly an ambitious reform agenda, but the package has been carefully developed to ensure key milestones are achievable. I am engaging with all staff on the change process through regular briefings and twice weekly messages about important issues and developments. The DIMIA executive is firmly committed to the change process. The package will ensure staff have the necessary information, support and skills to achieve change.

5. Resources

Over $230 million over five years has been committed to implement the response to the Palmer Report. A substantial proportion of this expenditure will be for new staff to implement the enhanced client service focus, improved quality assurance and accountability mechanisms, and provide better and more focused training. The PPO will monitor all expenditure against Palmer projects.

6. Communications with key stakeholders

A range of stakeholders have an interest in the DIMIA change management process and the implementation of the response to the Palmer Report. To maximise the opportunity for acceptance of the process, there is a need for sustained communication between DIMIA and stakeholders. A new National Communications Manager will drive more open engagement with the public and key individuals and organisations.

In my first weeks as Secretary to DIMIA, I took immediate steps to engage a wide range of stakeholders, particularly those who have been critical of DIMIA's performance. I have met and briefed many individuals and

on Migration. There are dedicated liaison arrangements in DIMIA's State and Territory Offices to ensure constituents' issues are handled quickly. I will ensure that DIMIA executives regularly engage with a wide range of interest groups to ensure there is high level exchange of information and views.
I have already mentioned the enhanced client focus for DIMIA – people are our business. Staff are constantly reminded of the need to approach each client contact as contact with an individual person.

Some of the recommendations in the Palmer Report can only be implemented with the cooperation of State and Territory Governments. Colleagues in the Attorney-General's Department and the Department of Health and Ageing in particular are working with DIMIA to ensure recommendations in relation to national missing persons policy and health service delivery are implemented.

7. Success Factors

The success of the change process will be measured by the level of confidence DIMIA is able to inspire in the Australian community and the clients it serves. This will be achieved through the development of national strategies for client service, case management, detention health service delivery, detention infrastructure, and staff training and their implementation through the remainder of 2005 and 2006. Success will be reflected in the fact that every decision DIMIA takes is demonstrably fair and reasonable, that implementation of policy is open and there are clear lines of accountability through the DIMIA executive, to the Minister and Government and to the Parliament and the broader community.

Andrew Metcalfe
Secretary
Department of Immigration and Multicultural and Indigenous Affairs
27 September 2005

OBJECTIVE *TO ACHIEVE CULTURAL CHANGE IN DIMIA*	**OPEN & ACCOUNTABLE ORGANISATION**	**FAIR & REASONABLE DEALINGS WITH CLIENTS**	**WELL TRAINED AND SUPPORTED STAFF**
PALMER RECOMMENDATIONS	3.5, 4.11, 5.1, 5.5, 7.3, 7.5, 7.6, 7.7	3.2 – 3.4, 4.1 – 4.13, 5.1 - 5.4, 5.6, 5.7, 6.1 - 6.13, 7.1, 7.4	3.1, 5.1, 5.2, .7.1. 7.2, 7.4, 8.1, 8.2, 8.3
DELIVERED BY 1 OCTOBER 2005	**Restructuring the Department** • New divisional structure for compliance and detention activities in National Office – new Division heads appointed **Detention & compliance issues** • Consultant appointed to review activities and detention services contract **Better external engagement** • Briefed Standing Committee on Migration • Secretary's engagement with key individuals and organisations • MP liaison arrangements in all State and Territory Offices **Privacy issues** • Migration Act amendments	**Client service focus** • Client Service Strategy/Charter consultations commenced **Case coordination/management** • Detention Review Managers/arrangements for Detention Review Committee • Management of detainee files • Complex Case Review Taskforce established **Identity issues** • National Identity Verification & Advice Unit (NIVA) established **Health and wellbeing of detainees** • Improved health services for detainees at Baxter • Detention Health Service Delivery Taskforce established • Audit of health service delivery at Baxter • Razor wire removed from Villawood	• Minister's suggestion scheme • All staff briefings • SES forum • Leadership training pilot course • Palmer Programme Office established
DELIVER IN FIRST 100 DAYS – by the end of December 2005	**Restructuring the Department** • New National Office Structure and appointments to key positions • New National Communications Manager • New Internal Auditor • New Chief Lawyer **Detention & compliance issues** • Consultant to advise on detention & compliance activities and the detention services contract • Establish Detention Contract Management Group • Review of decision-making & quality control for detention, compliance, & removals • New IDAG structure and expanded membership • Work with ANAO on lessons learned from recent audits **Better external engagement** • Review & implement communications strategy • Develop strategic relationships with external scrutineers • Appoint external members of DIMIA governance committees • Web redesign and content management **Privacy issues** • Strategic Privacy Impact Assessment	**Client service focus** • New Client Services Division • Client service satisfaction surveys (initiate tender process) • Centralise client feedback mechanisms • Integrated email/telephony enquiries • Enhance overseas call handling arrangements **Case coordination/management** • Single entry client search facility • Training in effective name search methods • DIMIA Community Care Model • Handling of detention records • Compliance/Detention case management system **Identity issues** • Expand role of NIVA • Enhance handling of ID issues across Dept (instructions and training), including use of biometrics **Health and wellbeing of detainees** • Long term detention strategy • Liaison with States/Territories on health issues (with DHA) – finalise MOU with SA Health – common training for clinical staff • Finalise detainee management procedures at BIDF (Red One and MSU) • Improved arrangements for food services	**Training for staff** • National Training Manager & Branch • Staff Training: compliance & detention (search warrants, reasonable suspicion, identity investigations, Srey cases), visa cancellation, leadership, values & conduct, ICSE, TRIM, records management, systems security **Support for Staff** • Review/reissue key compliance and detention Migration Series Instructions • Enhanced compliance helpdesk capability **Information and systems issues** • IT platform & governance review • Usability evaluation • Pilots: Mobile access to ICSE, integrate passport readers into ICSE • MRT/RRT linkages **Other issues** • Staff surveys • Rural and remote compliance activity
DEVELOP IN FIRST 100 DAYS – by the end of December 2005 for delivery during 2006	**Restructuring the Department** • New State/Territory Office Org. Structure – implement from mid-December 2005 **Detention & compliance issues** • Compliance strategy **Quality assurance** • National Quality Assurance Programme – decision making • Enhanced internal audit programme **Other issues** • Unlawful detention legal mitigation strategy	**Client service focus** • Client Service Strategy & Charter • Develop client service surveys **Case coordination/management** • National Case Management Framework • Develop Community Care Model –pilot to commence Jan 06 **Identity issues** • National missing persons database (thru APMC, AGD to lead) • 24/7 'hotline' for police and consular inquiries **Health and wellbeing of detainees** • Long Term Detainee Health Services Strategy including mental health services and governance • Baxter Improvement Programme (the Baxter Plan) • Advice on implementing Muirhead Standards • Remove razor wire from other IDCs • Queensland Detention Facility - Shaftesbury **Bridging visas** • Bridging Visa Review • Regional Compliance Enhancement Taskforce	**Training for staff** • Establish College of Immigration Border Security & Compliance - comprehensive training for compliance and detention staff • National Training Strategy • Review/reissue remaining MSIs **Information and systems issues** • I.T. Business Needs Analysis & Action Plan • Digitising historical manual movement records • Central IRIS project • Compliance case management discovery exercise • Records management improvement plan

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(1) Inquiry into the Administration of the Migration Act 1958

Senator Ludwig asked:

Please provide an outline of the changes undertaken, commenced or proposed in relation to DIMIA's management, operations, processes and structure since the release of the report of the Palmer inquiry. In doing so, please outline any time lines applicable to these changes (eg, commencement, completion, review, etc).

Answer:

A copy of the detailed response to the issues raised in the Palmer report, which was tabled in Parliament on 6 October 2005, is attached. It is also available on the DIMIA web-site at www.immi.gov.au.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(3) Inquiry into the Administration of the Migration Act 1958

Senator Ludwig asked:

If possible, please provide an organisational chart for DIMIA showing its management and operational structure as at 30 June 2005.

Answer:

The DIMIA organisational chart as at 27 June 2005 is attached.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(4) Inquiry into the Administration of the Migration Act 1958

Senator Ludwig asked:

If possible, please provide an organisational chart for DIMIA showing its current management and operational structure.

Answer:

The DIMIA organisational chart as at 3 October 2005 is attached.

QUESTION TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(5) Inquiry into the Administration of the Migration Act 1958

Senator Ludwig asked:

If possible, please provide an organisational chart for DIMIA showing its management and operational structure once all intended changes have been implemented.

Answer:

The proposed DIMIA organisational chart is attached.

QUESTIONS TAKEN ON NOTICE

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11 October 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

Inquiry into the Administration of the Migration Act 1958

STATISTICS

1. Can DIMIA provide figures for the last three years in relation to the number of student visas granted (by type, if applicable); and a breakdown of the different types of study undertaken by students holding such visas (ie university, school, college)?

Student visas granted in last three program years are:

Total Student Visa grants

Program year	**Offshore**	**Onshore**	**Total**
2002-03	109,610	52,965	162,575
2003-04	115,248	56,370	171,618
2004-05	116,715	58,071	174,786

Breakdown of the different types of study undertaken by students are:

Student Visa Grants by sector[i]

Education Sector	Total Grants 2002-03 PY	Total Grants 2003-04 PY	Total Grants 2004-05 PY
AusAID	3,233	3,128	3,042
Defence	518	552	512
ELICOS	21,967	22,368	22,642
Higher Education[ii]	54,331	54,892	82,116
Postgraduate Research[ii]	32,217	37,362	11,008
Non Award	10,006	14,067	17,668
Schools	12,475	12,174	10,432
Secondary Exchange	2,320	2,353	2,179
Vocational Education and Training	25,508	24,722	25,187
Total	**162,575**	**171,618**	**174,786**

[i] It is important to note that student visas are granted based on the confirmation of enrolment for the principal *course* that a student intends to complete in Australia. Students may 'package' one or more courses together, but the visa they receive is based on the principal course in that package. So, for example, a student intending to undertake a short-term English language course, followed by a foundation course, followed by an undergraduate degree, would receive a subclass 573 Higher Education visa. Therefore, the table above is an indicator of the *principal* type of study undertaken by overseas students applying for visas, but not necessarily of their full study pattern.

[ii] From 1 July 2004, applicants wishing to study a masters degree by coursework (as opposed by research) are required to apply for a subclass 573 Higher Education visa, rather than a subclass 574 Postgraduate Research visa. For that reason, the number of Postgraduate Research visas granted in 2004-05 was markedly lower than in previous years, and there was a commensurate increase in the number of Higher Education visas.

2. Can DIMIA provide statistics for the last three years in relation to the nationality of those granted student visas?

Please see the attached table.

3. Can DIMIA provide figures for the last three years in relation to the number of student visa cancellations?

Program Years	Visa Cancellations
2004/05	8,118*
2003/04	8,245*
2002/03	8,204*

* A recent court case (Uddin v MIMIA) has found that a defective form was used to advise some students that they had breached their visa conditions. The court found the form did not meet mandatory legislative requirements setting out to whom and where students need to report to DIMIA after being notified that they had breached their conditions (the form indicated students should report to a compliance officer when it should have said to any DIMIA officer and it also indicated the nearest specific DIMIA office when it should have said any DIMIA office). That form was revised in July 2005.

As a result of this court case, any automatic cancellation of student visas under section 137J of the *Migration Act 1958*, where the old form was used, could be regarded to have been ineffective. As the *Uddin* decision affects all section 137J cancellations between May 2001 and 16 August 2005, the Department decided that the best way to deal with this situation was to reverse on DIMIA systems all section 137J cancellations recorded in this period.

Some 8450 section 137J cancellations were reversed. Most such visas would have in any case expired and some people have other visas. As at 4 October 2005, there are 625 people in Australia with a current resurrected student visa**.**

The Department has developed a comprehensive information campaign to advise students who may be affected by the decision and of their situation as a consequence of it.

4. Can DIMIA provide an analysis of the number of student visa cancellations compared with other classes of visa, and in comparison with the total number of visa cancellations?

In 2004-05, student visas cancellations (prior to the Uddin decision) represented 35% of total cancellations, with some 8,118 student visas being cancelled. Other visa cancellations by category were: Temporary Residence 37%; Visitor and Working Holiday Maker 18%; Business Skills 5%; Bridging Visas 2%; Family Migration 1.5% and other 1.5%.

In 2003-04, student visas cancellations (prior to the Uddin decision) represented 39% of total cancellations, with some 8,245 student visas being cancelled. Other visa cancellations by category were: Temporary Residence 33%; Visitor and Working Holiday Maker 16%; Business Skills 6%; Bridging Visas 3%; Family Migration 2% and other 1%.

In 2002-03, student visas cancellations (prior to the Uddin decision) represented 42% of total cancellations, with some 8,204 student visas being cancelled. Other visa cancellations by category were: Temporary Residence 30%; Visitor and Working Holiday Maker 16%; Business Skills 4%; Bridging Visas 4%; Family Migration 2% and other 2%.

Source: Managing the Border (2004-05 draft, 2003-04 and 2002-03) – Table 6.7

5. How many student visa holders have been detained, and for how long, in the last three years?

According to departmental records, between September 2002 and September 2005, 1361 student visa holders were detained. These 1361 people were detained as a direct result of overstaying their student visa or having their student visa cancelled.

Of these 1361 people, 20 remain in immigration detention as at 23 September 2005.

6. Can DIMIA provide statistics on appeals, successful or otherwise, in the MRT, the Federal Court and the High Court in relation to student visa cancellations or alleged breaches of student visa conditions?

The following tables set out the data on appeals to the MRT, Federal Court and High Court relating to student visa cancellations or visa refusals based on breach of student visa conditions.

MRT

Year	Student Visa Cancellations	
	Lodged	Set Aside*
2002-03	1109	31%
2003-04	1092	40%
2004-05	1035	33%

*** Set Aside** means that the applicant's appeal was successful, as the department's decision was set aside.

For student visa applications that were refused on-shore, the MRT received 628 review applications in 2002-03, 505 applications in 2003-04 and 471 applications in 2004-05. However, these include reasons such as failed English or health requirements, as well as breach of conditions. It is not readily possible to disaggregate the total to determine the number of MRT applications relating only to breach of student visa conditions.

Appeals in the Federal Court and High Court in relation to student visa cancellations:

Applications resolved

Year	Appeal Outcome	Federal Magistrates Court	Federal Court	Full Federal Court	High Court	Total
2002/2003	Applicant withdrawal	9	11	1		21
	Department win	4	9	2		15
	Department withdrawal	1	1			2
	Matter remitted in full*				1	1
2002/2003 Total		14	21	3	1	39
2003/2004	Applicant withdrawal	28	16	1		45
	Department loss	2	2			4
	Department win	20	10	3		33
	Department withdrawal	4	1			5
	Matter remitted in full*				1	1
2003/2004 Total		54	29	4	1	88
2004/2005	Applicant withdrawal	37	7	3	2	49
	Department loss	1	2	2		5
	Department win	65	15	6	2	88
	Department withdrawal	6	1			7
2004/2005 Total		109	25	11	4	149

* This refers to cases remitted to Federal Magistrates of Federal Courts by the High Court.

7. How many students have been granted Bridging Visas or other types of interim visas in the last three years?

Information is not readily available covering all bridging and other temporary visas. The Department is reviewing its data relating to Bridging Visa E and if possible will provide further information.

8. How many students who have had their visas cancelled, or who have breached their visa conditions, have returned to their country of origin of their own accord in the last three years?

The following former student visa holders who had their visa cancelled or had overstayed their visa departed Australia voluntarily:

2002-03 – 2,632
2003-04 – 2,617
2004-05 – 2,134.

RAIDS

11. How many 'raids' has DIMIA undertaken in the last three years in relation to students who have breached or outstayed their visas?

We are not able within the time frame to provide data on the number of compliance operations specifically targeting students. However please refer to questions 12 to 14.

12. Can DIMIA provide details in relation to the nature of such 'raids'?

Compliance field operations are routinely conducted in metropolitan, rural and remote areas of Australia. Compliance resources are dedicated to the location of people who:

- have no authority to be in Australia;
- have stayed in Australia beyond the period specified in the visa (overstayers);
- are in breach of conditions that apply to their visas.

Information sources which assist compliance officers in locating overstayers and people in breach of their visa conditions include voluntary approaches by individuals, departmental records and data matching with other agencies, community information, education institutions and police referrals.

Please refer also to questions 13 to 14.

13. How many breaches were detected as a result of such 'raids'?

The following table presents student locations as a sub-set of total locations. This data does not link a location to a specific operation and includes voluntary approaches by individuals.

Program Year	Total Locations	Student Locations (voluntary approaches)
2002-03	21,465	6,232 (3,996)
2003-04	20,003	5,792 (3,637)
2004-05	18,341	5,110 (3,092)

14. What were the locations of these 'raids'?

Compliance operations are conducted in metropolitan, rural and remote areas throughout Australia. Student locations occur by self referral and in a range of situations such as residences and places of business.

In 2003-04, of the 5,110 student locations, 45% were in NSW, 27% in Victoria, 11% in Queensland, 10% in Western Australia, 4% in South Australia and 3% in the ACT and regions/Northern Territory/Tasmania combined.

15. What have been the ultimate results of these 'raids'? ie, how many student visas holders were detained and/or subsequently had their visas cancelled?

Outcomes of compliance operations can include visa cancellation, grant of a bridging visa, an application for another substantive visa or immigration detention pending their return to their home country.

Please refer to question 5 for the numbers of student visa holders detained. This includes persons who came to attention by voluntary approach.

Please refer to questions 3 and 4 for numbers of all student visa cancellations. This includes people who came to attention by voluntary approach, via compliance operations and automatic visa cancellations.

MINISTERIAL DISCRETION

21. How many times has the Minister exercised his/her discretion in the last three years in respect of student visa holders who have had their visas cancelled? Are students required to have exhausted all appeal mechanisms first?

The Minister has exercised his/her discretion to grant visas to 35 persons in the last three years where student visa holders had their visas cancelled.

The Minister's public interest powers under s351 of the Migration Act are only available following a decision of the Migration Review Tribunal.

22. How many applications for ministerial discretion have been made in total in the last three years in relation to student visas?

Over the past three financial years requests for the minister to exercise his/her public interest powers involving 564 persons were received in respect of student visa applicants who were refused student visas or had their student visas cancelled.

REVIEWS

23. Is DIMIA currently looking at the *Education Services for Overseas Students (ESOS) Act 2000* Evaluation Report 2005? If so, which parts?

Yes, DIMIA is currently considering the implications of the recommendations made in the *Education Services for Overseas Students (ESOS) Act 2002* Evaluation Report. Of the 41 recommendations in the Evaluation Report, some 23 would have an impact for DIMIA if implemented, ranging from amendment to the *Migration Regulations*, amendments to DIMIA systems, updates to our policies or procedures, or staff training. We have been consulting closely with the Department of Education, Science and Training, which has a process in place for consulting with the Australian Education Systems Officials Committee (AESOC) and the Ministerial Council on Employment, Education, Training and Youth Affairs (MCEETYA) on the progression of the recommendations relating to the ESOS Act, Regulations and National Code. When the DEST response is more fully articulated, DIMIA will need to take the necessary steps to implement the required changes in our Regulations.