

QUESTION TAKEN ON NOTICE

**SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE: 11
October 2005**

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(1-3) Inquiry into the Administration of the Migration Act 1958

Senator Ludwig asked:

1. In respect of Ms Vivian Solon, Ms Cornelia Rau, Mrs Valbona Kola, Mr Ergi Kola and the members of the Bakhtiari family:
 - (i) It is understood that, in the process of organising or planning for their removal from Australia, applications for travel documents or documents of identity were lodged that were not signed by each of the above or which stated that they were unable to sign. Is this correct? If so, why did they not sign the documents themselves?
 - (ii) It is understood that (a) each were able to sign earlier documents, forms or applications and that (b) copies of these signed documents, forms or applications are in the department's possession. Is this correct?
2. How many deportations and removals from Australia have been undertaken in the last five years where the application for travel documents or documents of identity was unsigned by the person being deported or removed? Please outline the reasons why in these cases the person did not sign the documents themselves (eg, illiterate, lack of capacity, other reason)?
3. Does DIMIA have in its possession any material relating to Ms Vivian Solon that has come to light since the tabling by the Senate Foreign Affairs, Defence and Trade Committee of its interim report on Ms Solon's removal, search and discovery and that has not been provided to the Foreign Affairs, Defence and Trade Committee? If so, please provide copies of that material to this Committee.

Answer:

1. (i) There is no record in DIMIA files of an application form to the Philippines Consulate for a travel document for Ms Alvarez/Solon. There are on file copies of the travel document itself and a number of e-mails relating to the travel document.

Applications for Australian Certificates of Identity were submitted on behalf of Ms Venona Vata (aka Mrs Valbona Kola) and Mr Paulin Pali (aka Mr Ergi Kola) in their true identities. These were not signed by Ms Vata and Mr Pali as they have not been cooperating with arrangements for their removal.

Applications for Australian Certificates of Identity were submitted on behalf of Mr and Mrs Bakhtiari and their children who did not cooperate with removal arrangements at any stage. They were given the opportunity to fill out travel document application forms and on a number of occasions they refused to do so. Mrs Bakhtiari was given a choice of travel document application forms and refused to choose.

In relation to Ms Cornelia Rau, applications for an Australian Certificate of Identity were not applied for in this case. 'Anna' informed DIMIA she wanted to apply for a German passport. An application form for a German passport and DIMIA Cooperation to Gain Travel Document form was provided to her. 'Anna' completed and signed these forms.

- (ii) According to DIMIA files Ms Alvarez/Solon was unable to sign bridging visa application forms and a record of interview.

The Department has a copy of the bio data page of the Certificates of Identity that were issued to Ms Venona Vata and Mr Paulin Pali in their false Serbian identities of Mrs Valbona Kola and Mr Ergi Kola.

The Bakhtiaris were asked to sign documents and forms for travel documents throughout their time in detention but declined to do so on all occasions.

The Department has the forms completed by 'Anna'.

2. The Department does not have information readily available for the number of removals where the application for travel documents was unsigned, and to collate this information would involve an extensive manual examination of individual files.

It is not uncommon for people who are being removed not to cooperate in the removal process for example refusing to sign a travel document application. Some countries will accept unsigned applications provided sufficient explanation is given.

3. No additional material relating to Ms Solon/Alvarez has come to light since the tabling by the Senate Foreign Affairs, Defence and Trade Committee's interim report.

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STATISTICS

BONDS

9. **Can you provide information on the payment of bonds? Are bonds graduated depending on the nature of the visa being sought or contested?**

There are no bonds required for student visa applicants.

10. **What happens to the bond if the student visa applicant or contestor is successful or unsuccessful?**

This does not apply for student visa applicants as there are no bonds required for them.

ASSISTANCE FROM EDUCATION PROVIDERS

16. **How many educational providers have forwarded notices to DIMIA about student visa holders who have allegedly breached their visas? Can DIMIA provide figures on how many and which educational institutions have done so?**

DIMIA does not collect data on the numbers of education providers who forward notices about student visa breaches relating to academic performance or attendance. This data is maintained by DEST.

DEST advises that between 01 January 2003 and 03 October 2005, there were 555 education providers who created 18,371 reports relating to academic performance and non-attendance. A breakdown by education provider is not readily available.

17. **Does DIMIA have a watchlist of certain educational providers that are of concern in relation to 'harbouring' students who have breached their visa or who have had their visas cancelled? If so, can DIMIA provide the list?**

DIMIA works closely with DEST on providers of concern. Under the ESOS Act, DEST has a range of sanctions which can be applied if a provider remains non-compliant or very serious breaches of the Act are identified. The sanctions that can be applied to a provider's registration include imposing conditions, suspension, and cancellation.

18. **What action is DIMIA undertaking in respect of educational providers that have a higher average frequency of students breaching their visas? If no action is currently being undertaken, what are the reasons for this?**

The providers who have the highest incidence of student visa cancellations, or reporting breaches of student visa conditions, tend to be those providers that have the largest numbers of students overall (such as universities). Simply having large numbers of reported students, or students whose visas have been cancelled, is not necessarily an indicator that the provider is at fault – rather, it is more an indicator that the provider is conscientious in discharging its responsibilities in relation to overseas students.

DETENTION

19. Where are student visa holders who have breached their visas detained? Are they detained in immigration detention centres with other unlawful non-citizens?

Most people who are located as a result of compliance action are granted a bridging visa, which allows the holder to remain in the community pending their departure from Australia, consideration of a substantive visa application or the completion of merits or judicial review.

20. Can DIMIA provide a summary of the costs of detention under section 209 of the Migration Act for student visa holders who have had their visas cancelled in the last three years? How many of these costs have since been cancelled, suspended or waived? Of those who reapply for a visa, do such costs have to be repaid or are they waived? Please provide details for the last three years.

The department does not have information on the costs of detention for former student visa holders readily available and to collate this would involve a manual examination of individual files, which is an unreasonable diversion of departmental resources.

According to departmental records, there have been no detention debts waived for people who have been detained as a result of the cancellation of their student visa in the last three financial years.

Students who were detained under section 189 of the Migration Act after their visas were automatically cancelled under section 137J of the Act, are liable to pay the Commonwealth the costs of their detention, even though they may be affected by the decision of the Federal Magistrates Court in the case of *Uddin vs MIMIA*. At the time of detention, Compliance officers would have relied on evidence of regular and effective cancellations under s137J of the Act that was sufficient to establish a reasonable suspicion that the students were unlawful non citizens. The fact that the cancellations were subsequently reversed does not alter the lawfulness of the detention and that a debt to the commonwealth has been incurred.

In recognition of the reversal of the cancellations, the department is approaching the Department of Finance and Administration to waive these debts under section 34 of the Financial Management and Accountability Act. The effect of a waiver would be to extinguish the financial obligation of the debtor to the Commonwealth. Pending a decision on the waiver, the department does not intend to pursue these debts.

Public Interest Criteria 4004 (PIC 4004), Part 1 of Schedule 4 of the *Migration Regulations 1994*, states that to meet this criteria the Minister, or their delegate, must be satisfied that “the applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment”.

If an applicant applies for a student visa they will have to satisfy PIC 4004 as part of the normal visa application process. If the client has a debt to the Commonwealth and the debt has not been waived or the client has been unable to repay the debt or enter into appropriate arrangements to repay the debt by instalments the client will not satisfy PIC 4004 and consequently will be ineligible for the grant of a student visa.

People are encouraged to contact the department to discuss payment options, and may enter into an agreement with the department to pay in instalments.

REVIEWS

24. Are there any reviews currently being undertaken by DIMIA in relation to student visas? If so, please provide details.

DIMIA does not have any formal external reviews in train specifically in relation to student visas. However, we have a number of internal processes in train to adjust our legislative and policy settings. These usually arise out of our ongoing consultations with DEST and international education peak bodies, which raise with us issues about our legislation and policy where these arise. We then consult with the relevant industry sector stakeholders to reach an agreed approach or solution before implementation.