



Australian Government
Department of Immigration and Citizenship

Address on
‘Positioning the department within the current environment’

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Introduction

It’s a pleasure to speak to you today. Before I begin, I wish to acknowledge the traditional custodians of the land we are meeting on today, the Wathaurung people. I wish to acknowledge and respect their continuing culture and the contribution they make to the life of this region. I would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today’s event.

Today I would like to focus on issues that span the broad range of services the department provides, and in some way have an impact on the work of the tribunals. These include an environmental scan of how the department is placed, ongoing reforms and policy developments, and lastly I would like to update you on our transformation strategy.

Environmental scan

The importance of the immigration portfolio is evident in our statement of purpose—*building Australia's future through the well-managed entry and settlement of people*. Our nation-building role requires us to collaborate and share leadership with other portfolios. We play a critical role in the government's sustainable population and productivity agendas.

Recently I spoke to a Productivity Commission conference on the *Value of Migration to Australia*, noting that our migration program is part of a whole-of-government agenda that has various components affecting Australia.

Critically, for the department, we need to understand which elements are within our control and which are beyond it, and how they may feed into migration and people movement flows and pressures in the longer term.

Our departmental programs occur within a much broader environment. The movement of people internationally is a defining characteristic of today's world. It is characterised by diversity and complexity.

We are increasingly seeing people move due to a range of factors—including labour markets; political instability; the environment; demographics; technology; perceptions about the distribution of opportunities; and individual aspirations and capacities.

Australia is but one part of this equation, but it is still easy to be awed by the volumes that we manage. For example in 2009-10, over 28 million passengers crossed our border, over four million visas were issued, and there were around 120 000 conferrals of Australian citizenship. Despite this, when discussing these issues we should not lose sight of the fact that we are dealing with individual people, each of whom has hopes, needs and aspirations for themselves and their children. Indeed, it is in relation to the department's clients who have arrived in an irregular way by sea, and where Australia's law and policy requires their detention in one form or another until their claims for refugee status are processed, that we must especially not lose sight of this simple fact. The role of the tribunals, in making merits review decisions on many visa categories, is an essential adjunct to this critical task.

Australia does a great job in settling and integrating migrants, then reaping the additional benefits as the next generation moves into adulthood. Take for example the story of the Dunera boys, named after the ship that brought them to these shores. They were, in the main, German-born Jews who fled to England during the 1930s to escape the Nazi regime and who were then interned in Hay and Tatura during World War II as enemy combatants. A large number of them went on to give tremendous service to this country including the influential economist, Fred Gruen.

More recently we have the story of Hieu Van Le, who arrived in Darwin as a Vietnamese 'boat person' in 1977, and who is now the Lieutenant Governor of South Australia. In Government we have seen the impact and contributions of migrants or refugees on Australia, and need only look at several members of Cabinet, including our Prime Minister.

Despite these success stories, it is important to note the complexity of managing Australia's immigration program. Change in one area can flow on to others, sometimes in ways that can be hard to predict.

Last year we saw that changes to the general skilled migration program had a direct impact on the international student caseload due to the anticipated pathways to permanent residence being affected.

We face significant challenges in responding to issues facing us in addressing the increasing numbers of temporary residents in Australia—some 1.6 million—most of whom are not on pathways to permanent residence. This group includes those who are sponsored by a particular employer to fill a skill or labour gap—such as under the 457 visa, international students, working holidaymakers, tourists, people visiting friends or relatives, and dual nationals who live trans-national lives. There are benefits to this mobility, but also significant challenges that transience or uncertainty of status can bring to a society.

In policy terms and as a nation in general, we need to help define and embrace our role as part of the interconnected and mobile international community. At the same time we must work to strengthen social cohesion and social inclusion for everyone's benefit. As reflected in the government's new multicultural policy, *The people of Australia*, we need to acknowledge and build on our connections to the world and strive for a just and inclusive multicultural Australia.

The challenge for government is to maintain ordered flows of people into Australia while retaining the public's confidence that immigration is properly managed and works in the national interest.

In this context, the challenge of irregular migration is a particularly sensitive one. There is a continuum of circumstances causing people to flee their country and seek new lives elsewhere. Due to the large number of refugees in the world, and ongoing pressures such as continuing and emerging political instability, governments around the world are limited in our ability to estimate, and manage these flows.

How we meet these wide-ranging challenges feeds public perceptions about immigration. It is not unreasonable to say that public confidence in the integrity of the immigration program is a prerequisite for its ultimate success and for maximising harmony in our multicultural society.

The visa system is a critical tool for controlling people movement into and out of Australia. Its evolution reflects many of the complex policy demands we face as a department.

Issues that may have an impact on

Migration Review Tribunal-Refugee Review Tribunal caseloads

As a department we share this complex environment in which we operate with the Migration Review Tribunal-Refugee Review Tribunals (MRT-RRT). Changes within departmental caseloads often directly flow onto tribunal caseloads.

I'm sure that everyone is aware of the department's changes to processing arrangements for the student visa and general skilled migration programs in recent years. These changes are aimed at increasing the integrity of the programs, and also to better target both programs in order to achieve the outcomes of government.

This has led to more stringent checks being made by the department during processing. While this has been one factor probably contributing to the recent decrease in successful offshore applicants, it has increased the numbers of onshore applicants making subsequent applications in order to delay their departure. The student portion of this cohort has increased by 69 per cent over the last four years. This is directly relevant to the tribunals because as you are aware, only student visa applicants who are refused a student visa while they are onshore may seek a review of their decision through the MRT.

Interestingly, while the number of student visa lodgements at the MRT is increasing, the rate of tribunal set-asides has decreased from 16.68 per cent to 9.11 per cent over the same period. This indicates that the MRT is affirming a higher-percentage of the department's student visa refusal decisions. The decline in MRT set-aside rates may also point to a diminishing quality of lodgements with regard to student visa refusal decisions.

This is only one of many student visa issues that the department is currently working through. To help address the current issues surrounding this caseload, the Minister for Immigration and Citizenship and the Minister for Tertiary Education, Skills, Jobs and Workplace Relations have jointly appointed the Hon Michael Knight AO, to conduct the first independent *Strategic Review of Australia's student visa program*. The review will focus on how the student visa program can best support Australia's international education sector, while at the same time preserving the integrity of Australia's migration program. The review is due to report to the Ministers in mid-2011.

Recent changes to the Skilled Program

Our programs are also being significantly impacted upon by the recent reforms to the skilled migration program. The changes are intended to ensure the program is targeted towards the skills needed in the Australian labour market, in line with the Government's goal of a demand-driven skilled migration program. The key underlying philosophy is that skilled migrants settle more easily and make the greatest contribution if they are able to come to a job and not to a job queue.

Employer-sponsored migration matches migrants directly to jobs in Australia, making it the best method for ensuring the labour market gets the skills it needs now. However, until around four years ago, the employer-sponsored and government-sponsored streams had historically only represented around a quarter of the skilled migration program, with the majority entering through the non-sponsored independent skilled stream. Encouragingly, this is changing.

Employer-sponsored and government-sponsored streams now represents around 55 per cent of GSM visa grants, or some 60 000 visas per year—over 1000 people each week, and we expect this will increase to around 60 per cent of visa grants this year.

Assisting with the move to a demand driven GSM program are state migration plans, which allow States and Territories greater flexibility for meeting their local labour market needs. These arrangements allow governments to sponsor applicants for occupations outside the new Skills Occupation List (SOL).

The changes to the SOL are not retrospective, so any valid application for GSM lodged before the new SOL came into effect will continue to be assessed against the old SOL. There are about 139 000 people in this category, with 51 000 of those onshore applicants. The transitional arrangements also apply to a cohort of onshore students who, at the time of the changes, were in permanent residency pathways. There are about 455 000 student visa holders in this group, with 387 000 of these primary student visa holders, and of those, 309 000 were in Australia on 8 February 2010.

These are, needless to say, complex issues that we are working through.

New arrangements for assessing refugee claims from irregular maritime arrivals

As I'm sure you're all aware, late last year the High Court of Australia considered the cases of two irregular maritime arrival asylum seekers—M61 and M69—who were found not to be refugees by both an officer of the Department and an independent merits reviewer.

The Court upheld the validity of the processing framework for irregular maritime arrivals, but found that certain legal errors were made in the processing of the two cases before the Court.

This was an important decision for our clients, as it holds the department accountable for ensuring that procedural fairness as defined in Australian jurisdiction is afforded to all clients. Importantly, the Court also found that irregular maritime arrivals can seek judicial review if they receive a negative merits review assessment.

As a result, under new arrangements for irregular maritime arrivals announced by Minister Bowen earlier this year, the Protection Obligations Determination process came into effect on 1 March this year.

Under the new process, an asylum seeker's claims for protection will still be initially assessed by a departmental officer (Protection Obligations Evaluation). The difference from the former Refugee Status Assessment process will be that, where the officer isn't satisfied that the asylum seeker is owed Australia's protection, the case will be immediately referred to an independent assessor for review-Independent Protection Assessment.

This process is one that is both robust and efficient in resolving asylum seekers' claims, and is designed to speed up the process so that clients could have an immigration outcome more quickly.

The introduction of Complementary Protection legislation

Further reforms are also underway. On 24 February this year, the Minister introduced into Parliament a Bill to enable the Protection visa decision making process to become more efficient, transparent and accountable.

The introduction of this legislation is important because under the Migration Act, only those people fleeing persecution for one of the five reasons outlined in the Refugees Convention are currently eligible to receive a Protection visa through the standard process.

Applicants who fall outside five categories are not considered to be refugees and consequently, their applications must be rejected by the department, and also by the Refugee Review Tribunal.

However importantly, Australia may have obligations to consider protection for these applicants according to *non-refoulement* obligations under other human rights treaties, which include:

- the International Covenant on Civil and Political Rights (ICCPR)
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and
- the Convention on the Rights of the Child (CROC).

This may be particularly so if an applicant is fleeing significant harm including the arbitrary deprivation of life, having a death penalty charge in the country from which they reside, being subjected to torture, or being subjected to cruel, inhuman, or degrading treatment or punishment.

Currently, Australia can only grant protection to people in these situations through Ministerial Intervention. Unfortunately for these clients, ministerial intervention is not guaranteed, and the minister cannot be compelled to exercise his power. Further, there is no requirement to provide reasons if the minister does not exercise the power, and there are no merits review for ministerial decisions.

The complementary protection legislation aims to develop an integrated protection decision making model, so that clients who make claims under any of the treaties mentioned above are able to be assessed for Australia's protection.

An integrated model would enable more timely assessment of protection claims, as there would be no need to go through the ministerial intervention process. Under current legislation, this is only available after both a negative primary Protection visa decision by DIAC, and a negative Refugee Review Tribunal finding.

Under the proposed complementary protection model, claims for protection will still be first considered against the Refugees Convention. If the applicant is found not to be a refugee at this point, they will have their claims considered against the new complementary protection criteria.

This approach has been supported by the Office of United Nations High Commissioner for Refugees, along with our domestic and international stakeholders.

No doubt Professor Jane McAdam will discuss this issue in more detail when she speaks later today.

Ombudsman Recommendations following the case of Mr A

Many of you will be aware of the Ombudsman's report regarding a complaint made by 'Mr A'. In this case, Mr A had lodged a complaint with the Ombudsman that the department had refused his partner, Ms B, a permanent partner visa despite an MRT remittal decision.

The Ombudsman found that there were flaws in the way this decision had been made—namely in relation to the way in which the department had communicated during the process with the MRT.

Subsequently, the Ombudsman made recommendations to the department highlighting the need for better guidance to staff on review processes of merit review decisions, and the timely consideration and implementation of court and tribunal decisions.

In response to the Ombudsman's recommendations following this case, you will be pleased to note the department has strengthened policy guidance on judicial review of tribunal decisions.

The MOU between DIAC and the Tribunals has been updated to include guidelines for approaches to:

- a systematic process for bringing Tribunal decisions to the early attention of DIAC decision makers
- exploring the practicality of electronic communication of decisions, and
- implementing a monitoring mechanism to oversight the implementation of decisions.

To further embed best practice in the implementation of MRT decisions, the department, via an internal review identified:

- the need for a monitoring mechanism to ensure that MRT and other tribunal decision were implemented and not lost in an administrative drift, and
- strengthen policy guidance, specifically in relation to partner visa program, to ensure that decision makers proceed with permanent partner visa considerations consistently with the MRT's directions for the provisional partner visa—unless substantial new information has come to light.

**DIAC's Transformation—the transition to a world class migration,
visa and citizenship service**

Lastly I would like to briefly discuss the department's Client Services Transformation Strategy, which is now well underway.

The transformation's will position the department to be better prepared for emerging challenges, particularly with regard to integrity and security, and have in place adequate risk mitigation strategies.

The multi-year strategy will deliver globally integrated and enhanced services to our clients, maintain and enhance the integrity of migration programs, and contribute to Australia's economic growth and prosperity.

A significant enabler for our transformation is new technology. The ever-increasing use of online service delivery allows government to engage people more directly than ever. The new forms of client engagement through social media provides a further layer of accountability for government service delivery, and also new insights into the behaviour of clients, and informs decision making to underpin more timely evidence-based policy making.

We have put in place a new organisational architecture and global operating structure to support this in managing our major visa caseloads and client service activities. This includes thirteen Global Managers situated in various departmental offices across Australia, each responsible for the end-to-end accountability of a global business line.

The transformation involves every aspect of the department's client service continuum, and has many benefits including:

- the provision of faster and more effective services
- improved consistency of decision making, information management, and greater integrity within our programs, and
- easier to use client products and interfaces.

The transformation is a long term strategy; however we are already seeing positive results from the work undertaken so far. For example, the department has, for some time, conducted client attitudinal research. The results of these tests have consistently shown a high degree of client satisfaction from our services, with the two most recent surveys showing between 80 and 84 percent satisfaction from our products and services. Importantly, these surveys also show an increasing preference by our clients to contact us using electronic channels, and to use our online application facilities. These positive results affirm the direction taken by the department, to build stronger migration and visa services.

Conclusion

Ladies and gentlemen, my department and your tribunals operate within a dynamic and changing environment, and our need to be able to adapt the way we operate is paramount. The issues I have discussed today help to illustrate the challenging position in which we are currently poised—particularly in relation to significant operational and policy issues—and hopefully provide some insight into how we will look to manage these issues into the future.

In closing, I hope that the full program before you is informative and useful, and I wish you well as you enjoy the remainder of the conference.