

## 19/02/08 – Legal & Constitutional Affairs

### Immigration - Mr Robert Jovicic

**Senator NETTLE**—The minister earlier today raised the case of Mr Robert Jovicic. Can we get an update of his status? When we were talking before about people who had their deportation orders, the minister raised that as an example.

**Mr Correll**—Mr Jovicic remains on a special purpose visa which was granted to him to enable his lawful stay in Australia.

**Senator NETTLE**—There is no ongoing deportation order?

**Mr Correll**—No.

**Senator ALLISON**—Is he entitled to apply for citizenship?

**Mr Correll**—I do not believe so but I would like to check that. I will correct the record if that is not the case.

**Senator ALLISON**—If he is not entitled to apply for citizenship can you please indicate what would need to be done procedurally in order for him to be so entitled?

**CHAIR**—Senator Evans has returned. Most of the remaining questions, Minister, are for you.

**Senator ALLISON**—Minister, will the Rudd government reverse or amend the Migration Act as it relates to the deportation of noncitizens on character grounds? Do you have anything you can tell the committee about the government's intention in that respect?

**Senator Chris Evans**—I gave evidence earlier in response to questions from Senator Nettle. I am reviewing ministerial powers more generally and how we handle those powers. There are a couple of principles that I am trying to apply: that the minister deal less with the individual case loads and that there be more transparency in the system and, where appropriate, more rights to appeal decisions because they were made by someone who is applying a set criteria.

At the moment I am reviewing the directions issued to the department about that, and Mr Correll is handling some of the 501 case load. But I have not made a decision to seek any legislative or regulatory change. It is a question of the directions given to delegated officers at the moment. I have indicated that the work that was done on the joint committee report in this area, and its commentary about the Ombudsman's recommendations et cetera, was of value. I have been reading that report and reviewing that evidence to try to come to a decision in my own mind about how best we process that case load. So we are dealing with the policy issues there.

The complexity of each individual case is, without firm guidelines, a very difficult thing to resolve. Mr Correll and I have spoken about that a number of times—balancing their age when they arrived in Australia, their criminal records, the likelihood of reoffending, the nature of the crime, their relationships, whether they have children. I have found in particular that a lot of the people who are

coming forward to me are people who have done a series of very serious crimes and that this is their fourth or fifth offence. Some of them have been in the prison system for 20 or 30 years and they end up on my desk, 30 years on, with a question about deportation. Quite frankly, if you were going to deport them you would have done it after the first crime, not after the fourth or fifth prison term. I am still trying to get to the bottom of why we are in this situation. Sometimes I get advice that I ought to warn them, when it seems to me that they have had a lot of chances and a warning would be a little pointless.

So there are a range of complex issues. One that we have discussed is the relationship with the prison authorities and whether or not decisions about those people with serious character concerns can be made and appeal rights and the time period for an appeal to be conducted can occur while they are still in custody. At the moment, people come out of custody and have to be taken into detention while these decisions and appeal rights occur, so they become an immigration problem. Some of them are long-term detainees of Villawood et cetera. It seems to me to be a very inefficient system.

It is a long-winded answer, but I am just trying to give you a sense of the complexity of it. I do not understand why this huge case load was not dealt with when they first offended. I am sure Mr Metcalfe or Mr Correll can give you an answer. I find it unconvincing, but they can give you an answer. Not that they are unconvincing, but how the system allowed us to get to that. As I said, I do not see why I am dealing with people who committed serious crimes many years ago and it has not been resolved in the system.

**Senator ALLISON**—Do I take it from that that the principle of returning people to their country of origin, if they have not taken out citizenship despite being permanent residents, is one that you intend to continue with?

**Senator Chris Evans**—Certainly I am not ruling out returning people who have committed serious crimes if they are not citizens of the country. The Ombudsman made some recommendations about how you might set a general rule. I think we had a 10-year rule previously. That was abolished by the previous government. One option is to go back to that. One is to pick up the Ombudsman's recommendations about age of arrival and period in Australia. What I have been doing, and discussing with Mr Correll, who has been handling some of the case load, is trying to get a sense of the experience.

I made the point earlier that I have been in the job 11 weeks. One of the things you learn to do is learn from your experience, and some of the decisions like that which I might have taken in the first couple of weeks are not necessarily the same views I hold now. What I have been doing is looking at the decisions in relation to the various criteria that have been suggested by other people. I think it is fair to say, as with all rules, there are some decisions that would fall inside that you would worry about and some that fall outside that you would worry about. I have not come to a firm conclusion on that, but I am aware of the joint parliamentary committee report, and I think that was useful. I am also thinking about seeing if we cannot give that committee some references that might assist us to move through some of these issues. I am meeting with the chairman tomorrow.

**Senator ALLISON**—As the rate of deportations in Australia is more than twice the size, per capita, of those of the UK and other similar countries, is it your understanding that this is due to those recent changes, requiring a catch-all?

Even those who arrived as babies suddenly find themselves being sent back to Vietnam and similar places.

**Senator Chris Evans**—I am not sure of the international comparison, but there is no doubt the previous government—I think under Minister Ruddock—made a series of changes. Perhaps Mr Metcalfe is better suited to this in terms of the history.

**Mr Metcalfe**—Senator, you are possibly aware that there had been for many years a power that currently exists in the act as section 200 which meant that a person who had lived in Australia as a permanent resident for 10 years or less—other than time spent in prison—was able to be considered by the minister, or a delegate, for criminal deportation. There is a parallel power in section 201, which goes to security concerns.

From memory, in about 1999 the previous government and the parliament brought in legislation called the Migration Legislation Amendment (Strengthening of Provisions Relating to Character and Conduct) Act which inserted section 501. Section 200 and section 501 sit together, even though they cover the same potential area—the major difference being that section 501 has no time limitation upon the amount of time that a person could have spent in Australia outside of prison. Since that time, as you are clearly aware, ministers have considered persons who have lived in Australia for more than 10 years outside of prison, including some people who came as young children. Essentially, the ministers have usually exercised that power personally, but it has been delegated from time to time as well. The very issue you are raising is how the new government would administer those powers, and that is an issue that the minister has indicated there are various thoughts about.

The Ombudsman has provided some very useful guidance, given his examination of the case load. There have been some celebrated cases in this area. Ministers often have to balance a range of competing concerns: formative years in Australia, length of residence, family links, together with the seriousness of the crime, recidivism, impact on victims and whatever. This is a particularly difficult, complex area for anyone involved in its administration.

**Senator ALLISON**—Minister, will you review the decisions made over the period of time since 1999, and consider repatriation of some of those already sent back to other countries?

**Senator Chris Evans**—No.

**Senator ALLISON**—I am thinking of one case in particular, of Steve Ongel, who came to Australia aged 18 months in 1970 and was deported to Turkey in 2003, leaving behind a wife and two daughters, aged two and four. Would that be the sort of circumstance in which you might reconsider?

**Senator Chris Evans**—The answer was ‘no’ in the sense that I thought that you were asking me whether I was going to review those decisions. Clearly, I am not going to go back through the files and review who previous ministers deported in accordance with the law and substitute my decision. I suspect that I do not have that power, but I am happy to take advice on that. But it is certainly not my intention. If someone wanted to put a particular case to me, Senator Allison, I would happily consider it and seek advice on. But I do not intend revisiting the decisions of previous ministers in the previous government and

reviewing all those decisions—certainly not. It is pretty clear that I do not have that power, anyway.

**Mr Metcalfe**—Essentially, to quote the Latin, you are *functus officio*.

**Senator Chris Evans**—Is that catching?

**Mr Metcalfe**—There is no matter before the minister that is there to consider in a legal sense. The only way that the matter could again be considered is if there was an application for migration, I suspect, and that would have to be considered in the context of any ban on readmission that the legislation provides for someone who had been removed in those circumstances.

**Senator ALLISON**—One could imagine a circumstance where there would be such an application if the law changed and if that person would not have been deported under the new laws.

**Senator Chris Evans**—I would not have thought so, Senator Allison. That is a retrospective application. If we change the laws to provide new guidance rules, then certainly decision making from then on would be guided by them. But it would not have the application of opening up all of the decisions previously made.

**Mr Metcalfe**—It might be the case if there was a new application.

**Senator Chris Evans**—The application would be a very different application. If someone had been offshore for many years, it is not a question of deportation. It would be a question of them seeking migration to this country. The answer, Senator Allison, is that they are not going to be picked up by a review by me. I have no powers to deal with them, anyway. The point is that, if there was a particular case that someone wanted to bring to my attention seeking entry to Australia, I would consider that on its merits. But I have no intention of going back and reviewing the decisions of previous ministers.

**Senator ALLISON**—I have one final question. Since our jails are full of people with mental illness—up to 80 per cent of those in prison have had a mental illness at some stage in the prior 12 months before being incarcerated—will that be a consideration in your review of the current arrangements?

**Senator Chris Evans**—Consideration in my review of—

**Senator ALLISON**—As I understand it, you are looking to review the situation to see whether there will be changes made to the law. I am asking you whether as part of that consideration you will look at the fact that a lot of people with mental illness end up in prison as a factor in considering whether it is appropriate to deport them or not.

**Senator Chris Evans**—Certainly mental health issues are an important factor in those decisions, Senator Allison. Some research was done recently on the impact of long-term detention on mental health. As you know, there is a lot of international evidence of that effect. Obviously, people's mental health is an important part of that consideration. I am pleased to see that there has been a much better response to those issues by the department in recent times. Those of you who have followed it closely would concede that. But clearly that is an issue that you would consider as part of the balancing of all the considerations.

**Senator ALLISON**—This may have been asked before, but are there statistics on the number of those who have been released from prison and put straight into detention and the length of their stays?

**Mr Correll**—We would have that information available, but we do not have it immediately to hand. We will take that on notice.

**Senator ALLISON**—What was the immigration department's role in the deportation of Mr Hew Griffiths, who was arrested for breaking US law to do with copyright and piracy? Did Immigration play a role at all in that deportation?

**Mr Metcalfe**—No-one at the table has any knowledge of that. We can take that on notice and let you know if we have any involvement in that matter.

**Senator ELLISON**—I can help the committee. That was an extradition. It was pending during the time that I was minister. It was done as a result of an extradition request from the United States.

**Senator ALLISON**—I will speak to you later.

**Mr Metcalfe**—We will check, but I suspect that Senator Ellison has provided the answer.

**Senator ALLISON**—I realised that he was extradited but I wondered whether the immigration department had a role in all of that.

**Mr Metcalfe**—The answer is almost certainly not, but we will let you know if we did.

**Senator ALLISON**—Thanks. That is all I have.