

Statement from Australian Border Force in response to multiple questions from Background Briefing

10 December 2015

The circumstances surrounding Mr Nejad's death have been referred to the Coroner and it is not appropriate to comment on matters relating to his death for this reason.

Australia's Migration Act requires people who do not hold a valid visa or unlawful non-citizens who present unacceptable risks to the Australian community to be detained.

This includes individuals who have been found to be owed protection, but who may be subject to an adverse security assessment, who have committed offences in detention or in the community, or who have breached behavioural standards which are a condition of their placement in community detention.

Immigration detention allows for the identification and management of potential risks to the Australian community, including national security, health and character risks. It is the Government's policy that non-citizens who have outstanding matters with the Department, or who present a risk to the Australian community, will remain in immigration detention.

However, detainees may be considered for community detention where it is decided an individual does not present unacceptable risks to the community.

Detainee movements within the detention network are common. All detainees undergo a comprehensive risk assessment prior to placement in the detention network. Placements take into account behaviour in detention, criminal histories, operational requirements, security and welfare issues. Placement arrangements are reviewed on a regular basis to ensure they are still appropriate. Mr Nejad's placements within the immigration network were inconsistent with these requirements.

Mr Nejad, like all detainees at the Christmas Island Immigration Detention Centre, had access to appropriate medical and mental health treatment as required. The Department and its contracted health service provider were aware of this individual's mental health history and it was being managed accordingly.

The Minister has power to grant those in immigration detention, a community detention placement, if he thinks it is in the public interest to do so.

The reasons why individuals may not be granted visas to live in the Australian community are varied, but may include health, identity and security risks to the community, or repeatedly refusing to comply with visa conditions in the past, including working illegally in breach of their visa conditions.

In July 2014, Mr Nejad's case was referred to the former Immigration Minister for consideration of a community detention placement. The former Minister declined to consider Mr Nejad's case.

Mr Nojad, Mr Javanmard and Mr Darvishpoor remain in immigration detention. The Department is actively managing their cases. Due to the nature and complexity of the circumstances, including the size of the legacy caseload, a timeframe for resolution of their visa status cannot be given at this time.

In relation to Curtin IDC, the Department is aware of the reported "second incident" involving Mr Nejad. The incident was reported appropriately by service providers to the Department at the time. There is no indication of the existence of CCTV vision of this reported incident.

Questions about why individuals were, or were not subject to criminal charges as a result of this or any other incident in detention, are questions for the relevant law enforcement or state prosecuting authorities. The Department refers all allegations of criminal behaviour of which it is aware to relevant authorities. A decision to commence criminal proceedings against any individual is one for those authorities.

The Protection Obligations Determination (POD) process no longer exists. However, of those individuals found to engage Australia's protection obligations (under previous processes including POD), 40 remain in held detention and 22 in community detention.

On 11 December 2015 we sought clarification on the numbers

Background Briefing

One question that doesn't seem answered ... is how many POD people in detention, of any form, are there because they have a criminal conviction for an offence in detention? And let's add to that, how many for offences committed in the community?

re the POD no longer existing, when did it end and why, and what has it been replaced with?

How many people are being held under the new definition of refugee? What is the longest any of them have been held?

And how many of them have failed the character test?

On 21 January 2016 Border Force replied

* Of the 62 individuals found to engage Australia's protection obligations (under previous processes including POD) who remain in held or community detention, 12 had their visa cancelled on the basis of a criminal charge or conviction. All of these individuals remain in held detention.

* The Protection Obligations Determination (POD) process was a non-statutory process for assessing an IMA's protection claims.

* The POD process ceased on 23 March 2012. After this date, IMAs were assessed through the already existing statutory process.

* More information about the change to a statutory process can be found in the 2011-12 DIAC Annual Report on page 216:

<http://www.border.gov.au/ReportsandPublications/Documents/annual-reports/2011-12-diac-annual-report.pdf>

* The Department has nothing further to add to information already available on the public record.

On 9 December 2015 Background Briefing sent additional questions to Border Force. Their answers, supplied on 21 January 2016, are included below.

Background Briefing

Our program will be reporting that:

- 1. A visitor to the Christmas Island detention centre, in September [2015], was told of a 'high level of staff-directed violence' against detainees. She observed a hostile and aggressive staff culture.**

Have there been incident reports of injuries to asylum seekers caused by staff, and have any SERCO or Border Force staff been charged with any offences such as assault against detainees in the past six months

Border Force

Follow up questions 1 part A

* No charges have been laid against Serco or Departmental staff in relation to any incident at CIDC in the past six months.

* The Department takes its duty of care to detainees very seriously and will not tolerate any behaviour that may impact on the safe operation of detention facilities.

* There have been recent incidents at the Christmas Island Detention Centre where Department and service provider staff have responded to situations where the safety of those staff and detainees was at risk.

* The Department takes seriously any allegation of misconduct by service provider staff. All allegations are reported to the Department and are thoroughly investigated.

Background Briefing

2. We will also be reporting that some asylum-seekers who have been transferred to Christmas Island had committed the offence of driving DUI, and working at a car wash without the appropriate visa [29/1/16 Note: this was not included in the final program]

Does the department believe that it is appropriate to detain asylum-seekers such as these, and also Fazel Chegeni, in a high security environment such as Christmas Island, with more serious offenders facing deportation?

Border Force

* Please provide further information on the allegation that there are people in CI for DUI charges so we may look into this.

* The reason a person is in immigration detention is only one factor as to their placement within the detention network. Other considerations include their past criminal history and their behaviour while in detention.

Background Briefing

3. Is the 2009 policy "Identification and support of people in immigration detention who are survivors of torture and trauma" still current?

Border Force

Follow up questions 1 part C

* The Identification and support of people in immigration detention who are survivors of torture and trauma policy is still in place.