Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Mr Owen Walsh
Secretary
Senate Legal and Constitutional
Legislation Committee
Parliament House
Canberra ACT 2600

Dear Mr Walsh

Inquiry into Migration Litigation Reform Bill

I refer to the Legal and Constitutional Legislation Committee's public hearing on 13 April 2005 in relation to the Migration Litigation Reform Bill. Response to the four questions on notice taken by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) are set out below.

Question 1

The following table provides details of the numbers of self-represented and legally represented litigants in migration matters currently before the Courts.

Active matters as at 18.4.2005 by Court and representation				
Court	**Legally represented**	**Self represented**	**Total**	**% Self represented**
Federal Magistrates Court	518	1,901	2,419	79%
Federal Court	120	214	334	64%
Full Federal Court	98	319	417	76%
High Court – original jurisdiction	8	25	33	76%
High Court – special leave	30	282	312	90%
High Court – substantive appeal following grant of special leave	8	-	8	0%
Other Courts	14	3	17	18%
Totals	**796**	**2,744**	**3,540**	**76%**

Question 2

DIMIA does not collect statistical data on how many repeat applications are struck out at an early stage or whether any go to hearing.

In practice, the Department's solicitors alert the court as early as possible of repeat applications and will usually seek to have the matter dealt with at an early stage.

DIMIA's solicitors have advised that generally the courts strike out repeat applications without a final hearing.

Some judges and magistrates adopt a less strict approach to repeat applications where the first matter was finalised without proceeding to final hearing. However, even where the Court does not summarily dismiss the matter, it often makes self executing orders.

The main reason why a repeat matter will not be struck out is when there is an early hearing date available and the court decides to list the application for dismissal at the same time as the final hearing. However, usually the courts do hear strike out applications earlier, as they are aware of the increased cost of listing a final hearing and strike out application at the same time.

In rare cases a court will decide not to strike out a matter because an applicant raises a ground that was not available when the matter was originally litigated (for example, natural justice was not available under the previous Part 8 of the Migration Act). Where an applicant raises a ground that was available when the matter was first litigated the court applies the principles of res judicata, issue estoppel and anshun estoppel.

Question 3

The Department has not directly raised its concerns about litigation with the MIA. The Department now has quarterly meetings with the MIA, and at a meeting on 12 February 2004 DIMIA asked specifically about MARA's progress in investigating a specific complaint referred by DIMIA, but did not discuss the broader issue addressed in the Bill.

DIMIA did, however, liaise with the MIA and MARA about the development of the *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004*. Concern about unmeritorious litigation was a significant factor underpinning the development of that legislation.

Question 4

The Department has been unable to locate any information about the expectations of applicants in regarding ministerial intervention when seeking merits review.

I trust that the information above is of assistance.

Yours sincerely

Douglas Walker
Assistant Secretary
Visa Framework Branch
19 April 2005