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The COMMITTEE SECRETARY
SENATE LEGAL & CONSTUTIONAL COMMITTEE
Department of the Senate
Parliament House
CANBERRA ACT 2600

SUBMISSION INTO THE ADMINISTRATION & OPERATION OF THE MIGRATION ACT 1958

Terms of Reference:

(a) the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural & Indigenous Affairs and the Department of Immigration and Multicultural & Indigenous Affairs with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;

INTRODUCTION:

I am grateful, and honoured, to have been invited to put a submission to this Committee and am happy to be called to give further evidence to assist in the important deliberations with which the Committee has been tasked.

In the light of the Palmer Report and recent media reports (Canberra Times 10/08/05) of the address by the new Secretary of the DIMIA to his Departmental Officers on Monday of this week, I feel that there is a real opportunity for submissions, and witnesses, to this Committee to assist both the Parliament and the Department to confront the challenges of a rapidly changing world and the changing needs of our own country.

At the outset, may I say clearly and sincerely, that there are many fine people employed within the Department of Immigration & Multicultural & Indigenous Affairs (DIMIA, or "the Department") and I have been privileged to work with them.

There are some DIMIA officers whom I would sincerely like to nominate for a HREOC Award this year because of their capacity to resist negative cultural pressure and their inherent decency and honesty in the face of ignorance and destructive practices. Unfortunately I hesitate to mention their names, though I have read them on the files and admired them sometimes without ever meeting them because I fear that even now, such recommendations might not sit well.

I may yet nominate one young man whom I have never met in person but who deserves credit for his strength of character and perception which may have led to him being shafted by those whom he dared to question.

There have also, unfortunately, been others who are ignorant and, blissfully unaware of their ignorance, have wrought havoc in the lives of the innocent.

There are others who have enjoyed their sense of power and have exercised it without mercy on the weak and the vulnerable. And there have been others who are just plain lazy, incompetent, uncaring, immature and irresponsible.

As an educator, however, I am the potential optimist. Many of the perceived problems of the Department and its contractors lie with poor management and communication structures and procedures.

With education and proper managerial structures in place which allow for robust communication and skill sharing, many "problems" will take care of themselves.

That is why I am hopeful that the new Secretary, Andrew Metcalfe, will put his mark on the Department; that he will give fearless advice to the Government of the day, whatever Party that may be, and yet have the ability to carry out the will of the Parliament in a manner appropriate to the dictates of a robust democracy.

It is often difficult for the ordinary Australian voter to see the delineation of the three arms of the Parliament – and the Secretary of any Government Department needs to be blessed with the Wisdom of Solomon if he is to straddle them all.

The Secretary of the Department of Immigration & Multicultural & Indigenous Affairs (DIMIA), like any Minister appointed to the portfolio, has a task second, almost, to none, especially in these days post-September 11, 2001.

In October, 2004, just prior to the Federal Election, I was honoured to address the **Sydney Institute** at the invitation of Gerard Henderson. My paper was published in the Spring 2004 edition of THE SYDNEY PAPERS, volume 16, Number 4. I am indebted to Anne Henderson for her activity and encouragement in this and other matters of mutual concern.

I thought that the Committee might be assisted by my reproducing part of my published Sydney Institute paper in this submission.

The paper was published under the title "Advancing the Asylum Seeker cause – the Case for Pragmatism" – now I think I would call it "My Wish List for Departmental Reform – Nauru and Beyond".

From THE SYDNEY PAPERS, Vol 16, Number4, Spring 2004:

My first meeting with the then new Minister was on 1 March, 2004 although the relationship had started with her recognition in December, 2003 of my representations on behalf of the Afghan asylum seekers on Nauru. This public recognition gained me entry twice to Nauru – the only legal representative from Australia for the asylum seekers ever to go there.

Pragmatism is defined by the Macquarie Dictionary as "character or conduct which emphasises practical values or attention to facts"

I saw pragmatism in action in the response of the Minister to representations from the United Nations High Commission for Refugees (UNHCR) and my office to re-open the Afghan cases in the light of new evidence provided in late 2003 to the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA)

I like a pragmatic approach to things and if had a wish-list for this latest Howard Government, it would be that pragmatism in immigration continues.

My wish-list comes down to the mantra that John Howard used in the last election.

You will remember that he kept saying, "*We* will decide who comes to this country and the means by which they come."

I listened and I thought, "But they don't really. Who does he mean by "we"? What really does John Howard know about how people are coming into this country? Who actually makes the decisions and on what basis? How accurate is the information they use?"

This paper is designed to give some insight into four areas pivotal to this notion of the Prime Minister's that "*We decide who's coming and the means by which they come.*"

1. The section 417(s417) process – or Ministerial Intervention

2. The anonymous dob-ins – (a DIMIA term).

3. The issue of false travel documents, not the ones that are used by people to come here, but, more importantly, the ones that are used by the Government to remove people.

4. The so-called Pacific Solution. As I have already said, I am the only person to have been allowed to go to Nauru in any kind of independent legal capacity, with the blessing of the current Minister, Senator Vanstone.

So there are the four things; the business of the section 417, or the Ministerial Interventions[1], the dob-ins, the false travel documents and the Pacific Solution.

[1] (which also includes interventions under s48B and s351)

1. The inquiry into Ministerial Discretion in Migration Matters was established on 19 June, 2003 following allegations raised in Parliament in May and June 2003 about the use of Minister Philip Ruddock's discretionary powers going back to 1998.[2] The Opposition Labor Party accused the former Minister, Phillip Ruddock, of being corrupt, of accepting, basically, donations from people in the community in order to have interventions made in relation to cases that people put to him.

The allegations involved, amongst others, Mr Karim Kirswani, a prominent member of the Lebanese Maronite community who was central to the so-called 'cash-for-visas' scandal. Kisrwani was initially said to have had the greatest number of Ministerial interventions. After a while they revised that and said, "No, no, no, it's Marion Le." Now, no one could accuse me of ever having enough cash to bribe anyone, that's the first thing. The second thing was that this was total confusion because the Labor Party, or individuals, Nick Bolkus,[3] for instance, would know that I know where the bodies are buried.
Over many years, there have been deals, what I call deals, done behind the scenes to get a migration outcome in the best interests not only of the people but of whichever political party is in power.

In any event, I didn't volunteer to appear before the Senate Inquiry. I think the Democrats put my hand up for a go and then I received a written invitation from the Senate to ask me to appear. One of the interesting things was that, in the Report I am referred to as being someone who has worked for many years with the Department and the Government in this area with no caveat that it was only with one Party or another – it was clearly immaterial to my work which Party was in Government.

Yet, according to the Report:

*"The most scathing criticisms of departmental processes were provided by Ms Marion Le, a human rights advocate and migration agent who has worked closely with the Department and represented people to Ministers over a 25 year period."*

The Report goes on to quote me as saying:

*"One of the biggest problems is that the department does not always send on submissions that are put to them, and we as the practitioners or the people bringing the submissions do not know when the Department has passed on our submissions and when they have not. So we never know whether the Minister is receiving them."*

I was also reported to have said:

*"The whole situation is really messy. I would not like to say that it is working well; it is not working well. It is messy, time-consuming and stressful. Those who are doing it*

[2] Senate Committee Report: Select Committee on Ministerial Discretion in Migration Matters, March 2004, p xi
[3] IBID, p xiii Minister Ruddock exercised his power to intervene on 2513 occasions from 1996 to October 2003, compared with Senator Bolkus's 311 in three years and Mr Hand's 81 in two years. Although Mr Ruddock has obviously used the power much more than the other Ministers, there were many more cases in which he could have intervened.

*do not know what the outcome is. - as I said, the submission heads off into the abyss."*
[4]

The abyss is the Department.

One of the big issues here is that the people who really make the decisions, at the base line, are not "we" the Government or "we" Phillip Ruddock, it's "we" the Department, the people in the Ministerial Intervention Unit. Often, the person making the decision as to whether or not the Minister is going to even see a particular case is going to be the same person who originally rejected the person.

For example, I had one case (and I raised this at the Committee hearings) where the person was rejected by the Department, went to the Refugee Review Tribunal (RRT) and the RRT Member said, words to the effect that: *"Look, because the Minister has enacted legislation to forbid us to consider this type of case as a refugee claim, I cannot give this person a protection visa, but what I can do is recommend that the Minister looks at this very carefully, because this man is certainly going to be shot, killed, when he goes back to his home country. I cannot find that he's a refugee under the Convention as we have amended it in Parliament but I do recommend this to the Minister for intervention."*

Now Phillip Ruddock was very firm in his instructions to the Department that if the Migration Review Tribunal (MRT), or the RRT, recommended someone to him for his Ministerial discretion, then he expected that the case would be on his desk within a few days.

This case, in fact, went back to the Department and they handed it back to the first decision maker. When I got to know of it, from a Freedom of Information search, it was disgraceful. The departmental officer had said to himself, "I'm not going to admit I've made a mistake." So he started immediately writing all the reasons why it shouldn't go to the Minister for ministerial discretion. In the meantime, though, a lawyer decided to appeal. It went to the Federal Court and the Federal Court Judge concluded that he couldn't find any error in law but agreed with the Tribunal that this man would die so the judge recommended that the case went back to the Minister.

But did it go to the Minister? Not without *my* intervention!

I was contacted sometime around Christmas Eve. The brother, who's living in Adelaide, rang me and said, "Could you take this case?" I was not keen but in the end, after reading the decision, I agreed to assist.

I submitted a request for Ministerial intervention but it was knocked back. Then I got the paperwork under FOI and I was furious when I saw that the case officers had completely ignored the comments by both the Tribunal and Federal Court as to their humanitarian and public interest concerns. And of course, they had ignored my submission as well.

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[4] IBID, p 63

I went to Phillip Ruddock and I said to him, *"You need to have a look at this,"* (in front of his minders), *"because this is a case that very clearly fits into your guidelines."* I knew that he'd said that if any case was referred to him by a Tribunal then he expected to see it, and he hadn't. It was a total cover-up by the Department.

What the Minister then did, of course, was to intervene. And he intervened in such a way that he gave the applicant more than he would have received normally, probably as both compensation and as acknowledgement that he agreed totally with the Tribunal, the Court and me.

The Minister gave the man a permanent visa allowing him to sponsor his wife and children which is what he needed.

If I hadn't taken that case, that Department would have totally ignored the recommendations, not only of the RRT but also of the Federal Court, and Phillip Ruddock would never have known!

One of the things of interest in the Report, surfaces very early where we read that the Committee requested from the Minister, which means the Department, "detailed case file information"[5]

According to the Report:

*"All of the Committee's requests for detailed case information were met with resistance, initially from DIMIA and ultimately from Senator Vanstone."*

Their responses to these requests are summarised.

"*At a public hearing on 23 September 2003, the Committee asked DIMIA to provide case files where Mr Kisrwani and Ms Marion Le had made representations. On 31 October 2003, DIMIA wrote to the Committee advising that the request raised significant workload implications for the department and that it would take an estimated 120 person days to prepare the files for the Committee's perusal."*

The Committee refined its request to encompass only "... 17 cases in respect of which Mr Kisrwani had made representations".

Despite an assertion on two days by Ms Philippa Godwin, a DIMIA deputy secretary, that the DIMIA would provide the answers that the Committee was seeking, those answers never eventuated.[6]

The Report made interesting reading particularly because, until the Report was published, I didn't even know they were wanting to look at my files. I would have been more than happy to have provided my files so that the Committee could see what was going on.

[5] IBID, p 6
[6] IBID, p 6

The case against Phillip Ruddock actually amounted to the fact that he was willing to take on board requests from people in the community who approached him.

I was questioned at length about that, "Do you think this is right? Do you think that if you've got the ability to approach a Minister that you should be able to do that?" And I said, "Why not? That's how a democracy works. People should be approaching their Minister, or their local member. They should be approaching the Minister, if they can, and if they can't, then they need to find someone like Gerard or Anne Henderson, or me, or someone who's there, with the expertise, with the reputation that these Ministers, these people whom we've voted into Parliament, can actually say, "Okay I will take on board that this person has a legitimate concern" and look at the case again.

I could tell you about file after file where I had real concerns about who is making the decisions. Numbers of us who criticised the policy of the Department, the policy of the Government, again said that Phillip Ruddock was assiduous in what he was doing, in the work that he did. When files were put to him by his department or by community people, he did look at them, more than any other Minister I know.

He was only joking but he once said, "It's lucky that they've [DIMIA] got you and me" and I responded no, that it was really bad because if the system has to rely on us then it's no good at all and needs total revision.

So my wish list for this term of the Liberal Government would be that there is a total revision of the way cases are processed and that the current Minister takes a very serious look at the recommendations of the Senate Committee.

In particular, there is a real need for someone to look at who is making decisions about what to pass on to the Minister.

2. <u>The question of "dob-ins".</u>

Dob-ins are becoming more and more common and generally occur by letter or telephone call to the DIMIA when anonymous persons secretly contribute something adverse to an individual applicant's file.

Let me give you an example from perhaps the most infamous of all asylum seeker cases who has been the victim of a dob-in – Ali Bakhtiari.

Poor Ali Bakhtiari was dobbed in. He was dobbed in, along with another person who became my client. The men were said to be brothers, Pakistani citizens rather than Afghani, guilty of giving false details of their families and nationalities to the DIMIA. I went all the way to the Afghanistan to prove that my client was who he said he was and I proved it. We have not, however, yet been able to find the identity of the dob-in.

It's very complicated so just take it from me.

Dob-ins generally have nothing to do with terrorism but are often based on gossip - asylum seekers married to someone or not married to someone - very trivial stuff in

fact but untested and unrevealed can lead to people being detained and removed from Australia.

With the Afghani case-load, the DIMIA put a lot of faith in the now largely discredited language tests and dob-ins which led to many genuine Afghani asylum seekers being detained on suspicion of being Pakistani for four years before eventually being released on temporary three year protection visas (TPV's).

Documents on one DIMIA file indicate that a number of unnamed informants have told the Department that the applicant is lying about his identity. While some informants, however, had apparently given similar information there were apparent inconsistencies. The Refugee Review Tribunal requested, from the DIMIA, details of the sources of the dob-ins but was advised that DIMIA is *"under strict obligation to keep the identities of persons who are the sources in these circumstances completely confidential"*.

Isn't that incredible?

There was another dob-in case of a young couple in Adelaide. Theirs is a very sad story. They fled to Australia from the Milosovic ethnic cleansing in 1999. They were terribly traumatised, came here and they are much loved by the local community who have supported them during the time they have had no work permits - over two years whilst they waited for an answer to their request for Ministerial intervention.

Someone dobbed them in. We didn't know this and we couldn't work out why Phillip Ruddock would not intervene in this case. He kept saying to me, "I know you've put another letter in about that case but there's an allegation on the file". We put in another request for files under the Freedom of Information legislation (FOI). I've had a separate case on foot for the little girl in the family, so I decided to wait.

Then, back it came, an unanswered, unexplored, dob-in, not a letter, but a file note recording that on a particular day a man who identified himself only by his first name and who left a mobile telephone number, walked into the office of the DIMIA in Sydney and said that Mrs A in South Australia (she's never been to Sydney) is living under a false name with her husband, and that a woman called Mrs B who is living with them is in reality her mother.

Mrs B also had an application before the Tribunal. This information was passed to the Minister as fact. They were accused of very serious immigration fraud. They had, in other words, adopted false names, and were living with a woman who is supposed to be the mother of the wife who is also lying to the DIMIA and Tribunal.

These are very, very serious allegations which one would imagine would lead to immediate investigations being undertaken.

Those allegations had been there for over two years. It has stopped those people accessing ministerial attention because the allegations went,as fact, to the Minister. If you saw the file note, you'd be horrified at such hearsay.

I rang my client and asked if she knew Mrs B? She thought for a few seconds and then said, "Oh wait a minute, about a year and a half ago she stayed with us for a couple of weeks because she had nowhere to go. She's a psychiatrist."

It took my client two days to locate Mrs B and I spoke to her on the phone. I also spoke to the woman with whom she now boards - a retired Correctional Services Officer who was absolutely furious at the accusations.

Mrs B was able to substantiate her identity and proved the allegations to be totally untrue. But there has been no apology from the DIMIA and probably no retraction on advice to the Minister. Those dob-ins are deciding who's coming to this country. That's just one example and there are many others.

This couple and Mrs B were anonymously dobbed in and there was not a basis of truth to the dob-ins. So when John Howard said, "We will decide who is coming here...", it's not so when we have dob-ins allowed to influence a person's right to stay. A man walked into the DIMIA office, didn't even give his full name, didn't give an address, gave a mobile number which they couldn't connect with later, and wrecked a family's life.

3. False travel documents.

You all know that people often utilise false travel documents when they're fleeing war-torn countries because they can't get out any other way. Frequently they don't have any documents because of the haste in which they flee.

When I was growing up we all thought people were heroes if they had escaped Nazi Germany or emerged from behind what was then called the Iron Curtain by sneaking across borders, clambering across the Berlin Wall or swimming from China to Hong Kong, to finally get to freedom.

Now I'm not for one moment condoning the current people-smuggling operations because they are unscrupulously conceived and lead to people's deaths. But many people do come on false documents and there's no crime in that if they're legitimately fleeing persecution. That's the only way they can get out.

The real problem that goes unnoticed, the real crime, is that we pass off or send people overseas to countries, where they can no longer get admission, on false travel documents. Having decided who is NOT staying in this country we then decide to remove the unwanted by deporting them.

The Edmund Rice Centre for Justice and Community Education, in cooperation with the School of Education, Australian Catholic University, conducted a study of Australia's treatment of forty rejected asylum seekers and their published report, *"Deported to Danger"* , gives a fascinating and chilling insight into what has happened to some of Australia's deportees.

In 2002, the Edmund Rice Centre decided to seek deported asylum seekers and interview them overseas. A disquieting interim report was published and given to the

Minster through DIMIA and to the UNHCR in October, 2003 The final document was published in 2004 and should be compulsory reading for anyone interested in Australia's border control policies.

Of course, the Department initially denied much of the report – particularly DIMIA denied issuing false documents and misleading detainees as to where they were being sent.

In quite a public spate, I produced my files and letters I had written to the Minister and DIMIA, almost word for word documenting what had been said to me at this end from the people in Port Hedland when they were told "We can give you false travel documents that will allow you to get in to Syria" and actually issued them to a group of Kuwaiti Bedoons who were then removed from Australia..

The Edmund Rice Centre researchers have included in their Report photos of some passports and documents that were provided to these people.

The Minister can deny it but the Department knows they issue them and in one of my cases when the matter went to Court, the fact was admitted in evidence.

DIMIA obtain travel documents that are said to be Australian travel documents. They look like passports but they are valid only for leaving Australia and have no validity for further travel.

A telling paragraph contained in the Report refers to "the material evidence of the apparent duplicity of some Australian officials" emerging in the stories of deportees.

*"T2 said, I agreed to leave as I had a conversation with Mr X; he works with the Ministry of Immigration as a Manager of Departure. He said: "If you can get a false passport from a smuggler, I will take you to any country." He was given a ticket purchased by DIMIA to travel from Sydney to Kuwait with a seven day 'stop over' in Damascus. No entry documents were available for Kuwait and T2 alleges that he was told to enter Syria on the short visitors' visa and then continue to live there illegally."*[7]

In the case I took to Court, when that evidence was produced to that particular departmental officer, he did not deny the conversation which had occurred also with my client but said it was a joke. I don't think so!

My client, part of the group in Port Hedland who was party to this advice, refused to trust the DIMIA and is still in Australia, released on a bridging visa and willing to give evidence at any time of the truth of the evidence quoted above from the Report.

I can tell you time and again about the stateless people who are being forced to apply for these travel documents and then are being whisked away to detention or constantly being threatened with deportation.

[7] Edmund Rice Centre For Justice & Community Education: DEPORTED TO DANGER, p 38

My wish-list for this Government contains a plea that we sort out the problems of stateless people so that Australia does not have to demean itself in the international scene by providing people with documents that are false, misleading at the very least, and that are a total shame on our country.

The other alternative, in law endorsed by the High Court, is that stateless people can be detained for the term of their natural life in our remote desert or island detention centres. This is clearly an unthinkable abomination. We must bite the bullet and say to stateless people, "Look we'll give you a haven; we'll let you stay here."

4. The Pacific Solution, so called.

There is nothing pragmatic about a politically motivated decision that makes processing offshore something legitimate, outside of the legal jurisdiction governed by Australia itself.

I've been to Nauru - twice. The Minister herself gave me jurisdiction to go to Nauru. I always know when the Department's got a problem to solve. They allow me in to do something so that it can be solved. It really is a game and as long as you know how to play it, and I've been playing for twenty-five years, you can solve it for the disenfranchised people, for the Government of the day and for the taxpayer.

But I want to solve it on a bigger level. One hundred and forty nine Afghanis came to Australia from Nauru after the cases were reopened this year. Twenty-two others went to New Zealand – the last of the Tampa refugees processed by the UNHCR.

In late September, the Department asked me to go to Nauru to try to solve the problem of the Iraqis. I was given three days notice and told, "You can go." I said I had cases scheduled with DIMIA interviewers in Launceston. The Department immediately arranged with the Victorian office to put off my interviews in Launceston.

Then I asked – "Are you going to fund me?" Long silence and then, "Well, Marion, you know that we don't actually do that."

I told them I had no funding, that everyone was tied up with elections, nobody was really providing any monetary assistance to the Iraqis and family members here wanted guarantees, which of course I couldn't give, that if they provided funding their relative would enter Australia.

By funding I just mean, seriously, the airfares. So those Iraqi re-interviews went ahead without any direct legal representation though I was able to be part of a telephone link in one case and we had some limited input through my office. [8]

[8] The results from the Iraqi re-interviews on Nauru released in December were disappointing given the escalation of violence in Iraq and I believe this was primarily because the Iraqis were not able to express themselves clearly due to their significant mental and physical deterioration after so long on Nauru. All families with children were accepted and entered Australia on 14 December. Only two single men, both

Amanda Vanstone is pragmatic enough to know that it's gone far enough. If you're looking at the Pacific Solution, it's not a solution obviously. There's a joke in my office. We say we are the Pacific Solution. I would have the biggest collection of immigration files of anyone in Australia. The Nauru files are there, the Baxter files are there. I've already given a huge van-full and half a truckload to the National Library, of all my Vietnamese and Cambodian files over the years.

Pragmatically speaking, in conclusion, I would like to see these four areas of concern addressed by the new Government.

In relation to the ministerial intervention process, let us make sure that it is based on truth. We need to tidy up the process, make it more open and more accountable.

With dob-ins, a lot of people do not know when they're being accused. We've asked if we're allowed to see accusations but generally our requests are denied and the accusations stand untested.

It's just unbelievable. It couldn't happen in the real world that you're not allowed to face your accuser or answer in person. This needs to change.

The Government, and in particular the present Attorney-General, Philip Ruddock, expresses concern, rightly, about the travel documents, or lack of them, of people coming here but then we issue misleading documents to people we deport to countries where they are not secure and are often in danger. Believe me, it's happening and by keeping silent we give this practice our support.

And then of course there's the Pacific Solution. The Afghans and Iraqis who remain on Nauru need to be assisted to come to Australia – there will be no Pacific Solution until Nauru is closed and those Afghanis wrongly accused of being from Pakistan are given justice. When the Kurds and single Iraqis who are not judged security risks to Australia finally set foot here, then we can trumpet a Pacific solution.

Australia is a great country - I acknowledge with pride New Zealand as my place of birth but I am proud to live here. Let us work together to find pragmatic and just solutions in the areas I have addressed."

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That Sydney Institute paper, delivered prior to the 2004 Election, and published afterwards, is almost prophetic given the Cornelia Rau and Vivian Alvarez Solon scandals which awoke the public and, fortunately, the Prime Minister and the Minister, to the need for drastic reform of the Department.

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Christians, have been accepted at the time of going to Press. Yet the UNHCR has extended the mandate of Complementary Protection to all the Iraqis on Nauru.

I am unfortunately constrained by time, rather than material, in making my submission to this Committee so I will outline other areas of concern and enlarge on them later if time permits or if requested by the Committee.

- BORDER CONTROL:

Border control is an essential component of Australia's immigration programme.

Detention of unauthorised arrivals, whether they arrive by sea or by air, is justifiable in the short term in order to:

(a) Verify identity – this would include an examination of any fraudulent documents or ascertain the reasons why the person has entered on false/fraudulent documents
(b) Ascertain the reasons why the person has come to Australia and what expectations he/she holds
(c) Allow processing of any refugee/asylum claims to begin
(d) To protect national security

I am not an advocate of "open borders" but nor am I in favour of long term detention. I am totally against the detention of children and the separation of families by the detention regime. I have witnessed the long term effects of detention on children which date back to the first detention of the Cambodian boat arrivals in 1989.

- IDENTITY ISSUES:

If it has taken us (DIMIA) over four years in some cases to identify people as Afghanis whom we have detained as Pakistanis, what hope do we have of identifying an individual terrorist?

The cases of Valbona and Ergi Kola; Majlinda and Alban Bitani; Vivian Alvarez Solon and Cornelia Rau are equally horrific and give me little confidence that the trining of DIMIA officers in some sections of the DIMIA Compliance areas is adequate let alone reasonable given the serious nature of the tasks they are charged with performing

It is apparent that there is an urgent need for training of DIMIA Compliance officers in many areas including document and identity fraud.

DIMIA should consider employing outside experts and academics to train and equip officers to deal competently with issues of identity verification and document fraud.

- THE KOSOVO "SAFE HAVEN CASE LOAD"

This committee should examine why the future of some of the people comprising this case load still remains unresolved – I am prepared to give evidence in relation to the unresolved cases referred to the Minister for her intervention. Some of the files of this group are apparently missing or destroyed.

• APPLICANTS FROM SOUTHERN SERBIA (Preshevo Valley)

The Committee should request information from the DIMIA and the DFAT as to the reality of returning anyone of Albanian ethnicity who came to Australia either as a Safe Haven Refugee or who originates from the Preshevo Valley and left there at the time of the 1999 Kosovo Conflict directly, to the Preshevo Valley.

I am prepared to give evidence in relation to this matter.

**FORMAL REQUEST FOR AN ENQUIRY INTO THE TREATMENT BY DIMIA OF VALBONA AND ERGI KOLA, AND MAJLINDA AND ALBAN BITANI AND THE REASONS FOR THE DETENTION OF MR & MRS KOLA and ALBAN BITANI in BAXTER IDC**

**I wish to request this committee to call for a full enquiry into the cases of:**

**Valbona and Ergi Kola, and**
**Majlinda and Alban Bitani**

**Valbona Kola,** who is pregnant with her first child, is currently detained in Glenside Psychiatric Hospital in Adelaide. Her husband, **Ergi,** is detained in Baxter IDC. Both have been seriously damaged by their time in detention and the so-far unsubstantiated allegations made against them

**Majlinda Bitani**, with her daughter **Gracey**, are currently living in Canberra on Bridging Visas E, completely dependent on the goodwill of Majlinda's fellow countrymen (and women) from the Preshevo Valley region of South Serbia. **Alban Bitani** remains locked in Baxter IDC whilst a care plan for his release into community detention is put together by the Red Cross for submission to the Minister next week.

Majlinda is pregnant with her second child and the trauma she is suffering from the detention of her husband has adversely affected her, her four year old daughter, Gracey, and her unborn child.

She has no means of support – financial, physical or emotional except that provided by friends in the Canberra and South Australian community.
She is constantly being told, through DIMIA communications to me, that her husband will be released but this has not happened.

Given that the family were on Bridging Visa E's without work rights for about two years before Alban was summarily detained, this sudden concern about a "care plan" for his release rings very hollow with Alban's wife who, pregnant, has been left to care for her daughter without the right to work and with the only Departmental "care" apparent being her reporting requirements.

At the moment Majlinda is able to access some medical treatment, and assessment of her pregnancy, through Calvary Hospital in Canberra where she is booked for her confinement. This relieves some of her anxiety but not much.

I find it impossible to believe that a so-called "care plan" can take so long to put to the Minister given that I was able to organise the successful re-location of over 140 persons from Nauru directly into the Australian community around Australia in about three weeks.

Both Valbona and Ergi Kola are now seriously, and perhaps irretrievably, damaged by their treatment at the hands of the Adelaide DIMIA Compliance Office.

Majlinda and Alban Bitani likewise have suffered from ill-considered decisions made by the Adelaide DIMIA Compliance Office.

RECOMMENDATIONS FOR THIS COMMITTEE:

1. Call for a full and open enquiry into the treatment of Valbona and Ergi Kola from the date of their arrival in Australia and their voluntary presentation at the Brisbane Office of the DIMIA
2. Call for a full and open enquiry into the treatment of Majlinda and Alban Bitani from the date of their arrival in Australia and their voluntary presentation at the Brisbane Office of the DIMIA
3. Ask for the qualifications and training of Compliance officers working within DIMIA throughout Australia but in particular in the DIMIA Adelaide office

• TPV HOLDERS

The TPV regime is detrimental not only to the holders of the TPVs but also to the host society. The ever increasing variety of TPVs is confusing to holders and helpers alike. I am happy to address this issue more comprehensively if called before the Committee.

• NAURU

As outlined briefly at the beginning of this submission through my Sydney Institute paper, I have been directly involved with the reassessment of the Nauru asylum seekers and refugees.

In support of the work undertaken by myself and Claire Bruhns working with me, the Minister, Senator Vanstone, noted in a letter to Hon Tony Windsor MP, earlier this year that:

***"The Department is thoroughly examining all information received from Ms Marion Le on individual asylum seeker cases"***

During the Senate Estimates in May this year Mr Robert Illingworth, DIMIA, also said:

***"We are receiving and obtaining information constantly from a wide range of sources in relation to essentially all of the case loads that we are responsible for. The case load on Nauru is no different from that. We have been receiving and obtaining information in relation to people who are not in the Afghan case load. We expect we will be receiving more information, which is being provided to us by***

***an advocate supporting some of those people. We have received some information—a considerable amount of information—from that source already. We are looking closely at what we have received and we will look closely at the material which we expect will be coming shortly but we are not ruling any particular case out."***

Thirty-two people (all males) still remain, after four years, in detention on Nauru:

11 Afghan
04 Kurds from Iraq
02 Iranians
02 Bangladeshis
01 Pakistani
12 Iraqis

All of those claiming to be Afghanis have now been clearly identified as such by the Afghan Embassy and Government Officials. It is very clear that they remain in fear of being returned to Afghanistan and that they should be granted refugee status and allowed to enter Australia. They have suffered long enough. I believe them all to be Convention refugees.

The four Kurds are requesting assistance from another Nation and are also technically being assisted by the UNHCR. They have not requested that their cases be assessed by the Australian DIMIA so they remain outside of our recognised caseload.

Given that the cases of all Iranians in detention have been re-assessed in the light of new information available to the DIMIA, it seems reasonable that the same opportunity for a reassessment should be offered to the two Iranians on Nauru.

I have examined the case of one of the Bangladeshis and have made representations on his behalf which DIMIA have assured me they are considering.

The remaining Iraqi single males comprise of several to whom we have obligations under Conventions other than the Refugee Convention and Mr Illingworth assured the Senate Estimates that these considerations would be taken into account "when the time comes."

I submit to this Committee that the Iraqi young men on Nauru are now in need of some practical solution to their situation.

There are, for instance, two young men there who have elder brothers in Australia who are competent and capable to accept the boys into their families. Both have lost their parents and are suffering from serious PTSD and related conditions. Another two men are in urgent need of medical assistance.

The UNHCR have extended "complementary protection" over the Iraqis on Nauru and the newly appointed UNHCR Regional Director, Neil Wright, called on Australia to extended a humanitarian hand to these people after he first visited Nauru earlier this year,

Canberra has settled some 25 children from Nauru into the community. Compared to children who have been in the on-shore detention centres these children are reasonably well adjusted and resilient. I have little hesitation in saying that overall the facilities and surroundings on Nauru served the detainees, particularly the children, better that the onshore facilities. My experiences of Villawood, Pt Hedland and Baxter allow me to confidently make the comparison.

That is not to say that detention on Nauru was not damaging.

And it is certainly damaging now to the small number of males who live there with their long term futures unresolved in constant fear of sudden deportation to a hostile environment from which they fled some four years ago.

- LOMBOK

I wonder whether the committee feels that its terms of enquiry extend to Lombok, Indonesia where I understand we are still supporting the detention of some Afghani, Vietnamese and Iraqi asylum seekers. I have a particular interest in Mrs Laila Sedaqatyar, her husband and two daughters born in 1997 and 1999.

It is my understanding that her parents, siblings and various cousins, uncles and aunts are residents and citizens of Australia yet Laila and her little family remain on Lombok. Her parents are distraught; the family is able and willing to finance their settlement in Australia but an application under the SHP category was rejected. It seems that whilst other members of her family were accepted for entry to Australia, Laila was rejected because she was considered to be part of her husband's family and he was assessed as not having a claim for refugee status.

I fought the battle of gender inequity many years ago with the earliest boat arrivals in Pt Hedland and it is saddening to me as a mother to see a young woman separated from her family; her children separated from their grandparents in this cruel and nonsensical manner. Unless there are serious security concerns surrounding her husband, surely we can reunite this little family with their loved ones?

- BVE HOLDERS

The misery caused to people who for one reason or another are put on Bridging Visas E has been incalculable. A BVE carries an automatic "no work" condition which means that people who have been working and living legally in the community may suddenly find themselves without any legal way to support themselves and over months be reduced to penury. It appears that the current Minister and her staff were unaware of the "no work" condition when the case of Daisy and Jude Morris and their autistic son Rophin hit the media.

The Morris family had been legally in Australia for more than nine years when they applied for permanent visas in order to take up a position with the Baptist churches in the Canberra/ Queanbeyan/NSW region.

Their application under the RSMS was rejected by the DIMIA on the basis of Rophin's autism. The application for review to the Migration Review Tribunal was doomed to fail for the same reason but the legitimate means for the Morris family to obtain a visa was through the Ministerial intervention powers available under s 351 of the Migration Act.

Mr & Mrs Morris applied to the Minister for her intervention but twenty-eight days after their application for review to the MRT was determined their associated Bridging Visas lapsed and they became technically unlawful although they had made a legitimate application to the minister for her intervention. In the past, such an application would have not only kept them legal but also able to work – not so once a Bridging Visa E is issued by the Department.

## MORRIS FAMILY MIGRATION CHRONOLOGY IN AUSTRALIA

- **27/3/1992 Rophin born**
- **12/1/1994 Jude, Daisy and Rophin Morris entered Australia on Occupational Trainee subclass 422 visa valid till 3/1/1995**
- **2/6/1995 Cultural social/ temporary visa class TE subclass 442 granted valid until 19/12/1995**
- **19/12/1995 Cultural/ social temp. visa granted, with period of stay until 30/12/1997**
- **15/7/1998 granted Temporary Business visa sub class 457 to stay until 15/7/2002**
- **7/8/2002 Application by Life Resources Centre for approval of a nomination position as an approve appointment was approved.**
- **5/7/2002 lodged Employer Nomination Residence subclass 857 visa**
- **26/1/2003 Application for PR rejected**
- **7/2/2003 Lodged appeal with MRT**
- **2/9/2004 Appeared before MRT in Canberra**
- **24/9/2004 Rejected by MRT**
- **14/10/2004 Application to Minister for Ministerial Intervention under section 351**
- **30/11/04 Immigration officers visited the family and issued Bridging Visa E – no work rights – not even voluntary work permitted**
- **2 /12/04 My Press Release issued**

*GOVERNMENT'S DOUBLE STANDARDS APPARENT: FAMILY SERVICES VERSUS IMMIGRATION –*

*A disabled child whose family has been refused a visa by the Department of Immigration, because of his disability, will today be part of a promotion by the Minister for Family and Community Services, Hon Kay Patterson, on the eve of International Day of People with a Disability.*

*Rophin Morris has lived in Canberra since the age of 22 months with his parents, Jude and Daisy, who came here legally from India ten years ago.*

*In 2002, Jude applied for a permanent visa on the basis of a sponsorship from the Queanbeyan and Ulladullah Baptist Churches but the application was rejected on the sole basis of Rophin's disability – he has been diagnosed as mildly autistic.*

*The family has now asked the Minister for Immigration, Senator Amanda Vanstone, to intervene on their behalf and grant them the permanent visa that will enable them to continue their counselling and other work with the marginalised and homeless in the Canberra and Queanbeyan region.*

*Two nights ago, however, when the family had settled to an early night in bed watching a hired DVD, a knock on the door sent them into an emotional whirl.*

*Four immigration officers were quickly in the room, examining their passports and advising Jude and Daisy that all their community and social involvement must cease immediately.*

*Daisy set up a support group in Queanbeyan for marginalised women; substance abusers and single mothers from different cultural backgrounds and she has also been working in Mitchell with RAJAH – supported accommodation with the homeless. Yesterday Daisy gave her resignation to both groups.*

*In Queanbeyan, Rev Peter Junor accepted Daisy's resignation with surprise and reluctance. Daisy's gaol was to build self-esteem into the women and her resignation leaves the programme in disarray.*

*Jude, who has a Master's Degree in Commerce, a Bachelor of Divinity and an Advanced Diploma in Family Therapy has being involved voluntarily in working with young offenders on programmes of suicide prevention and intervention.*

*Jude, Daisy and Rophin were in shock after the Immigration officers left their rooms at the Youth With A Mission campus where they live as part of the Christian community there.*

*Marion Le, the Migration Agent who has assisted the family with their application to Minister Vanstone, said that she was sure that the huge community support for the work of Jude and Daisy would convince the Minister that this family should not be rejected on the grounds of the disability of their child.*

*"The family is valued by all who meet them", she said. "Rophin is a delightful boy whose progress both intellectually and socially is a credit to his family and to the people who love and care for Rophin and his parents."*

*The Hon Kay Patterson and Ms Sussan Ley, MP, Parliamentary Secretary, will launch the Australian Governments' 2005 Disability Calendar, ABILITY, today at 5.00pm at the Elizabeth Room, Crowne Plaza, Binara St, Canberra.*

*Rophin will be featured on the calendar.*

> ***"It's ironic and sad," said Mrs Le, "that whilst the Minister for Family Services and Disabilities is claiming 'Australia has a longstanding commitment to promoting and protecting the rights of people with disabilities at both the domestic and international level' the Department of Immigration are sending the totally opposite message to the same family – you are not wanted here, despite all your talents and the love of the people of Canberra – Queanbeyan, because Rophin has been born with a disability."***
>
> ***Mrs Le re-iterated that she was sure that Minister Vanstone, if the full facts were put to her, would exercise her power to grant the family permanent residence in Australia.***

This Press Release brought immediate attention not only to the Morris family but to the promotional calendar on which Rophin featured. Apparently calls to the Department for Family and Community Services (DFACS) requesting the calendar exceeded anything that Department had hoped to achieve in publicity. After an initial reaction of recalling the calendar, it was again released by DFACS and the media ran with the two-fold issues – the "double standards" and the need for Ministerial intervention in the Morris family's case.

The Minister, Senator Vanstone, was inadequately briefed when she faced the media questions. It was clear from the aggressive responses to me via the telephone that her senior advisers were apparently unaware (to put the best light on their behaviour) that the DIMIA issuing of a Bridging Visa E to a family such as the Morris' who had never put a foot wrong in their entire lives in this country, and who were indeed actively contributing in a highly valued manner to the most marginalised in our society, meant that they were immediately denied work rights (even voluntary – in the case of Mr Morris preaching and counselling in the church community – anything which could be vaguely seen/sensed as re-numerable became off-limits), Medicare, travel outside Australia and were transported to an indeterminate time in limbo awaiting a decision from the Minister. Staff in the Minister's office, were certain, they told me in no uncertain terms, that this could not be the case.

I was at pains to assure them that the DIMIA policy with the issuing of a BVE was that unless the Minister was actively considering, and said so, a case for his/her intervention, then the BVE would carry a mandatory "no work" condition.

I reminded the Minister's office of my on-going concern for another family – the Shefket Halimi family of eight - who were rendered illegal because of a failure by the Minister to act on an intervention request put in train by the previous Minister, Philip Ruddock, and the obvious "turning of the blind eye" by all concerned in the bureaucracy.

There is no doubt that the Minister's office and sections of the DIMIA knew the invidious position in which the family was placed by their failure to inform the Minister correctly.

I was also in an invidious position with no-where to turn except to almost on a daily basis "beat on the doors of power". This was clearly a problem that needed solving but no-one took any action.

Indeed, just before the 2004 Election a Senior Officer spoke to me about the illegal status of the family but said that issuing of a BVE with the mandatory "no work" condition would clearly destroy the family and reduce them to penury.

I could only agree. At this stage the family had already been illegal for over six months and were unaware of the tenuous nature of their existence although they were battling on without access to Medicare or any kind of welfare assistance.

Mr Halimi was/is working in full-time employment; they have bought their own home and were/are operating a machinery repair business from the attached shop-front. They later invested in a fish and chip shop which Mrs Halimi operated.

The whole family is held in exceedingly high regard by the local community which to this day is largely unaware that their visa status remains unresolved.

The issuing of a Bridging visa E would strip the family of everything – their work rights; their dignity and their possessions. It would undoubtedly psychologically, mentally and emotionally destroy a family who had fought so hard to rebuild their shattered lives from the turmoil of the Milosevic regime and the deliberate policy of ethnic cleansing he put in place in the Preshevo valley of southern Serbia.

There was nothing further I could do once the request for intervention had gone to the Minister.

In any case, the status of the Halimi family was always, from the day Minister Ruddock lifted the bar, clearly a problem for the DIMIA who had worked it out with Minister Ruddock and now had to bring the new Minister, Senator Vanstone, up to speed.

To this day I have still not been able to fathom how much Senator Vanstone has been told or why this family is being made to suffer the indignities associated with a Bridging Visa when they were clearly promised a fast track to permanency.

I will address the Halimi family's situation in the next section under Ministerial Intervention Requests (s351 of the Migration Act).

To return, in this context, to the Morris family where I was again faced with the possibility of a family being destroyed because of the inaction of DIMIA officers who seem in their recommendations to Ministers often to focus on negatives rather than positives.

In this case, a little boy whose congenital condition, autism, was seen only in the light of the potential, and non-negotiable, "cost to the community" would be subjected to the stress which his parents would now endure awaiting a decision which could be years off.

Neither the parents nor the child deserved that stress. And the community has a right to know what policies are being put in place in its name and see whether they support those policies once made aware of them.

In the case of Rophin Morris and his parents, the community support, and that of the media, was overwhelmingly in support of the family.

The (Canberra) CITY CHRONICLE, Tuesday, April 26, 2005 reported how ACT Liberal Senator Gary Humphries phoned the family to tell them that Senator Vanstone had granted them permanent visas. Written factually and succinctly by Nathan Brown the history of the family's eleven years in Australia is recounted briefly but the sting is, sadly, in the tail:

> *"...the family's last hope lay with an appeal to the minister, which they lodged in October last year.*
>
> *Floods of letters of support came in from everywhere, from politicians, friends, and even people the family did not know.*
>
> *"The support from the community was overwhelming," Daisy said.*
>
> *But the most touching letters were from people the family had helped – from people who had decided not to take their life because the family had shown them dignity and self-worth.*
>
> *With all they had been through, at no point did the family ever think about giving up.*
>
> *"We thought if we give up what would happen to Rophin? Daisy said.*
>
> *"What would happen to these people?" Jude said about the people in their programs.*
>
> *"At the end of the day, helping humanity – that's been our goal," Jude Said. Migration lawyer [sic][9] Marion Le, who worked on the family's case, said she had no doubt once the Minister saw the case the visa would be approved.*
>
> *"I'm really pleased; it's the right thing to have done," Mrs Le said.* ***But Mrs Le said not all cases get seen by the Minister, even if appeals were made*** *(emphasis mine).*
>
> *"Any law that discriminates on disability is a bad law," Mrs Le said.*
>
> *"No-one can help having a disabled child."*
>
> ***A spokesman for Immigration Minister Amanda Vanstone said there were no plans to change the disability arrangements in the migration legislation*** (emphasis mine)."

My question to this committee, in response to that "spokesman", is "Why not?" Why are there no plans to <u>at least look</u> at the legislation in the light of the Morris case?

Why do this family and others like them, have to endure such a stressful, debilitating, and punitive system - thankfully truncated in this case because of the intensity of the media, especially that of the CANBERRA TIMES, interest in the family?

[9] Please note that I have never represented myself as a lawyer and whenever possible I act quickly to correct any such reference – the media and migration clients unfortunately sometimes use the term "lawyer" instead of "agent".

**There are five matters arising from this specific case which need addressing by the Committee:**

1. **The arbitrary nature and inflexibility of the health criteria applied in cases like that of Rophin Morris (and in the tragic case of the Kayani family where the Australian citizen father self-immolated at the very doors of Parliament House because the disability suffered by his daughter prevented the family being able to reunite in Australia) and the indisputable fact that the only way for such a person/family to succeed is to go to the Minister by the convoluted pathway of two rejections (one at DIMIA and one at the Review Tribunal)**

2. **The mandatory "non-work" condition imposed on holders of Bridging Visas E; the punitive nature of such a condition and the inherent culture within the DIMIA and/or the policy which automatically imposes such a condition**

3. **The length of time taken by the Ministerial Intervention Unit (MIU) to pass informed recommendations to the Minister**

4. **The nature and scope of the information put to the Minister for his/her consideration**

5. **The qualifications and the capabilities of those employed in the MIU to pass intelligent, informed and compassionate recommendations, *"in the public interest"*, to the Minister**

## • APPLICATIONS FOR MINISTERIAL INTERVENTION

**REQUEST FOR MINISTERIAL INTERVENTION UNDER SECTION 351 OF THE MIGRATION ACT**

***Under Section 351, if the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 349 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.***

**REQUEST FOR MINISTERIAL INTERVENTION UNDER SECTION 48B OR s417 OF THE MIGRATION ACT**

*SECTION 48B-*

***If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 48A does not apply to prevent an application for a protection visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day on which the notice is given.***

*SECTION 417-*

***If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 415 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.***

Chronology of the background to the Ministerial Intervention process as it has been experienced by the Shefket Halimi family as recorded only in the telephone records book in my office (note that some calls may have been missed):

Fatime and Shefket Halimi were part of the original "Kosovo Safe Haven Caseload" accepted in 1999 and later granted three year temporary "Health visas". The family which now consists of six children aged 15 and under, were driven out of the Preshevo valley in Southern Serbia, formerly the FRY by troops serving under Milosevic.

In June, 2003, the then Minister, Philip Ruddock, decided to lift the bar and allow people / families from this caseload to apply for visas to remain in Australia. Thirty-seven families (about 90 individuals) were affected by his decision. Amongst the affected families was Shefket Halimi's.

In recognition of their industry and standing in the Albury-Wodonga community Shefket and his wife were advised to apply for business visas for which they were not strictly eligible with the idea that they would go through the system quickly and access the Ministerial Intervention process quickly and with little or no disruption to their lives.

At the crucial time, however, Philip Ruddock departed from his Ministry and became Attorney-General. Senator Amanda Vanstone took over and the fate of the Halimi family still hangs in the balance with the family now seriously disturbed as to their future especially since Shefket's younger brother, his wife and four children; Shefket's unmarried sister and his/their elderly mother were all recently granted permanent visas to remain in Australia. All family members are/have been my clients and I am at a loss to explain what has gone so badly wrong with a system that can treat a law-abiding, diligent and productive family in such a careless, destructive and thoughtless manner. It seems that the files have been lost or destroyed – certainly we have been unable to obtain anything meaningful under FOI.

The saga is illustrative of the culture identified by Mr Palmer in his report. Let us all hope that the Minister and her new secretary can move to improve the systemic flaws which are apparent in the way in which this family has been treated.

**This is the story over more than two years of the processing of the Halimi family's visas through entries in my phone record book:**

(1) 23/06/03 - Letter from [redacted], Director Humanitarian Entry Section, which contained the instruction for Shefket's Family to apply for a Business Visa, as opposed to a Protection Visa as suggested by Minister Ruddock – stated intention to "fast track" the family to permanency – a meeting with the ACT R/O confirms this – I refuse to sign the application as Agent on the record

(2) 12/08/03 – DIMIA Decision to refuse the visa.

(3) 12/02/04 - MRT Hearing

(4) 1/03/04 – I met with Minister Vanstone and amongst other issues I alerted her to the case of the Shefket Halimi family. The minister asks for the file to be forwarded to her directly after the MRT decision is handed down

(5) 5/03/04 - MRT Decision handed down.

(6) 29/03/04 – I asked Claire from my office to ring ACTRO to check that the Department had recommended the Shefket Halimi case to the Minister. At 11.25am - [redacted] (DIMIA) indicated that no-one knows who is taking responsibility for progressing the matter, and the Halimi's file can't be located[10].

(7) 5.04/04 – I wrote to the Minister requesting her urgent intervention and received a response thanking me for requesting that "the Minister exercise her public interest power under section 351" (dated 13/04/04).

(8) 13/04/04 - [redacted] (Compliance) rang my office to say she had been alerted by [redacted] that the family were about to become illegal, and she had been asked to give the family a Bridging Visa A. She requested that Shefket and Fatima be brought to Canberra with their passports and she would award them a Bridging Visa A in view of the submission on their behalf before the Minister.[11] (I was in Sydney at a Hearing at the time.)

**(9)** 20/05/04 – 3.15pm – Rang [redacted] MIU to check progress of the submission but was told she wasn't there and to try back the next day.[12]

**(10)** 21/05/04 – 12.30pm – Left another message for [redacted].

(11) 21/05/04 - [redacted] (MIU) rang back and explained to Emrys from my office that the whole process is taking so long because of the need to look at all the new country information and that she "hopes to have the document up to the Minister within a week."[13]

(12) 26/05/04 - [redacted] (Compliance) rang and stated that the "Halimis are illegal and need to apply for Bridging Visa E and that he was alerted by someone in the MIU."[14]

(13) 31/05/04 – I asked Claire from my office to follow up with the MIU and [redacted] stated that she will have the MIU Submission on the Minister's desk tomorrow (1/6/04).[15]

(14) 31/05/04 – Claire then spoke to [redacted] and he told her to tell [redacted] to mark the document attention to him. (Claire had already asked her to do that.)[16]

(15) 29/08/04 – I was concerned that no decision had been passed down before the election was announced, so I asked Claire to ring [redacted]. [redacted] confirmed that he had the MIU submission on his desk, "as we speak."[17]

(16) 10/9/04 – left message for [redacted]

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[10] Call book – 23/1/04 – 24/4/04 p89
[11] p117
[12] Call book – 27/04/04 – 13/07/04 p43
[13] p45
[14] p49
[15] p61
[16] As above
[17] As above

(17) 2/09/04 – Claire from my office spoke to [redacted] – he had been seconded to the election head-quarters – he informed Claire to deal with [redacted] and [redacted].

*(18)* 2/09/04 – Claire spoke to [redacted] who said *"stand back and let the Department do their thing – we wouldn't have names – we don't keep files here anyway."* Claire explained that the family had six kids and that [redacted] had reported he *"had the MIU schedule in his hand on Monday 29/8/04."*[18]

*(19)* 2/09/04 – Not content to *"stand back and let the Department do their thing"* I directed Claire to contact [redacted] office. She spoke to a woman called [redacted] who agreed to *"find out who is dealing with it and ring us back as soon as possible."*[19]

*(20)* 2/09/04 – [redacted] rang back and Claire briefed her about my concern to get a decisionfrom the Minister's Office as quickly as possible in order to regularise the family's status as they were illegal.

*(21)* 2/09/04 – Claire tried to ring [redacted] but he was apparently *"airborne between Adelaide and the ACT."*[20] Claire left a concerned message about the Shefket Halimi family with the receptionist.

*(22)* 3/09/04 – Claire spoke again to [redacted] at 1.10pm re faxing and emailing to [redacted]. Material relevant to the case was then faxed and also sent by email.

*(23)* 3/09/04 – Claire spoke to [redacted] 4pm – he had received the email and they talked about the details of the case. He requested a chronology in writing. Discussed another Preshevo Valley case that had some similar themes and in particular how untested adverse information had turned up in a MIU Schedule for the other family. [redacted] acknowledged that *"he couldn't understand what had gone on in this case and he looked forward to reading the file and making sense of it – appreciated the chronology and letters we were sending and asked if Claire could fax it to his home fax number."* – Claire's record of the conversation included the comment *"good general discussion about making the process better."*[21]

*(24)* 7/09/04 – Tried to ring [redacted] – and was told he was *"not available all week – travelling with the Minister."*[22]

*(25)* 21/09/04 – Claire spoke to [redacted] who confirmed he had *"talked to the people in the Department and had clarified the sequence of events." What is not clear is what happened between the MIU and the Minister."* He said he had hopes of meeting with Minister Vanstone within the next week or two – and he said *"leave it to me – the paperwork is jammed – they* (the family) *are not going anywhere – will contact us after meeting with the Minister ..."*[23]

*(26)* 5/10/04 – left three messages for [redacted].[24]

*(27)* 7/10/04 – left another three messages for [redacted] throughout day.[25]

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[18] Office call book (13/7/04 – 27/9/04) p101
[19] p101
[20] p103
[21] Office call book, p105
[22] p109
[23] p144
[24] p7 (new Office call book 28/9/04 – 24/11/04
[25] p13

*(28)* **9/10/04 – 9.30am - Fatima Halimi rang to say that she "dreamed John Nation said not to worry – she had her permanent visa!"**[26]

*(29)* 12/10/04 – left message for [redacted].[27]

*(30)* 15/10/04 – 9am – left message for [redacted] to please ring ASAP.[28]

*(31)* 22/10/04 – 5.15pm – left message [redacted] and gave congratulations to the office in relation to the election win.[29]

*(32)* 3/11/04 – 10.30am – left message for [redacted] (he was apparently in a video conference.)[30]

*(33)* 4/11/04 – left message with [redacted] – "[redacted] *still in Adelaide.*"[31]

*(34)* 4/11/04 – left two messages for John Nation with the Adelaide office.[32]

*(35)* 9/11/04 – left message at Adelaide office at 3pm and at 5pm for [redacted] to please ring my office.[33]

*(36)* 10/11/04 – rang FOI about why it was taking so long to get the FOI released for this family and was told "the file is in Athens therefore it can't be released."[34] I objected and asked for a partial release by Friday – FOI delegate very apologetic. (I had applied for the file under FOI 3/9/04 and it still had not been released.)

*(37)* 12/11/04 – 5.15pm – Claire spoke to [redacted] and he said "the fax sent was difficult to read (page breaks mucked up etc) and was an original sent? [redacted] stated that "*Nothing has happened - they have appointed a junior Minister (Peter McGauran to replace Gary Hardgraves) – and the Minister will be sending a lot of the intervention requests to him – but not ones that are complex and difficult like the Halimis – especially (when) Philip Ruddock has been involved – in conclusion – nothing happening.*"[35]

*(38)* 17/11/04 – left message for [redacted] asking whether or not he had received the chronology etc again by hard copy.[36]

*(39)* 29/11/04 – 4.45pm - Claire spoke to [redacted] about meeting again with the Minister re: the Halimis (and others).[37]

*(40)* 30/11/04 – Claire spoke to [redacted] – he reported he was yet to approach the Minister or Peter McGauran and was going on leave from 17/12 onwards – (RE: the missing files) – he confirmed that he "*only has an orange folder – an original file never comes to the Minister's office – actually there was one high profile case (not via the MIU) – not someone seeking a visa – someone who already had a visa but generally – never see files – only ever once when the Minister wanted to make sure that everything available to the Department was put before her – but apart from that one time – the Minister receives an orange folder which is generally about 1cm thick – he has about 1 cm for Shefket Halimi – he*

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[26] p13
[27] p19
[28] p31
[29] p49
[30] p89
[31] p93
[32] p93
[33] p117
[34] p117
[35] p133
[36] p145
[37] Office Call book – 25/11/04 – 1/2/05

*said all the material we have sent to Minister Vanstone (via him) will not be on any DIMIA file yet – it is still with him.*"[38]

*(41)* 30/11/04 – Claire spoke to [redacted] again about possible meeting times with the Minister – "computers are down – need to check with Amanda – this week is looking unlikely – but Amanda Vanstone is in ACT next week and he will check if she can see Marion Le next week and email Marion ASAP."[39]

*(42)* 6/12/04 – left message for [redacted].[40]

*(43)* 7/12/04 – 11.55am -left message asking for [redacted] to ring ASAP.[41]

*(44)* 7/12/04 – 2pm – Claire asked [redacted] about the outstanding request for Ministerial Intervention for the Shefket Halimi family. He replied "*there is no particular time-frame for these cases – why is this case any different – usually happens 2-3 weeks after Minister receives it from the Department.*" – Claire asked about proposed meeting with Minister - "*got the run-around with the possibility of a meeting in 2-3 weeks time – travelling tomorrow – long sitting day Thursday – Adelaide Friday – Cabinet meeting Monday – then overseas etc etc …*" [42]

*(45)* 9/12/04 – Left message for [redacted] 5.55.pm – Kylie rang back and said he was on another call.[43]

*(46)* 24/02/05 – I raised the issue of the remaining families from the Kosovar Safe Haven at the Ministerial Consultation Meeting in Sydney. I was directed to discuss the issue with [redacted] which I did.

*(47)* 9/3/05 – Claire rang [redacted] about the situation about both the Halimi families who are my clients (the other family's Bridging Visa was about to expire and at this stage the Shefket Halimi family had been quietly living WITHOUT ANY VISA for almost a year) – and [redacted] said "*the Kosovar problem is much bigger than just Marion's two families in Albury/Wodonga and the Minister in aware of the larger nature of the problem*" – he said he couldn't give a time frame – that he had talked to Marion a couple of weeks ago at the Ministerial meeting (in Sydney) and he said "*the matter is awaiting the Minister's decision and he can't speculate when his boss will act.*"[44]

*(48)* 9/03/05 – The conversation with [redacted] continued – with him stating *"there has been a lot of water under the bridge – a lot has been happening – and as far as he is concerned nothing has changed – the situation is exactly the same as it was when he talked to Marion at the meeting two weeks ago."*[45] Claire stated that "Marion's office is receiving daily calls from the family members as *well as calls from community supporters, advisors to local MPs and we notice often that what the various callers are reporting they believe is happening at the Minister's office is not consistent. It would assist Marion if she could have a statement from you so she knows what actually IS going on and therefore*

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[38] pp13-15
[39] p16
[40] p41
[41] p43
[42] p43
[43] p53
[44] p72
[45] p73

*will know how to respond to the various people constantly contacting her, rather than giving ten versions of what we have been told the Minister is about to do about the two families – please tell us the actual reality – what is the Minister doing?"* [redacted] *reiterated "the Minister's position is exactly as it was two weeks ago – she is actually considering – but has not made a decision – there is no time frame on when she will."* Claire affirmed that the "*biggest concern was that the other Halimi family only had 28 days from the RRT decision until they lose their work rights and that is very concerning – but if the Minister's office generated a letter stating that she is actively considering the application for Ministerial Intervention(of the second Halimi family) then the Department can give family a visa where they can still have work rights.*" [redacted] then became very annoyed and said he wasn't going to go into specific rules without advice from the Department and that the Minister WAS actively considering it. He said he told Marion two weeks ago at the meeting that he was asking the Department to follow all this up and as yet he has not heard back from them.[46] (At this stage there was only nine days until the twenty-eight days finished for the second Halimi family and the Shefket Halimi family had been **without a visa of any kind for almost a year** – (with the full knowledge of both the Department and of the Minister's office.)

*(49)* 9/03/05 – Claire spoke to the WA Ministerial Intervention Unit who confirmed from the computer records that "the Minister is aware of the case and Melbourne has it – need to contact MIU in Victoria."[47]

*(50)* 9/03/05 – 4.42pm – Rang direct to [redacted], Director of the Ministerial Intervention Unit in Melbourne to try to get "*specific advice*" – he was not there so left message for him to ring urgently.[48]

*(51)* 9/03/05 – 4.45pm – rang Melbourne RO switchboard to try to locate [redacted] but was informed that the Melbourne office is closed for the afternoon.[49]

*(52)* 9/03/05 – 4.46pm – [redacted] rang back and referred to the letter stating that the letter is sent out if the case is part of a campaign.[50]

*(53)* 14/03/05 – 12.00 noon – left another message for [redacted] stating only four days to go before the 28 days was up for the second Halimi family and could he please return the call urgently.[51]

*(54)* 17/03/05 – Claire rang [redacted] to follow up when I can meet the Minister – he asked her to send an email listing issues and people and gave the email address.[52]

*(55)* 18/03/05 – spoke to [redacted] about meeting urgently with the Minister – he said Minister is in Canberra and he is in Adelaide, so can't confirm a time until after next Monday.[53]

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[46] p75
[47] p75
[48] As above
[49] As above
[50] p75
[51] p85
[52] p103
[53] p109

*(56)* 18/03/05 – Email from DIMIA – [redacted] re: Shefket Halimi family will be awarded a 12 month BVE (and the other Halimi family will be given three months). The BVE will have work rights

*(57)* 22/03/05 – 2.15pm - left a message for [redacted] to please return call.[54]

*(58)* 22/03/05 – 5 to 5pm – [redacted] returned call "Amanda not sure re: travel arrangements – how about DLOs – next week – 29/3 or 30/3 are possibilities."[55]

*(59)* 23/03/05 – [redacted] rang in RE: couldn't see the email, but found it while talking – confirmed that the meeting would not be Tuesday as Minister did not have to attend MC on Tuesday. He will speak to the Minister "after the Press conference to get an exact time on Wednesday and he will ring us back ASAP."[56]

*(60)* 23/03/05 – 5.50pm – [redacted] rang back and Natasha of my office took the call and wrote in the call book "*Meeting with Amanda Vanstone next week.*"[57] I later crossed out the "next week" and wrote "tomorrow."[58] This was because of advice that legalities prevented the Minister meeting with me alone but that she had kindly organised for me to meet with her three principal advisors.

*(61)* 24/03/05 – I had a long meeting at APH with [redacted], [redacted] and [redacted] (by video link-up). Amongst a number of other matters, I raised the outstanding intervention application for Permanent Residence for the Shefket Halimi family and John Nation assured me that the matter was "in hand." Natasha from my office attended the meeting with me and took detailed notes – the meeting lasted over an hour.

*(62)* 1/04/05 – Spoke to [redacted] about the BV.[59]

*(63)* 12/04/05 – Rang [redacted] on mobile and left message.

*(64)* 13/04/05 – Faxed to [redacted] about other Halimi family then Claire spoke to him by phone – 2.55pm – asked him if there was any news on the Shefket Halimi family's situation and he answered abruptly "no."[60]

*(65)* 23/05/05 – 2.15pm - Claire rang [redacted] in relation to the difficulties the Shefket Halimi family have reported they are having getting onto Medicare. She suggested we ring [redacted] – 3.10pm – I spoke to DIMIA Officer [redacted] – "[redacted] *away from the office today – advised I speak to* [redacted] *at the Regional Office or get on to* [redacted]."[61]

*(66)* 23/05/05 – Spoke to Elizabeth from Medicare twice and then to DIMIA Officer [redacted] twice. He agreed to write a letter to Medicare explaining the visa situation of the Shefket Halimi family.[62]

*(67)* 24/05/05 – Rang [redacted] twice (2.10pm and 3.10pm) and left two messages that Fatima (Shefket's wife) rang re: Medicare stating "*they are the only one of the remaining Kosovar caseload that have not been given Medicare since the Minister gave them all Bridging Visas.*" Victoria

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[54] p109
[55] p111
[56] p115
[57] p117
[58] p117
[59] p139
[60] New call book – 8/4/05 – 27/5/05 - p21
[61] p145
[62] p147

(who answered the phone) said she "*would get Anne to ring when she is out of the meeting.*"[63]

*(68)* 26/05/05 – 2.45pm – Rang [redacted] – he was in a meeting so I gave a woman a message re: the Shefket Halimi family and asked that he ring back ASAP.[64]

*(69)* 26/05/05 – [redacted] returned the call and said "*no time frame – but he will look into it.*"[65]

*(70)* 27/05/05 – Calls from Fatima reporting that the Red Cross had offered them money to assist them with medical expenses – apparently based on their earned income they have been eligible for a considerable amount of Red Cross assistance but have never applied for it.[66]

*(71)* 20/06/05 – Rang [redacted] Re: organising to meet with the Minister – spoke to [redacted] – [redacted] not in office – suggested emailing (which I did).[67]

*(72)* 24/06/05 – 4.29pm – Rang [redacted] – [redacted] said he was in a meeting but that she would get him to call me before he went home.[68]

*(73)* 24/06/05 – 4.50pm – Rang [redacted] and was told although he had come out from the meeting – he was now on another phone call. He returned the calls at 5.35pm and Claire spoke to him about the Shefket Halimi family and in particular, the current problem with Medicare. He agreed saying "*the Minister never intended them to be in this situation – but leave it with him.*" He also informed us that [redacted] was on leave.[69]

*(74)* 27/06/05 – 11.50am – Rang [redacted] – [redacted] (Adelaide Office) said he was on another call.[70]

*(75)* 27/06/05 – 3.40pm – Rang [redacted] again about Shefket and Fatima Halimi but he was "in a meeting."[71]

*(76)* 1/07/05 – Claire rang [redacted] re: Shefket Halimi family and the Medicare problem in particular. He advised that he had asked [redacted] to look into the Medicare problem.[72]

*(77)* 5/07/05 – 11.25am - [redacted] from the Mister's office rang in and confirmed she had organised the Red Cross payments and the family had now agreed to accept the money they were eligible for.[73]

*(78)* 6/07/05 – 12.55pm – (Second Halimi Family drove up from Albury/Wodonga and sat in my office very distressed about no certainty about their visa situation.) Claire rang [redacted] – he confirmed that "*the Minister is waiting until all the others come off all the other litigation ... but [redacted] is the one who was really abreast of this case but he is overseas at the moment.*"[74]

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[63] p145
[64] p161
[65] p161
[66] p167
[67] Interim call book – 30/5/05 – 30/6/05 – pages not numbered.
[68] As above
[69] As above
[70] As above
[71] As above
[72] Latest call book – 30/6/05 – p5
[73] p11
[74] p15

*(79)* 6/07/05 – 3.55pm – Rang[redacted]s again and left a message for him to please return the call.[75]

*(80)* 6/07/05 – 4.05pm - [redacted]s returned the call and she will try to find out where the actual file is.[76]

*(81)* 6/07/05 – 4.25pm – Phoned [redacted] from MIU who confirmed that "a second stage submission has gone up to the Minister – entered on 15/6/05 – latest entry – (and that) Gani and wife and four kids exactly the same situation."[77]

*(82)* 6/07/05 – 5.40pm – [redacted]s confirmed that the Minister HAS INTERVENED in relation to the Gani Halimi Family. Claire asked what about the Shefket Halimi Family and she answered "**I can only work one miracle a day and I am working on Shefket now.**"[78] We were all very grateful to [redacted] and to the Minister and hopeful of a resolution for Shefket and his family.

*(83)* 7/07/05 – 10.11am – Left message with a very polite young man – "[redacted] *was in a meeting.*"[79]

*(84)* 7/07/05 – 11.50am – Spoke to [redacted] in the Minister's office – left messages for both [redacted] and [redacted]s.[80]

*(85)* 7/07/05 –12.12pm - Tried to phone [redacted]s – left message on his mobile.[81]

*(86)* 7/0/05 – Left another message for [redacted]s on his mobile.[82]

*(87)* 14/07/05 – left message for [redacted] to return call re: the Halimi Family.[83]

*(88)* 15/07/05 – 10.30am – Rang [redacted]s – he was "not at his desk" so I left a message for him to please call back ASAP.[84]

*(89)* 15/07/05 – 11.20am – Still hadn't heard from [redacted]s so Claire rang him on his mobile. He answered and stated that he was "*actually in a meeting in Queensland and couldn't imagine how the Minister's office could think he was simply away from his desk – but he can't help with anything today.*"[85]

*(90)* 20/7/05 – Rang [redacted] and was told to ring Adelaide Office. 3.42pm – Rang Adelaide Office and was told that *"he was in a meeting with Minister Vanstone." Left a message for him to ring back please.*[86]

*(91)* 29/07/05 – 5.10pm – Left another message on [redacted] mobile.[87]

*(92)* 5/08/05 – 3.20pm – Rang [redacted] at Minister's office and was told he was "travelling." Left a message for him to call. Rang him on his mobile and left a message on the mobile as well.[88]

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[75] p17
[76] p20
[77] p19
[78] p19
[79] p20
[80] p21
[81] p21
[82] p22
[83] p49
[84] p53
[85] p53
[86] p73
[87] p106
[88] p119

*(93)* 9/08/05 - -2.30pm – Left a message on the mobile phone of [redacted]. Rang the Adelaide Office and was told he was in the ACT office. Rang the Parliament House office and was told that he "was assisting the Minister in the Chamber."[89]

*(94)* 9/08/05 – 5.15pm – left another message on mobile of [redacted] re: the Shefket Halimi family.[90]

*(95)* 10/08/05 – 4.45pm – left message for [redacted] to ring me about the Shefket Halimi family.[91]

*(96)* 10/08/05 – 4.50pm and 5.10pm – left two messages for [redacted] to please ring about the Halimi family.[92]

*(97)* 10/08/05 – 5.12pm – Rang [redacted]s again but [redacted] stated she was not at her desk, and took a message for [redacted].[93]

*(98)* 10/08/05 – 5.20pm – [redacted] rang back and talked to Claire. She stated that "[redacted] *is back from leave and has over the Halimis – he is in charge again and she will ring him and ask him to ring Marion in the morning and update her.*" She stated that he has been back for a week and will know about it now and so he should be able to give Marion the latest news.[94] Claire read her a letter I received from one of the Halimi children yesterday and asked her to let [redacted] know of the present situation facing on the family.

CONCLUSION:

As of the date of this submission the family is still awaiting a resolution.

(b) the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;

Time does not permit me to deal with this aspect in this submission though I would like to opportunity to present a later submission either written or orally at a hearing

(c) the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;

It is clear that holding people in long term detention has serious impact on their long term mental, emotional and psychological health.

(d) the outsourcing of management and service provision at immigration detention centres; and

(e) any related matters

[89] p123
[90] p123
[91] p125
[92] p125
[93] p127
[94] p127

Again, time does not permit me to comment on these later two aspects of the terms of reference though if the committee wishes me to do so, I am happy to give oral evidence.

In conclusion I would like to thank the Committee again for this opportunity and apologise for the somewhat rambling nature of my submission which has been written within the limitations of time and other demands.

Yours sincerely

MARION LE
10/08/2005