



DEPARTMENT OF IMMIGRATION AND
MULTICULTURAL AND INDIGENOUS AFFAIRS



Mr Alistair Sands
Secretary
Select Committee on Ministerial Discretion in
Migration Matters
Department of the Senate
Parliament House
CANBERRA 2600

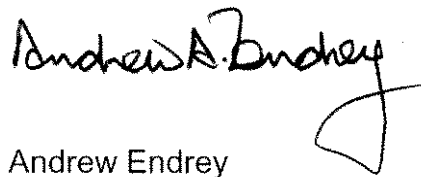
Dear Mr ~~Sands~~ *Alistair*

I am writing with regard to questions taken on notice by the Department of Immigration and Multicultural and Indigenous Affairs at and subsequent to the public hearing in Canberra on 5 September 2003 of the Inquiry into Ministerial Discretion in Migration Matters.

2. In your letter to Deputy Secretary, Philippa Godwin, of 8 September covering a list of written questions that the Committee wished the Department to take on notice, you advised that the Committee hoped to receive answers to as many questions on notice as possible by 19 September 2003, and that any answers not provided by that date should be provided by 2 October 2003.
3. For ease of reference, at Attachment A is a consolidated list of these questions ordered by topic. (Please note that a further two questions forwarded by the Secretariat on 16 September are not included in that list but will be responded to by 2 October.) For administrative convenience, the questions have been grouped alphabetically from A to N, and numbered accordingly under each topic grouping.
4. The table at Attachment B lists the questions taken on notice by the Department at the hearing of 5 September. Of the 20 questions on the list, we are now providing the Committee with responses to 14 of these, at Attachment C; (the table at Attachment B indicates those 6 questions that remain outstanding.
5. As requested by the Secretariat on 28 August, I am also forwarding to the Committee with this letter, at Attachment D, an analysis of outcomes of intervention requests by Parliamentarians; and the nationality of clients on whose behalf Parliamentarians have made representations, over the period 1999-2003.
6. At Attachment E, we are forwarding responses to questions in groups B to D listed in Attachment A. With regard to those questions that still require a response, in groups A, and E to N, we are endeavouring to have these ready for forwarding on to the Committee by 2 October.

7. We look forward to further assisting the Committee at the forthcoming public hearing in Sydney on Tuesday, 23 September 2003.

Yours sincerely

A handwritten signature in black ink that reads "Andrew A. Endrey". The signature is written in a cursive style with a large, stylized initial 'A' and a long, sweeping tail that loops back under the name.

Andrew Endrey
Director
Parliamentary Coordination
19 September 2003



**DEPARTMENT OF IMMIGRATION AND MULTICULTURAL
AND INDIGENOUS AFFAIRS**

Deputy Secretary



Mr Alistair Sands
Secretary
Select Committee on Ministerial Discretion
In Migration Matters
Parliament House
CANBERRA ACT 2600

Dear Mr Sands

I am writing in response to your letter of 17 September 2003 regarding witnesses for the public hearing to be held in Sydney on 23 September 2003.

You will note that the witness list includes Mr Nick Nicholls and Ms Louise Lindsay, both from the Sydney office. As you are aware, Mr Nicholls as NSW State Director, has overall responsibility for the Sydney Ministerial Intervention Unit. Ms Lindsay manages the Onshore Protection area, of which the Ministerial Intervention Unit is an integral part, and she is therefore in a position to answer questions about the day to day running of the Unit.

These staff are at the appropriate level and have the appropriate expertise and experience not only to provide information about the detailed operations of the Unit but also to describe the broader policy and operational context within which the Unit functions.

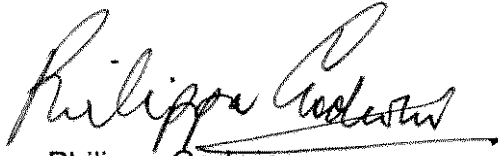
We expect that the officers present will be in a position to answer questions about individual cases raised in submissions and evidence to the Committee to date.

If cases or issues not previously discussed or made known to us are raised in Tuesday's hearing, and should, therefore, officers present not be able to answer all aspects of those questions we would, of course, take questions on notice and provide prompt replies to the Committee.



I trust that this clarifies the composition of the witness list, and I seek to reassure the Committee that the officers attending Tuesday's hearing are the most appropriate to assist the Committee in its endeavours.

Yours sincerely



Philippa Godwin

18 September 2003

Attachment A

Department of Immigration and Multicultural and Indigenous Affairs: Questions on Notice 8 September 2003.

A. Process for dealing with requests for ministerial intervention

- A1 Is there a set process for assessing a request for ministerial intervention?
- A2 Are there written guidelines on how such a request should be handled?
- A3 How are requests usually received?
- A4 Where a request is not received in writing, who decides whether it constitutes a request for ministerial intervention or not?
- A5 Are all requests acknowledged in writing?
- A6 What role do areas of DIMIA other than the Ministerial Intervention Units play in the assessment of requests for Ministerial intervention?

- C7 Has the number of staff in ministerial intervention units increased to cope with the increased number of requests for ministerial intervention?

D. Guidelines for officers on ministerial intervention

- D1 Which of the documents provided to the Committee is the current set of guidelines on the use of Ministerial discretion?
- D2 Is the document at **Attachment 8** (MSI 225), dated 31 March 1999, still the current set of guidelines for staff on the exercise of Ministerial discretion?
- D3 What other guidance is available for staff assessing requests for ministerial intervention?

F. Cases not referred to the Minister

- F1 Is a decision not to refer a case to the Minister reviewed by another officer within the MIU?
- F2 Does the officer responsible record reasons for *not* referring a case to the Minister?
- F3 Is the person concerned notified of specific reasons why their case was deemed not to fit within the guidelines for ministerial intervention?
- F4 How many times has the Minister asked for a submission to be prepared on a case included on a schedule of cases not recommended by the Department for intervention?

G. Refusal to consider matters where there is current litigation in process

- G1 What is the rationale for the guideline that it is inappropriate to consider cases where there is migration litigation that has not been finalised (as in paragraph 183 of the submission)?
- G2 Does the need to wait until all related litigation and review processes are complete involve extra cost and/or time for the applicant (and department) in cases where ministerial discretion could possibly be exercised earlier?
- G3 Are you aware of any cases where the Minister has chosen to intervene while judicial proceedings are underway? Can you provide details of such cases?

H. Nationality of those granted ministerial intervention

- H1 Can DIMIA provide figures of the nationality of people granted ministerial intervention before 2000?

Some of this information (for s417) was provided to the Senate Legal and Constitutional Committee in 1999 (Submission 69E, pp1680-1730).

- H2 Can you collate the data provided to the Legal and Constitutional Committee in 1999 to produce tables and graphs similar to those at attachments 22, 23 and 24?
- H3 Can equivalent data (by nationality and year) be produced with regard to the Minister's intervention power under s351 over the same time period?
- H4 Can the department offer an explanation of what factors have led certain nationalities to be highly represented in the number of visas granted through ministerial intervention (as per figures in Attachments 22-24)?
- H5 Does the Minister receive a higher number of requests for ministerial intervention from certain nationalities?
- H6 Can the department provide figures of the number of requests received relative to number of times ministerial discretion has been exercised by nationality?

L. Matters referred by the RRT

The Refugee Review Tribunal states that it notified DIMIA of 1,010 cases potentially raising humanitarian considerations in the period 1 July 1999 to 30 June 2003.

- L1 How many of the cases referred by the RRT to DIMIA as raising humanitarian considerations were referred to the Minister by the department?
- L2 In how many of these cases did the Minister intervene?
- L3 Where the Minister did intervene on humanitarian grounds, what visa type was issued in most cases?
- L4 Can you provide details of any cases where the RRT has recommended the use of Ministerial discretion, and the Minister has declined to use his discretionary powers?
- L5 Can you provide details of any cases where the RRT has recommended use of Ministerial discretion but the department has decided not to refer the case to the Minister?
- L6 What is the rationale for having cases referred by the RRT to the department rather than directly to the Minister?
- L7 Is the case officer who assesses cases referred by the RRT the same as the case officer who made the original decision to refuse a protection visa?
- L8 Is a decision not to refer such a matter reviewed by a higher level DIMIA official?

M. Statements in parliament

- M1 Have there been any changes to the reporting format for statements tabled in parliament on use of ministerial intervention powers since the relevant sections were inserted in the Act?
- M2 What was the reason for the change in the reporting format?
- M3 Is a pro forma statement used now?
- M4 Who in the department is responsible for preparing the statements?
- M5 Who approves the final form of the statement?

N. Public information available on Ministerial discretion powers

- N1 What information is available to visa applicants on the possibility of seeking ministerial intervention?
- N2 Is the current Fact Sheet 41 the same as the one referred to in the department's response to recommendation 8.3 of the 2000 Senate report into the operation of Australia's refugee and humanitarian program? Why is there no reference to ministerial discretion in this document?
- N3 There is one paragraph in Fact Sheet 61 which refers to the minister's discretionary powers. Is this all the information currently available in the fact sheet series on ministerial discretion?
- N4 What other information on the use of these powers is available publicly?

- N5 Is the department aware of concerns among lawyers and refugee advocates that there is insufficient public information on the operation of Ministerial discretion?

ATTACHMENT B

SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS
AFFAIRS

QUESTIONS TAKEN ON NOTICE – 5 SEPTEMBER 2003

No.	Hansard Page no.	Senator	Information/Material to be Provided
1	4	Ludwig	Can the Department provide a statistical analysis of the odd requests for intervention made to the Minister, by country of origin?
2	6	Ludwig	What do you tell the RRT every six months?
3	8	Ludwig	When is it (the new MSI) operational from? When did it start about?
4	8	Ludwig	Is that what people are operating on (the new MSI)? Do you have it? Do migration agents have it? Has it been put on a web? Is it available? What date was it placed on LEGISLATION?
5	8	Ludwig	Who actually has it (the new MSI) in their possession and is utilising it from that date? And how have you dispersed it? How have you ensured that it is a document that is now in the possession of those relevant people who may use it?
6	10	Wong	Is there any notification anywhere on your web site of the content of the guidelines?
7	13	Ludwig	What I am at least looking for at the start is the number of representations in the top 10 and then, in terms of the correspondence, whether you can disaggregate that by the number of correspondents in relation to a representation person or an individual – in other words, can you tell us whether there are 500 representations by the one organisation in the name of one person or whether there are 500 separate representations in respect of 500 individuals, or by group or class?
8	15	Wong	Regarding the RRT referrals, will you get back to us on whether you report to them every six months – that is in the RRT submission?
9	25	Santoro	How long would each officer dealing with a case typically take to deal with each one (s417 request)?

10	27	Humphries	Is the work force within this whole area of DIMIA fairly stable there a relatively high turnover of people in comparison with other areas of the Public Service?
11	31	Sherry	Could you go further and give us the top 100 perhaps (Parliamentarians)?
12	34	Bartlett	Are you able to give an indication of what the numbers are in the present circumstances which are themselves fairly exceptional and which are hard to quantify in a formal visa decision process) when you say they are very small?
13	36	Bartlett	Has any analysis or research been done as part of those considerations (in terms of creating a new visa subclass which would allow applicants, who were the subject of an unfavourable decision, and who accept that they have no or little chance of merits review, to waive their rights to merits review and seek ministerial intervention immediately) at any stage that we might be able to get access to?
14	38	Bartlett	Are you able to get any figures (in relation to any ministerial intervention) conscious of Australia's international obligations and the going to exercise the power accordingly) in terms of the ministerial intervention power where it has been specifically to meet those obligations?
15	40	Wong	Are there occasions on which a request goes directly from the Minister's office to the Ministerial intervention unit?
16	51	Santoro	Has there been any parliamentary debate that you can refer to in relation to this issue (tabling statements)?
17	71	Wong	How many have there been (the number of decisions that have been referred to a UN committee by failed section 417 applications) that resulted in favourable decisions to the complainants?
18	81	Wong	The number of scheduled cases in the year of which the complainants requested a full submission.
19	81	Ludwig	I was interested, in terms of the MSI 225, in a snapshot of the current history, either in strike-out or delete, as may be necessary to show how it has developed, changed or been altered. You do not necessarily need to mark it up, if that is not the easiest way, as long as it is in a format that allow me to identify the changes.
20	86	Ludwig	I was wondering whether with respect to the information provided to Senator Santoro there was a case file or a document detailing the investigation that was done by your department.

			might provide the information to the committee in a more way.
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ATTACHMENT C**QUESTION TAKEN ON NOTICE****SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

Senator Ludwig asked (Hansard page 4) – Can the Department provide a statistical analysis of the 27,000-odd requests for intervention made to the Minister, by country and by origin?

Answer:

No. Detailed information in relation to cases in which the Minister did not intervene is not available without undertaking a manual check of many thousands of case files or system records, which would involve multiple millions of dollars of staff time. Further, some of the relevant files may have been destroyed in accordance with the Archives Act.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 6) – What do you tell the RRT every six months?

Answer:

The RRT is provided with copies of the tabling statements relating to instances where the Minister uses his intervention powers every six months.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 8) – When is it [the new MSI] operational from? When did it come about?

Answer:

The amended Departmental Administrative Guidelines (MSI 387), at Attachment 2 of DIMIA's submission to the Enquiry were placed on LEGEND on 14 August 2003. They became operational from that date.

The Minister's Guidelines (MSI 386) at Attachment 9 of the DIMIA submission to the Enquiry were signed by the Minister on 5 August 2003, and were also placed on LEGEND on 14 August 2003. They became operational from that date.

QUESTION TAKEN ON NOTICE**SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

Senator Ludwig asked (Hansard page 8) – Is that what people are operating on [the new MSI]? Does MARA have it? Do migration agents have it? Has it been put on the web? Is it available? What date was it placed on LEGEND?

Answer:

This question was answered in the context of the hearing of 5 September 2003, see page 9 of Hansard.

The new MSI was placed on LEGEND on the 14 August 2003 and is available to all departmental staff and external subscribers from then onwards. Individual sections may also distribute paper copies of MSIs to their staff.

Copies of the MSIs are available from AGPS bookshops and DIMIA offices. However, government bookshops will cease their operation from 1 October 2003.

A commercial version of LEGEND, which is updated regularly, is available through the Lawbook Co. by subscription. It is understood that many migration agents subscribe to this publication and therefore will have access to the information once LEGEND is updated. Due to the costs of providing CD-ROM updates to subscribers, the contractual arrangements for commercial version of LEGEND only allow for a maximum of 12 updates per year and are therefore guided by amendments to core portfolio legislation. On-line updates of changes to LEGEND are provided by the Lawbook Co. to subscribers of the commercial version of LEGEND only where there has been minor changes to departmental material and the details of the changes can be sourced from outside of LEGEND eg Scaleplus on the Attorney-General's website for legislative changes.

Details of the new MSI are not available on the Department's website however, members of the public can access individual MSIs through the Ombudsman, Privacy and Freedom of Information Section of the Department.

Members of the public also have access to the updated commercial version of LEGEND, as the Department distributes CD-ROM updates to each State and Territory library and the National Library.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 8) – Who actually has it [the new MSI] in their possession and is utilising it from that date? And how have you dispersed it and ensured that it is a document that is now in the possession of those relevant people who may use it?

Answer:

A response to this question was provided to the Senate Committee on 5 September 2003, at pages 8 and 9 of Hansard.

As soon as the new MSI is placed on LEGEND, it is available to all departmental staff. Individual sections may also distribute paper copies of MSIs to their staff.

A commercial version of LEGEND is available through the Law Book Company by subscription. It is understood that many migration agents subscribe to this publication and therefore have access to the information.

Details of the new MSI are not available on the Department's website however, members of the public can access individual MSIs through the Ombudsman, Privacy and Freedom of Information Section of the Department.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Wong asked (Hansard page 10) – Is there any notification anywhere on your web site of the changing of the guidelines?

Answer:

Details of the new MSI are not available on the Department's website however, members of the public can access individual MSIs through the Ombudsman, Privacy and Freedom of Information Section of the Department.

It is relevant to note that the guidelines are issued for use by DIMIA officers in their work to support the Minister in the use of his intervention powers.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Wong asked (Hansard page 10) – Is there any notification anywhere on your web site of the changing of the guidelines?

Answer:

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It is relevant to note that the guidelines are issued for use by DIMIA officers in their work to support the Minister in the use of his intervention powers.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Santoro asked (Hansard page 25) – How long would each officer dealing with a case typically spend on each one [s417 request]?

Answer:

A response to this question was provided to the Senate Committee on 5 September 2003, at page 29 para 9, and page 30 para 1, of Hansard.

It should be noted that it is extremely difficult to assess workloads. The length of time involved in responding to a request for Ministerial Intervention will vary depending upon the details and complexity of the case. While some cases can be resolved very quickly, others will take significantly longer.

There is no obligation on the Minister to consider a request. There are no limitations to the number of times a request can be brought to the Minister's attention.

In some circumstances, a case remains potentially "in progress" whenever the Minister has decided not to intervene. Nevertheless, the Department has attempted to provide an estimate of a "typical" caseload.

The average amount of time that an officer would spend working on most individual cases would be seven or eight hours. An analysis of responses received from MIUs indicates that this can be broken down further:

- Assessment of applications to determine whether they meet the guidelines, and determination is that guidelines are not met – average 2 hours to examine, prepare letter to applicant and update departmental records
- Average time for file to be requested and received – 5 days
- Cases assessed as meeting the guidelines and where a submission is required – 5 days per submission
- Preparation of schedules and attending to repeat requests – average 3 hours per case.

QUESTION TAKEN ON NOTICE**SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

Senator Humphries asked (Hansard page 27) – Is the work force within this whole area of DIMIA fairly stable or is there a relatively high turnover of people in comparison with other areas of the Public Service?

Answer:

A response to this question was provided to the Senate Committee on 5 September 2003, at page 27 of Hansard. DIMIA has a relatively stable workforce and low separation rate. There is internal churn, particularly in the ACT Regional Office. That is in part due to that office being in close proximity to Central Office, and the transfer of staff to gain experience, eg in preparation for overseas postings and other associated training.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Sherry asked (Hansard page 31) – Could you go further and give us the top 100 perhaps (Parliamentarians)?

Answer:

The Committee is referred to the material provided under cover of DIMIA's letter of 15 September 2003 to the Committee.

QUESTION TAKEN ON NOTICE**SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

Senator Bartlett asked (Hansard page 38) – Are you able to get any figures (in relation to any minister being conscious of Australia’s international obligations and therefore is going to exercise the power accordingly) in terms of the use of the intervention power where it has been specifically to meet those obligations?

Answer:

The Department does not record the grounds on which the Minister uses his s417 intervention powers beyond the information contained in statements tabled by the Minister in Parliament in relation to such cases. The Minister determines whether to intervene on a case by case basis, depending on the facts in the individual case.

It is not possible to extrapolate the reasons for the Minister’s intervention from the class of visa granted. As non-refoulement under CAT and ICCPR require merely that the person not be returned to the country where they face harm, any visa would deliver the outcome by allowing the person to stay lawfully in Australia.

QUESTION TAKEN ON NOTICE

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Santoro asked (Hansard page 51) – Has there been any parliamentary debate that you can recall in relation to this issue (tabling statements)?

Answer:

We are not aware that there has been parliamentary debate on the issue of tabling statements.

QUESTION TAKEN ON NOTICE**SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

Senator Wong asked (Hansard page 71) – How many complaints that have been referred to a UN committee by failed section 417 applicants have resulted in favourable decisions to the complainants?

Answer:

There have been three findings against Australia from United Nations Committees in cases where the clients had previously sought Ministerial Intervention. These findings are conclusions, not decisions, and are not binding on Australia. One complaint to the United Nations Committee Against Torture (UNCAT) was withdrawn, and the Government is currently considering the views of the United Nations Human Rights Commission (UNHCR) for the other two cases.

QUESTION TAKEN ON NOTICE**SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

Senator Ludwig (Hansard page 81) – I was interested, in terms of the MSI 225, in a snapshot or a bit of history, either in strike-out or delete, as may be necessary, to show how it has developed, changed or been altered. You do not necessarily need to mark it up, if that is not the easiest way, as long as it is in a format that allows me to identify the changes.

Answer:

The Minister issued the “Ministerial Guidelines for the identification of unique or exceptional cases where it may be in the public interest to substitute a more favourable decision under s345, 351, 391, 417, 454 of the *Migration Act 1958*” (MSI-225) in March 1999. Those guidelines are provided at Attachment 8 of the Department’s submission.

Also, in 1999 draft Administrative Guidelines underpinning the administration of the Minister’s Guidelines were provided to Departmental staff but they were not formalised into an MSI. Given the passage of time and changes to legislation, those draft guidelines needed to be updated and formalised. Therefore, the Minister’s Guidelines were revised at the same time. Both sets of guidelines were issued on 15 August 2003; the Administrative Guidelines (now MSI-387) at Attachment 2 and the Minister’s Guidelines (now MSI-386) at Attachment 9 of the Department’s submission.

On 1 June 1999, the Migration Review Tribunal (MRT) replaced the Immigration Review Tribunal (IRT) and the Migration Internal Review Office (MIRO).

On 1 October 2001, section 501J was introduced into the Act to enable the Minister to substitute a more favourable decision for a decision of the Administrative Appeals Tribunal (AAT) in relation to a protection visa if the Minister considers it in the public interest to do.

The main change between MSI 225 and MSI 386 (ie the Minister’s Guidelines) is the inclusion of the Minister’s public interest powers at s501J of the Act. The other changes are textual. These textual changes are summarised in the attached table.

Textual changes between MSI 225 (old) and MSI 386 (new) – Minister’s Guidelines.

<i>Old MSI 225 - ATT 8 of submission</i>	<i>New MSI 386 – Attachment 9 of submission</i>
7 pages.	8 pages.
Plain text format.	Info Mapped format.
Long and potentially confusing title: “Ministerial Guidelines for the identification of unique or exceptional cases where it may be in the public interest to substitute a more favourable decision under s345, 351, 391, 417, 454 of the <i>Migration Act 1958</i> (1)”.	Title is short and written in plain English: “Guidelines on Ministerial powers under sections 345, 351, 391, 417, 454 and 501J of the <i>Migration Act 1958</i> ”.
Non-compellability of the powers is outlined at paragraph 2.1.	Non-compellability of the powers is outlined more concisely at paragraph 2.3.
Does not cover review tribunals which came into existence after March 1999.	Covers all current and defunct review tribunals.
Outlines the circumstances when the powers are not available are outlined in Chapter 3.	Lists the circumstances where the powers would not be available in more detail at paragraph 3.2.1.
Outlines the circumstances where a case may be inappropriate to consider at paragraph 3.4.	Explains the circumstances where a case may not be appropriate to consider in more detail at paragraph 3.3.
States that DIMIA officers must advise the Minister of the commencement and outcome of relevant court proceedings when referring a case (see 3.3).	Explains why that information must be brought to the Minister’s attention when referring a case (see 3.4.1)
Chapter 5: “Other considerations” discusses a range of issues, which the Minister may consider relevant when considering a case.	Chapter 5: has been renamed “possible adverse information” and discusses these issues more concisely.
States generally when DIMIA should take action when notification of a review decision has been received from a tribunal (see Chapter 6).	States more clearly what action may be taken by officers when notified by a review tribunal that a primary decision has been affirmed (6.2.1, 6.2.2). See also 5.1 and 5.2 of the Administrative Guidelines (MSI 387) which discusses the specific actions to be taken in respect of protection and non-protection visa decisions.

Table 1: Analysis of Outcomes of s417 and s351 Requests (Date Range November 1999 - 29 August 2003)

Top 10 Parliamentarian	Intervention Correspondence ¹	Number of s417, s351 Requests	Cases	Intervened (Cases)	Not Intervened (Cases)	Other ² (Cases)
Ferguson, Laurie	100	94	80	19	34	27
Price, Roger	70	63	50	12	26	12
Mossfield, Frank	58	43	36	9	19	8
Bartlett, Andrew	56	50	43	14	19	10
Murphy, John	56	54	33	5	19	9
Abbott, Tony	53	51	29	6	14	9
McLeay, Leo	52	50	44	11	20	13
Sciacca, Con	47	42	41	12	24	5
Albanese, Anthony	46	44	40	11	21	8
Byrne, Anthony	44	42	37	11	21	5
Total:	582	533				

Note:

These figures are based on the list provided to the Committee on 15 September 2003.

¹ The figures include intervention requests other than s351 and s417, such as those relating to s48b.

² Includes those cases still in process or otherwise finalised eg client withdrawn.

Table 2: Total Caseload Information - Top 10 Parliamentarians ³

	Intervention Correspondence ¹	Number of s417, s351 Requests	Cases	Intervened (Cases)	Not Intervened (Cases)	Other ² (Cases)
Top 10 Parliamentarians	582	533	411	104	202	105

³ It is not possible to directly match the case data in Tables 1 and 2, as in some cases more than one parliamentarian has made a request on the same case, and this is reflected in Table 1. The information in Table 2 is the total number of discrete cases covered by requests made by the Top 10 parliamentarians.

**NATIONALITY OF CLIENTS COVERED BY S351 AND S417 INTERVENTION
REQUESTS BY THE TOP 10 PARLIAMENTARIANS
(Date Range Nov 1999 - 29 August 2003)**

Country of Citizenship	Cases	Country of Citizenship	Cases
Philippines	47	Africa (so stated)	1
Sri Lanka	38	Argentina	1
Fiji	27	Bahrain	1
Lebanon	19	Belarus	1
China, Peoples Republic of	18	Bulgaria	1
India	15	Cambodia, the Kingdom of	1
Iran	15	Congo	1
Burma (Myanmar)	14	Cyprus	1
Nigeria (Africa)	14	Ecuador	1
Indonesia	13	Estonia	1
Russian Federation	13	Georgia	1
Turkey	13	Ghana	1
Tonga	12	Italy	1
Pakistan	11	Japan	1
South Korea	10	Jordan	1
Colombia	8	Kampuchea	1
Algeria	7	Kenya	1
Iraq	7	Kyrgyzstan	1
United Kingdom	6	Liberia	1
Yugoslavia, Fed Republic of	6	Mauritius	1
Afghanistan	4	Nepal	1
Stateless	4	Nicaragua	1
Albania	3	Palau	1
Croatia	3	Palestinian Authority	1
Eritrea	3	Poland	1
Kuwait	3	Senegal	1
Vietnam	3	Somalia	1
Bangladesh	2	Taiwan	1
Egypt, Arab Republic of	2	Tanzania	1
Ethiopia	2	Timor, East (so stated)	1
Fmr Yugo Rep of Macedonia	2	Togo	1
Greece	2	U.S.S.R.	1
Libya	2	Uruguay	1
Peru	2	Venezuela	1
Romania	2	Zimbabwe	1
Samoa	2	Others ¹	10
Sierra Leone	2	Total:	411
South Africa, Republic of	2		
Sudan	2		
Syria	2		
Thailand	2		
Ukraine	2		

Note:

These figures are based on the list provided to the Committee on 15 September 2003.

¹ Includes cases where the nationality varies within the case or where the nationality is not recorded in DIMIA systems in a manner which is reportable

ATTACHMENT E**SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

Questions on Notice provided under cover of the Committee's letter of 8 September 2003

B. Assessment of requests for ministerial intervention**Question B1**

What level would a DIMIA officer assessing a request typically be?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, and is at pages 23 and 25 of Hansard. More detailed information is also available at Attachment 10 of the Department's submission. Question on Notice C2 also refers.

Staff in the MIUs range from staff at APS 2 level to EL 2 level. The bulk of assessment/ processing work is undertaken by staff at the APS 5 and 6 level, with EL 1 and 2 level staff undertaking supervisory and quality assurance roles. APS 2, 3 and 4 level staff provide administrative support.

Question B2

What information would those officers have available to them?

Answer

Staff handling ministerial intervention requests have available the individual client record and as necessary, the departmental file which includes the application, all documentation outlining the claims made by the applicant, the departmental decision record, the MRT or RRT decision record, relevant country information and any additional correspondence submitted in support of the intervention request. Staff also have access to LEGEND which contains the relevant MSIs and guidelines.

Question B3

Would that officer normally discuss that request with other DIMIA officers, such as the case officer originally responsible?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, and is at page 24 of Hansard. Consultation takes place as necessary. This could include with supervisors, the relevant policy area, the DIMIA legal area and, if necessary, the case officer who originally handled the case.

Question B4

Would that officer normally contact people outside DIMIA to discuss the request, such as people who have made representations on behalf of the applicant?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, and is at pages 24 and 25 of Hansard.

Question B5

Would that officer ever speak directly with Department Liaison Officers or others in the Minister's office regarding a request for intervention?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, and is at pages 24 and 25 of Hansard.

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Questions on Notice provided under cover of the Committee's letter of 8 September 2003

C. Procedures for handling volume of requests received

Question C1

How many staff work at each of the Ministerial Intervention Units?

Answer

The number of staff varies between each Ministerial Intervention Unit. Detailed information is available at Attachment 10 of the Department's submission.

Question C2

What level are those officers?

Answer

The officers who work at the Ministerial Intervention units vary from APS Level 2 to Executive Level 2. A response to this question was provided to the Senate Committee on 5 September 2003, at page 27 para 1, and page 29 para 3, of Hansard. This issue was also addressed in the Department's submission at Attachment 10.

Question C3

How many requests are received at each MIU, on average, per week/month/year?

Answer

ACT – 120 requests per month (02/03). 1,455 were received in 2002/2003.

VIC – 86 requests per month (02/03). 1,032 were received in 2002/03.

NSW – 278 requests per month (02/03). 3,333 were received in 2002/03.

WA – 17 requests per month (02/03). 209 were received in 2002/03.

These figures relate to the number of cases in respect of which requests for intervention have been made.

Question C4

How long does an officer typically spend assessing a request for ministerial intervention?

Answer

A response to this question was provided on 5 September 2003, at page 29, paragraph 9, and page 30, paragraph 1, of Hansard. Also see the DIMIA response to Senator Santoro's question on notice at Hansard page 25.

Question C5

Are there any guidelines on timing for processing a request or expectation that a request will be dealt with in a particular time frame?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, at Hansard pages 25 and 26. Factors that may influence processing times are also detailed in the Department's submission at page 49, paragraphs 214 and 215.

The concept of overall processing times for Ministerial intervention also has little relevance because there is no formal application process and because there is no obligation for the Minister to consider the use of his powers in a particular case, nor is he prevented from considering the case on more than one occasion.

The Administrative Guidelines (**Attachment 2** of the DIMIA submission) set out the order of priority in which requests for intervention are to be processed and this can affect the time taken to process a request.

Question C6

How many cases would an officer in a ministerial intervention unit typically be dealing with?

Answer

Following consultation with the various MIUs, it has been determined that an officer processes between approximately 140 and 660 cases per year, depending on the complexity and circumstances surrounding each individual case.

Question C7

Has the number of staff in ministerial intervention units increased to cope with the increased number of requests for ministerial intervention?

Answer

Detailed historical staffing figures are not available. However, resourcing for this support work has for several years up to 2002/03 financial year been on the basis of a pricing agreement between DIMIA and DoFA. This agreement provided funding on a unit cost basis for work done. State Offices have accordingly been able to flexibly manage staffing levels to deal with changes in work volume.

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Questions on Notice provided under cover of the Committee's letter of 8 September 2003

D. Guidelines for officers on ministerial intervention

As has been outlined in Chapter 4 of the departmental submission to the Enquiry, guidelines for the use of Ministerial discretion have evolved since the introduction of the powers in 1989. Minister Hand made a statement to the Parliament in May 1990 that provided guidance for departmental officers in preparing submissions for his consideration. This was followed by a departmental policy control instruction, PC1721, on 10 August 1990 (**Attachment 3** of the DIMIA submission).

Minister Bolkus affirmed Minister Hand's guidelines, and on 26 May 1994 issued revised guidelines (**Attachments 6 & 7** of the DIMIA submission).

Minister Ruddock accepted Minister Bolkus' guidelines in 1996, but in March 1999 he signed revised Ministerial Guidelines which were issued as MSI 225 on 4 May 1999 (**Attachment 8** of the DIMIA submission). These Ministerial Guidelines were underpinned by draft Administrative Guidelines which were used by departmental officers as the basis for assessing and referring intervention requests to the Minister but which were not formalised as an MSI.

Rather than formally issue the draft Administrative Guidelines, the opportunity was taken to update them - the revised Administrative Guidelines being issued on 14 August 2003 as MSI 387 (**Attachment 2** of the DIMIA submission). Simultaneously the Minister's Guidelines were updated and reissued as MSI 386 on 14 August 2003 (**Attachment 9** of the DIMIA submission)

Question D1

Which of the documents provided to the Committee is the current set of guidelines on the use of ministerial discretion?

Answer

The Administrative Guidelines (**Attachment 2** of the DIMIA submission) and the Minister's Guidelines (**Attachment 9** of the DIMIA submission) are the current guidelines.

The Minister's Guidelines at **Attachment 9** provide guidance to DIMIA officers in relation to the types of exceptional and compelling circumstances identified by the Minister as circumstances where he may wish to consider exercising his public interest powers. The Administrative Guidelines at **Attachment 2** underpin the Ministerial Guidelines and assist departmental staff in the application of those Guidelines.

Question D2

Is the document at **Attachment 8** (MSI 225), dated 31 March 1999, still the current set of guidelines for staff on the exercise of ministerial discretion?

Answer

No. **Attachment 8** is the Ministerial Guidelines signed by Mr Ruddock on 31 March 1999 which have been replaced by the new Minister's guidelines (MSI 386) (Attachment 2 of the DIMIA submission).

Question D3

What other guidance is available for staff assessing requests for ministerial intervention?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, at pages 19 and 23 of Hansard. In addition to the Administrative Guidelines (**Attachment 2** of the DIMIA submission), staff assessing requests for Ministerial intervention can access relevant country information, and are given refresher training on a regular basis on refugee law and other policy changes. Staff are also able to consult as necessary with supervisors, the relevant policy areas, the DIMIA legal area and as necessary, the case officer who originally handled the case.

Question D4

What is the status of the document at **Attachment 9**?

Answer

The document at **Attachment 9** of the DIMIA submission is the current Ministerial Guidelines, signed by Mr Ruddock on 5 August 2003.

Questions D5 and D6

Has this document been signed off by the Minister? When did this/is this likely to occur?

Answer

The Minister signed off on **Attachment 9** on 5 August 2003.

Question D7

Is this document available to staff assessing requests for ministerial intervention?

Answer

Yes. The Minister's Guidelines (**Attachment 9** of the DIMIA submission) has been issued as MSI 386 and became available to all departmental staff through LEGEND on 14 August 2003.

Question D8

Is this document publicly available?

Answer

Yes. A response to this question was provided to the Senate Committee on 5 September 2003, at page 10 of Hansard.

Question D9

Can you explain the differences between this set of guidelines and that at **Attachment 8**?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, at pages 8 & 9 of Hansard. Also see the DIMIA response to Senator Ludwig's question on notice at Hansard page 81.

Question D10

Will/did this set of guidelines replace those at **Attachment 8**?

Answer

Yes.

Question D11

Why was this new set of guidelines developed?

Answer

The amended Minister's Guidelines (**Attachment 9** of the DIMIA submission) were developed as it had been in excess of four years since they were last revised. The opportunity was taken, in the light of the passage of time and changes to policy and legislation for the Minister to issue the new Guidelines to reflect those changes.

Question D12

What is the status of the document found at **Attachment 2** of the submission?

Answer

Attachment 2 is the current departmental Administrative Guidelines issued as MSI 387 on 5 August 2003.

Question D13

Is this document currently available to DIMIA staff assessing requests for ministerial intervention?

Answer

Yes. The Administrative Guidelines (MSI 387) (**Attachment 2** of the DIMIA submission) were placed on LEGEND on 14 August 2003 and are currently available to DIMIA staff.

Question D14

Is it publicly available?

Answer

A response to this question was provided to the Senate Committee on 5 September 2003, at page 10 of Hansard. MSIs are available for inspection and purchase at DIMIA Freedom of Information Units.

Question D15

If it is not yet released, when is it expected to be formally issued?

Answer

The Administrative Guidelines (**Attachment 2** of the DIMIA submission) have been released and were placed on LEGEND on 14 August 2003.

Question D16

Why was this more detailed set of guidelines produced?

Answer

See the DIMIA response to Senator Ludwig's question on notice at Hansard page 81.

Question D17

What are the major differences with the set(s) of guidelines currently in effect?

Answer

See the DIMIA response to Senator Ludwig's question on notice at Hansard page 81.