

14 November 2003 1.50 p.m.

Dear Alistair,

Further to my electronic message of 12 November 2003, please find in attachments below the remainder of the Department's responses to Questions taken on Notice at the Sydney hearing of the Ministerial Discretion in Migration Matters Inquiry on 23 September.

Please note that, as discussed with Peta Leemen this afternoon, four attachments to the response to the question asked by Senator Santoro (Hansard page 56), which are unavailable electronically, will be forwarded separately to the Secretariat by fax.

Responses are still outstanding to questions in two groups:

'S' - Questions with regard to Mr Ruddock's letter of 16 June 2003;  
and

'T' - Updated Ministerial intervention figures and Ministerial interventions in October 2003.

We are continuing to examine workload and resource considerations involved in responding to the above questions; these may be considerable and result in significant leadtimes. We will advise as soon as possible the extent to which we may further assist the Committee with regard to these two questions.

Regards

Andrew Endrey  
Director  
Parliamentary Coordination  
DIMIA

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 66) – Can the Department make the findings of the review (Migration Agents Review 2002) available to the committee?

*Answer:*

The report on the 2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry is attached.

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 66) – When did the (migration advice industry) review commence?

*Answer:*

The review commenced in September 2001 with the distribution of a discussion paper inviting stakeholders to make submissions on the operation of the current regulatory arrangements and options for future industry regulation. This discussion paper was also posted on DIMIA's and the MIA's web sites at that time.

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 66) – Was the anecdotal evidence of what we heard today (some migration agents and some non-migration agents giving misleading advice, and asking for or receiving cash payments) available back in 2001?

*Answer:*

Some limited anecdotal evidence was available. However, most of the evidence has come to light since the Parliamentary debate on the *Migration Legislation Amendment (Migration Advice Industry) Bill 2002* was held in June 2002, when the Review had already been finalised.

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Sherry asked (Hansard page 68) – Is there any information that the Department has about that collection of issues? (knowledge of complaints about misleading advice and inappropriate charges, including cash payments)?

*Answer:*

The MARA does not categorise complaints as "misleading advice". The MARA reported in their 2002-03 Annual Report that the largest single category of complaint was in relation to standards of professional conduct. 85.2% (ie. 435) of the 510 complaints to MARA in 2002-03 were in relation to standards of professional conduct that included (but did not separately identify) misleading advice.

The MARA also reported that of the 510 complaints that it received in 2002-2003, a further 5.4% (ie. 28) related to "fees and charges".

## **QUESTION TAKEN ON NOTICE**

### **SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS**

Senator Wong asked (Hansard page 79) – Could you give us the dates of the successful interventions? (In producing the updated tables of intervention rates for the top ten group)

*Answer:*

Please refer to response to Question on Notice O1 of 5 September 2003.

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Wong asked (Hansard page 80) – I suggest that we add a couple of other MPs...Can we add the member for Parramatta and the member for Sturt?  
(In producing the updated tables of intervention rates for parliamentarians)

*Answer:*

The tables in Attachment 1 provide the same information for the members for Parramatta and Sturt as has been provided for the Top Ten Parliamentarians.

**Table 1: Analysis of Ministerial Intervention Requests Under S351 and S417  
(Date Range November 1999 – 29 August 2003)**

	A	B	C	D	E	F	
Parliamentarian	Number of Requests <sup>1</sup>	Cases <sup>2</sup>	Intervened (Cases)	Not Intervened (Cases)	In Progress (Cases)	Otherwise Finalised (Cases)	Success Rate (C/B)
Cameron, Ross	36	30	10	7	5	8	33%
Pyne, Christopher	5	5	0	3	1	1	0%

<sup>1</sup> The number of requests shown above has been refined through manual checks of DIMIA systems and excludes items of correspondence identified as intervention requests in PCMS, but which relate to other intervention powers such as s48b.

<sup>2</sup> Includes only cases that were able to be identified by manual interrogation of departmental systems.

The figures above are based on manual interrogation of available data from PCMS, crosschecked by manual interrogation of departmental systems.

**Table 2: Visa Grant Dates – Ross Cameron  
(Date Range November 1999 – 29 August 2003)**

Financial Year	Visa Grant Date (Cases)
00/01	6/09/00
	14/12/00
	30/01/01
01/02	24/01/02
02/03	20/07/02
	19/08/02
	9/04/03
	12/05/03
03/04	3/07/03
	14/08/03

The figures above are based on manual interrogation of available data from PCMS, crosschecked by manual interrogation of departmental systems.



## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 80) – Can the Department provide an explanation as to why Lebanon is the top of the intervened countries for non-parliamentarians and the Philippines is the top for parliamentarians? Can the figures for nationalities be disaggregated?

*Answer:*

No, the Minister has no control over who may request him/her to exercise his/her intervention powers.

It is up to an individual as to whom they approach to support a request. Equally, it is up to Parliamentarians and others as to whom they choose to support by making representations to the Minister.

Please see Attachments 1 and 2 for the figures relating to the disaggregated number of intervention requests by nationality.

Nationality of clients under s351 and s417 requests by the top 10 Parliamentarians  
(Nov 1999-29 August 2003)

Author	Nationality	351	417	Total
Laurie Ferguson	Afghanistan	0	1	1
	Algeria	0	1	1
	Bahrain	0	1	1
	Belarus	0	1	1
	Burma (Myanmar)	0	3	3
	China, Republic of	1	1	2
	Colombia	0	1	1
	Croatia	1	0	1
	Estonia	0	1	1
	Fiji	2	2	4
	India	0	2	2
	Indonesia	0	3	3
	Iraq	1	3	4
	Japan	0	1	1
	Kuwait	0	2	2
	Kyrgyzstan	1	0	1
	Lebanon	6	4	10
	Nigeria (Africa)	0	5	5
	Pakistan	1	0	1
	Palau	0	1	1
	Palestinian Authority	0	1	1
	Peru	0	1	1
	Philippines	3	3	6
	Russian Federation	0	3	3
	Somalia	0	1	1
	Sri Lanka	1	5	6
	Stateless (so stated)	0	1	1
	Thailand	1	0	1
	Tonga	1	2	3
	Turkey	5	3	8
	Ukraine	0	1	1
	Yugoslavia, Fed	0	2	2
	<b>Total</b>		<b>24</b>	<b>56</b>
Roger Price	Egypt, Arab Republic of	0	1	1
	Fiji	5	2	7
	India	2	0	2
	Indonesia	1	0	1
	Iraq	0	1	1
	Lebanon	0	1	1
	Nicaragua	0	1	1
	Nigeria (Africa)	0	2	2
	Philippines	16	6	22
	Samoa	3	1	4
	South Africa, Republic of	0	1	1
	Sri Lanka	1	1	2
	Taiwan	0	1	1
	Tonga	2	1	3
	United Kingdom	1	0	1
	<b>Total</b>		<b>31</b>	<b>19</b>

<b>Author</b>	<b>Nationality</b>	<b>351</b>	<b>417</b>	<b>Total</b>
Frank Mossfield	Burma (Myanmar)	0	5	5
	China	1	0	1
	Colombia	0	1	1
	Cyprus	1	0	1
	Fiji	3	2	5
	India	0	1	1
	Iran	0	2	2
	Lebanon	1	0	1
	Other *	0	2	2
	Philippines	4	0	4
	South Africa, Republic of	0	1	1
	South Korea	1	0	1
	Sri Lanka	2	6	8
	Yugoslavia, Fed	1	1	2
	Zimbabwe	0	1	1
	<b>Total</b>	<b>14</b>	<b>22</b>	<b>36</b>
Andrew Bartlett	Africa (so stated)	0	1	1
	Algeria	0	4	4
	Burma (Myanmar)	0	1	1
	China, Republic of	0	2	2
	Colombia	0	2	2
	Congo	0	1	1
	Croatia	0	1	1
	Eritrea	0	2	2
	India	0	3	3
	Iran	0	7	7
	Iraq	0	1	1
	Italy	1	0	1
	Kenya	0	1	1
	Libya	0	1	1
	Pakistan	0	2	2
	Philippines	0	3	3
	Romania	0	1	1
	Russian Federation	0	5	5
	Senegal	0	1	1
	Sri Lanka	1	0	1
U.S.S.R.	0	1	1	
Yugoslavia, Fed	0	1	1	
<b>Total</b>	<b>2</b>	<b>41</b>	<b>43</b>	

<b>Author</b>	<b>Nationality</b>	<b>351</b>	<b>417</b>	<b>Total</b>
John Murphy	Albania	0	3	3
	Bulgaria	1	0	1
	Burma (Myanmar)	0	2	2
	China, Republic of	2	1	3
	Colombia	0	1	1
	Fiji	2	0	2
	Georgia	0	1	1
	Indonesia	0	1	1
	Lebanon	0	1	1
	Nigeria (Africa)	0	3	3
	Other *	1	1	2
	Pakistan	0	1	1
	Peru	1	0	1
	Russian Federation	0	1	1
	South Korea	3	0	3
	Sri Lanka	0	4	4
	Stateless (so stated)	0	1	1
	Tonga	0	1	1
	Uruguay	1	0	1
	<b>Total</b>		<b>11</b>	<b>22</b>
Tony Abbott	Algeria	0	1	1
	China, Republic of	1	3	4
	Colombia	0	1	1
	Ethiopia	0	1	1
	Fiji	1	0	1
	Ghana	0	1	1
	India	0	1	1
	Iran	0	4	4
	Other *	1	0	1
	Philippines	0	4	4
	Russian Federation	0	1	1
	South Korea	0	1	1
	Sri Lanka	1	0	1
	Stateless (so stated)	0	1	1
	Thailand	0	1	1
	Tonga	1	0	1
	Turkey	0	1	1
	Ukraine	0	1	1
	United Kingdom	2	0	2
	<b>Total</b>		<b>7</b>	<b>22</b>

<b>Author</b>	<b>Nationality</b>	<b>351</b>	<b>417</b>	<b>Total</b>	
Leo Macleay	Algeria	0	2	2	
	China, Republic of	1	0	1	
	Colombia	0	1	1	
	Egypt, Republic of	0	1	1	
	Eritrea	1	0	1	
	Fiji	1	3	4	
	Indonesia	0	3	3	
	Iran	0	2	2	
	Jordan	0	1	1	
	Kuwait	1	0	1	
	Lebanon	3	1	4	
	Nigeria (Africa)	0	2	2	
	Pakistan	2	1	3	
	Philippines	2	1	3	
	Russian Federation	0	2	2	
	Sierra Leone	0	1	1	
	South Korea	1	1	2	
	Sri Lanka	1	1	2	
	Stateless (so stated)	1	0	1	
	Syria	0	1	1	
	Tanzania	0	1	1	
	Tonga	3	0	3	
	Ukraine	0	1	1	
	Vietnam	1	0	1	
	<b>Total</b>		<b>18</b>	<b>26</b>	<b>44</b>
	Con Sciacca	Afghanistan	0	1	1
Algeria		0	1	1	
Argentina		0	1	1	
Burma (Myanmar)		0	3	3	
Cambodia		0	1	1	
Colombia		0	1	1	
Ecuador		0	1	1	
Ethiopia		0	1	1	
Fiji		1	0	1	
India		0	1	1	
Indonesia		1	1	2	
Iran		0	1	1	
Iraq		0	1	1	
Lebanon		2	1	3	
Liberia		0	1	1	
Libya		0	2	2	
Other *		0	1	1	
Pakistan		0	3	3	
Philippines		3	0	3	
Russian Federation		0	2	2	
South Korea		0	2	2	
Sri Lanka		0	3	3	
Sudan		0	1	1	
Togo		0	1	1	
Turkey		1	0	1	
United Kingdom		1	0	1	
Yugoslavia, Fed Rep		0	1	1	
<b>Total</b>		<b>9</b>	<b>32</b>	<b>41</b>	

<b>Author</b>	<b>Nationality</b>	<b>351</b>	<b>417</b>	<b>Total</b>
Anthony Albanese	Bangladesh	0	2	2
	Burma (Myanmar)	1	1	2
	China, Republic of	2	3	5
	Colombia	0	2	2
	Fiji	1	1	2
	Greece	1	0	1
	India	1	1	2
	Indonesia	0	2	2
	Iran	1	0	1
	Kampuchea	1	0	1
	Mauritius	0	1	1
	Nepal	1	0	1
	Nigeria (Africa)	0	2	2
	Other *	0	1	1
	Pakistan	0	1	1
	Philippines	0	1	1
	South Korea	1	0	1
	Sri Lanka	0	2	2
	Sudan	0	1	1
	Syria	1	0	1
	Tonga	1	0	1
	Turkey	0	2	2
	United Kingdom	2	0	2
	Venezuela	0	1	1
	Vietnam	0	2	2
	<b>Total</b>		<b>14</b>	<b>26</b>
Anthony Byrne	Afghanistan	0	2	2
	Croatia	1	0	1
	Fiji	1	0	1
	Fmr Yugo Rep of Macedonia	2	0	2
	Greece	0	1	1
	India	2	1	3
	Indonesia	0	2	2
	Lebanon	0	1	1
	Other *	0	3	3
	Pakistan	0	1	1
	Philippines	1	0	1
	Poland	0	1	1
	Romania	1	0	1
	Russian Federation	0	2	2
	Sierra Leone	0	1	1
	Sri Lanka	6	5	11
	Timor, East (so stated)	0	1	1
	Turkey	1	1	2
<b>Total</b>		<b>15</b>	<b>22</b>	<b>37</b>

<b>Author</b>	<b>Nationality</b>	<b>351</b>	<b>417</b>	<b>Total</b>	
Ross Cameron	Lebanon	4	9	13	
	Sri Lanka	0	6	6	
	Iran	0	3	3	
	Bangladesh	0	2	2	
	Burma (Myanmar)	0	1	1	
	France	1	0	1	
	India	0	1	1	
	Iraq	0	1	1	
	Israel	0	1	1	
	Jordan	0	1	1	
	<b>Total</b>		<b>5</b>	<b>25</b>	<b>30</b>
	Christopher Pyne	Afghanistan	0	1	1
Albania		0	1	1	
Iran		0	1	1	
Philippines		1	0	1	
Sudan		0	1	1	
<b>Total</b>			<b>1</b>	<b>4</b>	<b>5</b>

- a) These figures are based on the list provided to the Committee on 15 September 2003.
- b) The information provided in the above table is the total number of discrete cases covered by requests made by the Top 10 Parliamentarians.
- c) The figures above are based on manual interrogation of available data from PCMS, crosschecked by manual interrogation of the ICSE.

\* Other 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

**Nationality of clients under s351 and s417 requests by the top 10 community groups/individuals  
(Nov 1999-29 August 2003)**

<b>Author</b>	<b>Nationality</b>	<b>351</b>
Amnesty	Afghanistan	0
	Albania	0
	Algeria	0
	Angola	0
	Australia	0
	Bangladesh	0
	Burma (Myanmar)	0
	Cambodia, the Kingdom of	0
	China, Peoples Republic of	3
	Colombia	0
	Congo	0
	Ethiopia	0
	Ghana	0
	India	0
	Iran	0
	Iraq	0
	Lebanon	0
	Libya	0
	Other *	0
	Palestinian Authority	0
	Senegal	0
	Somalia	0
	Sri Lanka	0
Syria	0	
Turkey	0	
Yugoslavia, Fed Republic of	0	
<b>Total</b>	<b>3</b>	
Marion Le	Albania	0
	Bangladesh	0
	Burma (Myanmar)	0
	China, Peoples Republic of	0
	India	0
	Indonesia	0
	Iran	0
	Kuwait	0
	Other	0
	Stateless (so stated)	0
	Taiwan	1
	Vietnam	1
	Yugoslavia, Fed Republic of	0
	<b>Total</b>	<b>2</b>
Fijian-Australian Community Council	Fiji	6
	Indonesia	0
	Philippines	0
	Vanuatu	0
	<b>Total</b>	<b>6</b>



Libby Hogarth	Afghanistan	0
	Albania	0
	Bosnia-Herzegovina	0
	Cambodia	1
	China, Peoples Republic	0
	Colombia	0
	Ethiopia	0
	Indonesia	0
	Iran	0
	Iraq	0
	Lebanon	1
	Other *	0
	Palestinian Authority	0
	Peru	0
	Russian Federation	1
	Stateless (so stated)	0
	Syria	0
	Thailand	1
	Vietnam	0
	Yugoslavia, Fed Republic	0
<b>Total</b>	<b>4</b>	
Karim Kisrwni	Brazil	1
	China, Republic of	0
	Egypt,	0
	Lebanon	5
	Other *	0
	Syria	0
	Ukraine	0
	United Kingdom	1
	<b>Total</b>	<b>7</b>
Maryellen Flynn	Iran	0
	<b>Total</b>	<b>0</b>
Sisters Of Mercy	Bangladesh	0
	Congo	0
	Czechoslovakia	0
	Egypt, Republic of	0
	Ethiopia	0
	Iran	0
	Jordan	1
	Kenya	0
	Nepal	1
	Romania	0
	South Korea	0
	Yugoslavia, Fed	0
	<b>Total</b>	<b>2</b>
	Sisters Of Charity Advocacy Network	Ethiopia
<b>Total</b>		<b>0</b>
Gail Alamdar	Iran	0
	<b>Total</b>	<b>0</b>

Hotham Mission	Albania	0
	Chile	0
	Egypt	0
	Eritrea	0
	Ethiopia	1
	Iran	0
	Jordan	1
	Kenya	0
	Pakistan	0
	Somalia	0
	Sri Lanka	1
	Turkey	0
	Yugoslavia, Fed	0
	<b>Total</b>	<b>3</b>

- a) These figures are based on the list provided to the Committee on 15 September 2003.
- b) The information provided in the above table is the total number of discrete cases covered by req  
Top 10 individuals and community groups.
- c) The figures above are based on manual interrogation of available data from PCMS, crosschecke  
interrogation of the ICSE.
- \* Other includes cases where the nationality varies within the case or where the nationality is not rec  
systems in a manner which is reportable

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<b>417</b>	<b>Total</b>
4	4
1	1
9	9
1	1
1	1
2	2
2	2
1	1
1	4
6	6
1	1
2	2
1	1
1	1
8	8
2	2
1	1
1	1
2	2
1	1
1	1
4	4
9	9
1	1
1	1
1	1
<b>65</b>	<b>68</b>
3	3
1	1
3	3
1	1
1	1
1	1
2	2
1	1
2	2
1	1
0	1
0	1
2	2
<b>18</b>	<b>20</b>
35	41
1	1
1	1
1	1
<b>38</b>	<b>44</b>

1	1
1	1
1	1
1	2
1	1
1	1
1	1
1	1
1	1
1	1
0	1
1	1
1	1
1	1
0	1
1	1
1	1
0	1
1	1
2	2
<b>18</b>	<b>22</b>
0	1
1	1
1	1
43	48
1	1
1	1
1	1
0	1
<b>48</b>	<b>55</b>
1	1
<b>1</b>	<b>1</b>
1	1
1	1
1	1
1	1
2	2
6	6
1	2
1	1
0	1
1	1
2	2
1	1
<b>18</b>	<b>20</b>
1	1
1	1
1	1
1	1

1	1
1	1
1	1
1	1
0	1
1	1
1	2
2	2
1	1
2	2
5	6
1	1
1	1
<b>18</b>	<b>21</b>

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## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 70) – Can the Committee be provided with a copy of the list of 18 names (if it can be tabled) provided to the Minister in Parliament that was apparently compiled by Ms Gillard?

*Answer:*

The list was provided to Mr Ruddock by Ms Gillard who noted on 5 June 2003 in the context of a question without notice to Mr Ruddock, "...for the sake of privacy I have detailed on a list I have had sent to the Minister". The Department's understanding is that this list was therefore not tabled in Parliament by Ms Gillard on the grounds of privacy. In view of the circumstances, the Department is of the view that it would not be appropriate for the Department to table the list. The Committee may, therefore, wish to approach Ms Gillard with a view to obtaining the list of names on a confidential basis.

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 78) – Does the Department have any prosecutions or investigations in respect of misrepresentation under sections 334 and 335 of the Migration Act?

*Answer:*

There have been no prosecutions by the Department under Sections 334 and 335 of the Migration Act. DIMIA Investigations staff consider all possible Migration Act offences, including offences under Sections 334 and 335, in their investigations. In this context there are currently a number of investigations under way that involve possible Section 334 and 335 offences.

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Wong asked (Hansard page 51) – Has the Department investigated the appropriateness of Mr Kisrwani organising a function, apparently attended by the Minister, in favour of Mr Greg Kelly upon Mr Kelly's promotion to Director within the Parramatta office of the Department as reported in the SMH of 31 January 2001?

*Answer:*

The Department was not aware of this report until raised by Senator Wong. It has been unable to locate the article referred to by Senator Wong.

Mr Kelly advises that he attended a function hosted by members of the Lebanese community on 26 February 1999 to farewell him from the Bankstown Office. Mr Kelly was transferring from Regional Manager Bankstown to Regional Manager Parramatta. This was a transfer not a promotion. Mr Kelly states that his records indicate that the function was hosted by Wally and Albert Whebe. He cannot recall that Mr Kisrwani or the Minister attended this function.

Mr Kelly further advises that he has no record of any other function, for example a "celebratory" dinner hosted by the Lebanese community in the period around his departure from Bankstown and his commencement in the Parramatta Office.

Mr Kelly advises that Mr Kisrwani hosted a dinner at the River Canyon Restaurant in Parramatta on 14 November 2000 to farewell him from the Parramatta Office. This dinner was attended by the Minister, the NSW State Director, members of the Lebanese community and some Departmental staff.

Mr Kelly attended other farewell functions on 16, 17, 20 and 24 November hosted by persons from the Hwa Tsang Monastery, Australian Lebanese Welfare Group, Serbian Orthodox Welfare Organisation and the Croatian Community respectively.

The Department considers that Mr Kelly's attendance at these functions in the circumstances was consistent with the Department's objectives in developing and maintaining appropriate links with local multicultural communities.



## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard page 53) – Could the Department please provide details of any current internal investigations into departmental officers who may have acted inappropriately in attending community functions, including how the investigation process is enlivened and the results of those investigations?

*Answer:*

The Department is not currently conducting any internal investigations into departmental officers who may have acted inappropriately in attending community functions.

The investigation process is enlivened by a referral of the information to the Department's Values and Conduct Section (VCS). The information can originate from any source, whether from the community, another agency or from other Departmental staff and may be in any form, written or oral. Departmental staff are required to bring any allegations against employees to the attention of VCS as soon as possible.

If the information indicates the possibility of criminal conduct by the employee concerned, an investigation will commence or the matter will be referred to the Australian Federal Police for evaluation.

If the information does not indicate criminal conduct, an assessment will be conducted by VCS as to whether the matter is apparently consistent with the employee's duties. An investigation will be conducted if the matter does not appear to be consistent with the employee's duties or otherwise could raise serious concerns about a conflict of interest.

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Sherry asked (Hansard page 54) – Could you read a copy of the transcript [of the SBS *Insight* interview with Mr KISRWANI], determine whether or not the claims made are correct and report back to the committee?

*Answer:*

The transcript of the program clearly indicates that the event which was organised to celebrate Philip Ruddock's 25 years in Parliament and the luncheon to which Mr Kelly gave Mr KISRWANI a lift were two separate events.

Mr Kelly advises that he did not attend a function to celebrate Mr Ruddock's term in Parliament, nor any other political fundraiser.

Mr Kelly advises that he recalls, while Regional Director at the Parramatta office, he did on a small number of occasions provide a lift to Mr KISRWANI to Departmental or community events. Mr Kelly's office in Parramatta was close by Mr KISRWANI's business in Harris Park. He also recalls that this was a courtesy he extended to other community leaders on occasions.

The Department considers Mr Kelly's conduct in these circumstances consistent with the Department's objectives in developing and maintaining appropriate links with local multicultural communities.

## QUESTION TAKEN ON NOTICE

### SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Santoro asked (Hansard page 56) – Would the Department please inform the Committee of the contents of its Code of Conduct?

*Answer:*

A copy of the Department's Code of Conduct is at Attachment 1. The Code of Conduct Framework includes related instructions which are also attached:

- Whistleblower Policy and Procedures (Attachment 2);
- Breaches of the Code of Conduct (Attachment 3); and
- Investigations of Possible Criminal Conduct (Attachment 4).

Please note that the Administrative Circular "Discipline Procedures" has been superseded by the Administrative Circular "Breaches of the Code of Conduct".

## **P. Processes of the Sydney Ministerial Intervention Unit**

### **Question P1**

Can you outline the usual processes in place within the MIU for handling requests for ministerial intervention?

### **Answer**

Please see paragraph 169 of the DIMIA submission to the Inquiry and responses to questions A1-A6, emailed to the Committee on 16 October 2003, and F1, emailed to the Committee on 9 October 2003.

### **Question P2**

Attachment 2 of DIMIA's submission contains detailed administrative guidelines on the Minister's public interest powers. Are these guidelines current in the Sydney MIU? How long have they been in place?

### **Answer**

The latest Guidelines were placed on LEGEND on 14 August 2003 with training having been provided on 12 August 2003. The Guidelines are in use.

### **Question P3**

DIMIA's submission to this inquiry suggests that in some circumstances preliminary details of a case are faxed by the MIU to the Minister prior to the preparation of a submission (para 186). How often/how many times has this happened? Why would this occur? Would this usually be done at the request of the Minister or DLO?

### **Answer**

Para 8.1 of MSI 387 (Attachment 2 of the DIMIA submission to the Inquiry) provides guidance on the processing of applications for BVEs made on the basis of a request for the exercise of the Minister's public interest powers. In circumstances where there is a repeat request for the exercise of the Minister's power, the associated grant of a BVE may be subject to the Minister personally considering whether or not he wishes to exercise the public interest power. MSI 387 advises the circumstances where a request can be considered under the Minister's personal consideration. This includes where the supervisor of the MIU has made an assessment that the request falls within the Guidelines and, prior to the preparation of a Submission, provides preliminary details of the case to the Minister's office by fax.

Provision of information on the number of times this has occurred would require a manual check of all case files as DIMIA computer systems do not capture this information.

**Question P4**

Are MIU staff in regular contact with external stakeholders, such as community leaders who have made representations on behalf of individuals seeking Ministerial intervention?

**Answer**

MIU staff members do not generally have contact with external stakeholders. However, it may occur infrequently where the external stakeholder is also acting in the capacity of a representative. The external stakeholder may respond to requests for information /documentation or may seek to enquire as to the current status of a request.

**Question P5**

Do MIU staff have direct contact with MRT/RRT members? Do MIU staff have access to MRT/RRT case files?

**Answer**

Liaison staff who manage the movement of DIMIA files are the points of contact on case matters between the RRT and the MIU. MIU staff do not have direct contact with RRT members, nor do they have access to RRT files. All Onshore Protection staff have access to the RRT decisions, as they are placed on the DIMIA file by the RRT.

**Question P6**

Does the Ministerial Intervention Unit have a counter or shopfront? How do people contact it?

**Answer**

The MIU does not operate a counter service as there is no need or expectations that a person will contact the MIU, given that intervention requests are made to the Minister not the Department. However, the MIU can be contacted through the general contact centre telephone number, if necessary.

**Question P7**

How many people are involved in handling Ministerial intervention requests in NSW, including people both inside and outside the MIU?

**Answer**

The number of staff working in the MIU in NSW varies from time to time in response to operational requirements. As at 30 June 2003 there were 19.5 staff working in the unit. The MIU is located in the Gateway (Lee St) offices and MIU activities are generally limited to that one work area. There are links to other DIMIA work areas and external agencies such as the Health Assessment Unit and the Australian Federal Police who provide advice as appropriate.

Although not a request for intervention, a Public Interest Guidelines Assessment may be referred to the MIU after the relevant assessment is undertaken by protection visa (PV) case managers. There are some 29 case managers who undertake these assessments as an adjunct to their role of PV primary decision makers.

**Question P8**

Does the MIU deal only with s417 interventions, or does it also assess cases involving the Minister's other discretionary powers under the Act (such as for procedural matters)? What proportion of time is spent handling the various types of intervention requests?

**Answer**

The MIU deals with all s417, s501J and s48B requests. The s417 cases are the largest workload by far. In 2002, the MIU undertook processing of a defined group of (1000) s351 requests transferred from the MIU in ACTRO to assist with workload management in that office.

**Question P9**

Has an internal or external audit ever been undertaken of MIU operations? If so, what was the nature of the audit and its findings?

**Answer**

According to the Department's records there has not been an internal or external audit of MIU operations specifically, nor the MIU process in general.

### **Question P10**

Several submissions to this inquiry have suggested that requests for Ministerial intervention can take up to two and a half years to process, and that most cases take around 6 months (eg. Sub 6, p.3). What would cause such a long delay in processing time?

#### **Answer**

It is not usual for cases to take up to 2½ years. In general, requests are dealt with in periods ranging from 6 weeks to 6 months, with an average of 4 months. However, processing times can vary considerably and reflect administrative procedures involved. In general a case where the Minister indicates an intention to intervene takes longer because of the two stage process and various checking that needs to be undertaken.

Some requests such as those initially assessed as "Guidelines Met" may require additional research before referral to the Minister and requests involving health and character assessments would also take longer. Extremes in processing times would generally reflect the processing requirements for an individual case. There may also be perceptions that an unsuccessful request followed by success in a repeat request constitutes extended processing times. Each repeat request is assessed against the Guidelines and the outcome of the repeat request may reflect new information or a change in circumstances sufficient to produce an eventual successful outcome for the individual.

The issue has also been addressed in departmental evidence to the Inquiry at Hansard pp25, 26, 29 and 30, the DIMIA submission to the Inquiry at paragraphs 214 and 215, and the DIMIA response to Senator Santoro's question on notice at Hansard p25.

### **Question P11**

Some of the submissions to this inquiry suggest that an increase in the scope of discretionary powers under the Migration Act combined with the increased requests for ministerial intervention under ss417 and 351 has created a backlog of work for the Ministerial Intervention Units (eg Submission 17). How would you respond to those comments?

#### **Answer**

The Department operated under a pricing agreement with the Department of Finance which provided the capacity to match staff to workloads. If workloads shift unexpectedly and significantly it is conceivable that this could place pressure on a work area in the short term. Management would need to consider the availability of suitable staff to address the matter in the short term, while addressing the longer term options including recruitment and training. Attachment 10 to the Department's submission to the Inquiry identifies the numbers of all staff who have some involvement in intervention work. The full time equivalent numbers involved in processing Ministerial intervention requests is lower.

**Question P12**

What would be the shortest time taken by the MIU for processing a case? What factors enable some cases to be dealt with quickly?

**Answer**

The shortest time to finalise a request would generally be 5 working days. The two factors which impact on the speed with which a request is dealt with such as the time taken to obtain files, conduct research and present the details and the priority of a request. For example, a request relating to a person in detention would have a high priority. Other individual circumstances (such as health issues) may also be compelling reasons for urgent action. MSI 387 (Attachment 2 of the DIMIA submission to the Inquiry) establishes general processing priorities.

**Question P13**

The administrative guidelines at attachment 2 state that the Minister may intervene in cases where litigation is currently underway if the applicant is in danger of missing a substantial business opportunity (6.3.2). Has the Sydney MIU ever recommended intervention while litigation is in progress on these grounds?

**Answer**

DIMIA computer systems do not capture this information.



## Q. Additional questions arising from previous answers

### Question Q1

The list of intervention correspondence from major firms (attachment D of information provided on 15 September 2003) includes: Australian Migration Program & Investments; Richard Barba & Co; Eric Tjahja Migration Agent; Ozi-land Immigration & Education Consultants. For each of these firms:

- a) Is it a registered migration agent?
- b) Who is it associated with?
- c) Does it have connections with an educational institution?
- d) What information does the department have about the nature of the work carried out by the firm and its client base?

### Answer

a). Firms are not registered under the Migration Act as a migration agent. Registration as a migration agent is open only to individuals. This is provided for at section 288(1) of the Migration Act 1958: "An individual may apply to the Migration Agents Registration Authority (MARA) to be registered as a registered agent".

b). Each of these firms currently employs, or previously employed, a number of migration agents. Information provided by the MARA in relation to the agents employed by these four firms over the previous two years (including each agent's registration number and whether he or she had ever been sanctioned) is as follows:

#### 1. Australian Migration Program & Investments

*Agents currently employed by this firm:*

1. Lisa Brady	9903048	never sanctioned
2. Michael Kuperman	9800968	never sanctioned
3. Simon Lipman	0106572	never sanctioned
4. Peter Steele	0000264	never sanctioned
5. Gil Tabios	9251561	never sanctioned
6. Michael Walker	0006651	never sanctioned
7. John Wallis	9475565	never sanctioned
8. John Young	9251554	never sanctioned

*Agents not currently employed by this firm but employed there during the previous 2 years:*

9. Gayed Gayed	9905531	never sanctioned
10. Parket Lemarkat	9803401	never sanctioned
11. Emile Chidiac	0100089	His registration ceased on 21 March 2003 and he was never sanctioned.

2. Richard Barba & Co

This firm currently does not employ any agents.

*Agents not currently employed by this firm but employed there during the previous 2 years:*

1. Rex Bamba	9794372	His registration as a migration agent was cancelled by the MARA on 8 September 2003.
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3. Erik Tjahja Migration Agent

This firm currently does not employ any agents.

*Agents not currently employed by this firm but employed there during the previous 2 years:*

1. Erikiawan Tjahja	0001327	His registration as a migration agent ceased on 3 June 2003 and he was barred from applying for re-registration for five years.
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4. Oziland Immigration Consultants Pty Ltd

*Agents currently employed by this firm:*

1. Christopher Muthu	0101560	His registration was cancelled by the MARA on 14 July 2003. He appealed to the AAT and was given a stay order so is currently able to practise.
2. Muthuraman Senthil Ramasamy	0317433	never sanctioned

*Agents not currently employed by this firm but employed there during the previous 2 years:*

3. Vijay Sumathy	0106407	He is currently not registered but has a registration application before the MARA.
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c). DIMIA does not routinely keep system records of links between registered migration agents and education providers. A search has, however, been undertaken, which revealed no evidence of the above-listed firms having any such links. Nevertheless, the possible existence of such links, cannot be discounted. DIMIA has anecdotal evidence that some registered migration agents work closely with particular educational institutions.

d). The MARA's advice of 3 November 2003 is that the four firms in question employed a total of sixteen registered migration agents over the previous two years. A preliminary check of the Department's ICSE database indicates that each of these agents has assisted many hundreds of clients lodge applications for visas across a range of visa classes. Of the more than fifteen hundred records of visa applications assisted by these firms, fewer than twenty were for student visas.

### **Question Q2**

At the public hearing on 5 September 2003, Mr Peter Knobel stated that DLOs keep notebooks to keep track of the content and outcome of any phone calls. (*Hansard* p.72). Can the department provide copies of any such notebooks kept by Mr Knobel and other DLOs while serving in Minister Ruddock's office?

### **Answer**

These notebooks contain a record of certain telephone communications with the Minister's office, notwithstanding the fact that the record is made by DLOs. Some of the communications recorded may be regarded as confidential by the participants. Moreover, the notes of the communications, being purely for the purpose of acting as an 'aide memoire', are likely to be quite misleading taken out of context. For these reasons, the Department does not believe the provision of the notebooks is appropriate. However, if there is a particular point that can be clarified by checking whether there is a specific entry, we could assist by seeking that information.

### **Question Q3**

The Department's answer to Question G3 provided on 9 October 2003 states that the Minister has chosen to intervene in 21 cases during 2000/01 to 2003/03 while judicial proceedings are under way.

a) With respect to these cases, what was the rationale for intervening before judicial proceedings had concluded?

Once the Minister had indicated that he was satisfied that it was in the public interest to substitute the RRT decision with a decision more favourable to the applicant it would incur unnecessary costs for the applicant and the taxpayer to defer action in order for judicial proceedings to conclude.

- b) Was the agreement of the Minister obtained before offering applicants access to Ministerial intervention in exchange for withdrawing from judicial proceedings?

Yes, in all cases.

- c) How do DIMIA officers identify cases where the Minister might wish to intervene despite judicial proceedings?

It depends on the individual circumstances of each case subject to litigation.

#### **Question Q4**

In addition to these cases, are there cases where applicants have been asked to withdraw from court proceedings in exchange for their case being put before the minister for consideration where the minister has not exercised his discretionary powers? If so, how many cases? Have any applicants subsequently recommenced court proceedings after withdrawing to enable consideration of their case by the Minister?

#### **Answer**

There are no cases

#### **Question Q5**

Several submissions to this inquiry have stated that there is a perception of bias in the way the Minister has used the discretionary powers under ss 351 and 417. What steps does the department take to prevent a perception of bias in the operation of these powers?

#### **Answer**

The Department's responsibility is to ensure there is a clear set of guidelines for staff managing this workload. As set out in the MSI on the Minister's Public Interest Powers – Attachment 2 of the Department's submission to the Committee – each case is considered on its individual merits (refer to 3.3.4 of Attachment 2). The MSI further states that cases are assessed on a case by case basis and previous decisions of the Minister have no impact on the assessment of each case against the Guidelines (refer to 3.3.5 of Attachment 2).

The concept of bias assumes that it is possible to compare the outcome and the reason for that outcome in two or more cases. The facts of no two cases, nor the personal circumstances of individuals will be exactly the same. Regardless of apparent similarity, no two individuals whose cases are being submitted to the Minister for the consideration of the intervention powers, will have precisely the same antecedents and experience in life, and therefore cannot raise identical public interest consideration.

**Question Q6**

According to answers to questions L1 and L4 provided on 9 October 2003, 711 of the cases referred by the RRT as raising humanitarian considerations from 1999-00 to 2002-03 were referred by the department to the Minister. Were all of these cases the subject of a full submission? If not, how many were the subject of a full submission and how many were placed on a schedule?

**Answer**

Of the cases referred by the RRT from 1999-00 to 2002-03, 456 cases were the subject of a full submission, with the remaining cases placed on schedules.

## **Questions on Notice to Department of Immigration and Multicultural and Indigenous Affairs**

### **R. Questions regarding Mr KISRwani and associates' involvement in ministerial intervention applications**

#### **Question R1**

Has an officer of the department interviewed Mr Karim KISRwani since allegations about him were aired in May 2003? If so,

- (a) What was discussed with Mr KISRwani?
- (b) Which officers of the department were involved in interviewing Mr KISRwani?
- (c) Was documentation kept of the interview?
- (d) Can the department provide copies of any such documentation to the Committee?

#### **Answer**

- a). Mr KISRwani was interviewed on 4 July 2003 in relation to ongoing investigations.
- b). Mr KISRwani was interviewed by two accredited DIMIA investigators.
- c). Consistent with standard investigative procedures a record of the interview was kept.
- d). It is not appropriate to provide copies of documentation, as it is material to an ongoing investigation. To do so may prejudice the investigation.

#### **Question R2**

What other steps has the department taken to investigate Mr KISRwani's involvement in visa related matters?

#### **Answer**

The Department is currently investigating a number of visa related matters that involve Mr KISRwani. As these matters are current and ongoing it would not be appropriate to elaborate on these investigations.

**Question R3**

Can documentation of any investigation of Mr Kisrwani be provided to the Committee?

**Answer**

No. To provide copies of documentation that is material to an ongoing investigation may prejudice the investigation.

**Question R4**

How many times has Ms Gilda Ponferrada made representations about a ministerial intervention request to the department? How many cases has she made representations about? What are the names of those cases?

**Answer**

Ms Ponferrada has made 34 Ministerial intervention requests in respect of 29 cases. As at 7 November 2003 there had been no visas granted in respect of these cases. The Department does not consider it is appropriate to provide the names of these cases (Ms Godwin's letter of 30 October 2003 refers). The nationalities of these cases are at Attachment R1.

**Question R5**

Has the department conducted an investigation of the activities of Ms Ponferrada?

**Answer**

In the investigation of a number of visa related matters the Department has become aware of some community concerns in respect of the conduct of Ms Ponferrada which relate to the Migration Agent Code of Conduct and these matters have been referred to the Migration Agent Registration Authority.

**Question R6**

Can documentation of any investigation of Ms Ponferrada be provided to the Committee?

**Answer**

It is not appropriate to provide copies of documentation, as it is material to an ongoing investigation. To do so may prejudice the investigation.

**Attachment R1: Summary table of nationalities where requests for Ministerial Intervention were made by Ms Ponferrada**

<b>Nationality</b>	<b>Number of Cases</b>	<b>Number of Visas Granted</b>
Philippines	15	Nil
Fiji	6	Nil
Lebanon	5	Nil
Sri Lanka	1	Nil
Syria	1	Nil
UK	1	Nil
<b>TOTAL</b>	<b>29</b>	<b>Nil</b>