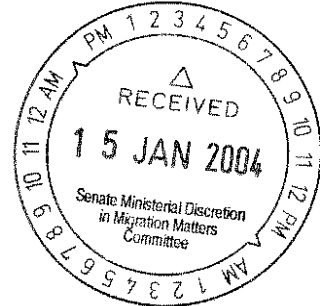




Australian Government

Department of Immigration and Multicultural and Indigenous Affairs



Senator Joe Ludwig  
Chair  
Select Committee on Ministerial Discretion in  
Migration Matters  
Parliament House  
CANBERRA 2600

Dear Senator Ludwig

Please find enclosed 14 case studies provided in the format advised in Ms Godwin's letter of 12 December 2003.

2. Also enclosed are responses to Questions on Notice:

- **U** - Intervention requests by Mr Fahmi Hussain;
- **V** - Individuals about whom further information was requested at the Public Hearing of 18 November 2003;
- **W** - Representational Allowance to return hospitality;
- and to Questions on Notice taken at the 17 and 18 November 2003 hearings.

3. In the course of preparing a response to **V** above we have been advised by our Special Counsel (AGS) that in regard to detailed information on Mr HBEICHE and Mr SAMMAKI we would need to seek their permission to release such information to your Committee.

4. We are therefore in the process of contacting these two individuals to gain their permission. Once permission is received we will forward the information.

Yours sincerely

Des Storer  
First Assistant Secretary  
Parliamentary and Legal Division

14 January 2004

## **Case 1**

Number of persons included in application - 1

### **(i) Nationality**

Albanian

### **(ii) – (vi) Timeline**

22 October 2001	client arrived in Australia on a fraudulently obtained passport. Refused immigration clearance and detained at an IDC
8 November 2001	client lodged a Protection Visa (PV) application
22 November 2001	PV application refused
29 November 2001	client applied to the RRT for review of the PV decision
27 March 2002	RRT affirmed the decision not to grant a PV, but noted possible humanitarian considerations
4 April 2002	client appealed the RRT decision to the Federal Court
19 April 2002	Public Interest Guidelines Assessment (PIGA) conducted - Guidelines not met
6 September 2002	Federal Court upheld RRT decision
26 September 2002	client appealed that decision to the Full Bench of the Federal Court
29 October 2002	client's migration agent requested that the Minister intervene in the case (s417 request)
14 November 2002	request was not referred to the Minister as it was assessed as inappropriate to consider due to ongoing judicial review
29 November 2002	migration agent made a repeat request (s417) for intervention by the Minister in this case
2 December 2002	client withdrew from judicial review
18 December 2002	case assessed as not meeting the Guidelines
19 December 2002	case referred to the Minister on a schedule
10 January 2003	Minister declined to consider the case
28 February 2003	migration agent made a further repeat request for s417 intervention by the Minister in this case

12 March 2003	member of a religious order requested that the Minister intervene in this case (repeat s417 request)
31 March 2003	member of a second religious order requested that the Minister intervene in this case (repeat s417 request)
31 March 2003	member of the public requested that the Minister intervene in this case (repeat s417 request)
1 April 2003	case assessed as meeting the Guidelines
2 April 2003	second member of the public requested that the Minister intervene in this case (repeat s417 request)
23 May 2003	case was referred to Minister on a Stage 1 submission
29 May 2003	Minister indicated that he wished to consider the case and requested further information (health and character checks)
24 September 2003	case was referred to the Minister in a Stage 2 submission
7 October 2003	Minister intervened and granted a subclass 835 visa

## Case 2

Number of persons included in application - 1

### (i) Nationality of Applicant

Lebanese

### (ii) – (vi) Timeline

8 November 1997	client arrived in Australia as holder of subclass visa 676 (visitor short stay)
5 February 1998	client lodged a Protection Visa (PV) application
16 March 1998	PV application refused
15 April 1998	client applied to the RRT for review of the primary decision
29 April 1998	client's agent lodged FOI application
17 June 1998	FOI request decided
4 February 2000	RRT affirmed primary decision
14 February 2000	Public Interest Guidelines Assessment (PIGA) conducted – Guidelines not met
3 March 2000	client's agent requested that Minister intervene in the case (s417 request)
14 April 2000	case referred to Minister on a schedule
6 May 2000	Minister declined to consider
19 May 2000	client's agent again requested that Minister intervene in the case (repeat s417 request)
22 May 2000	Minister's office requested a brief
22 November 2000	case referred to Minister in a Stage 1 submission
28 November 2000	Minister indicated he wished to consider the case and requested further information (health and character checks)
23 August 2001	case referred to Minister in a Stage 2 submission
30 August 2001	Minister intervened and granted a Protection (subclass 866) visa.

### **Case 3**

Number of persons included in application - 1

#### **(i) Nationality of Applicant**

Burmese

#### **(ii) – (vi) Timeline**

23 May 1996	client arrived in Australia as the holder of a subclass 686 (Tourist – Long Stay) visa
25 October 1996	client lodged a Protection Visa (PV) application
31 March 1998	PV application refused
23 April 1998	client applied to the RRT for review of the PV decision
1 March 2000	RRT affirmed primary decision
21 March 2000	Public Interest Guidelines Assessment conducted – Guidelines not met
16 January 2001	client requested that the Minister intervene in the case (s417 request)
30 April 2001	case submitted to the Minister on a schedule
30 April 2001	Minister declined to consider the case
25 June 2002	client located working illegally and subsequently detained
12 July 2002	a community leader, along with other community supporters and petitions, requested that the Minister intervene in the case (repeat s417 request)
17 July 2002	client's migration agent requested that the Minister intervene in the case (repeat s417 request)
28 July 2002	Minister's Office requested a brief
5 August 2002	client released from detention
16 August 2002	case referred to Minister in a Stage 1 submission
4 September 2002	Minister indicated that he wished to consider the case and requested further information (health and character checks and an Assurance of Support)
30 December 2002	case referred to the Minister in a Stage 2 submission

10 January 2003

Minister intervened and granted a subclass 835 (Remaining Relative) visa

## Case 4

Number of persons included in application - 2

### (i) Nationality of Applicant

Fijian

### (ii) – (vi) Timeline

2 November 1991	client, accompanied by his daughter aged 3, arrived in Australia as the holder of a subclass 663 (visitor) visa
24 March 1992	client lodged a Protection Visa (PV) application
7 July 1992	PV application refused
31 July 1992	client applied to the RRT for review of the PV decision
9 May 1995	RRT advised DIMIA that review application withdrawn
25 September 1998	client's agent requested that Minister intervene in the case (s417 request)
13 May 1999	client's agent advised by the then Parliamentary Secretary that Minister had no power to intervene as client had withdrawn RRT review application
19 May 1999	client's agent wrote to Parliamentary Secretary, advising that client had not withdrawn RRT review application
31 May 1999	client lodged Freedom of Information (FOI) request
11 June 1999	client's agent made further request that the Minister intervene in the case (s417 request), and advised that, after consulting with client, the RRT review application had not been withdrawn
9 July 1999	client's agent advised by DIMIA that Minister had no power to intervene as client had withdrawn appeal
19 July 1999	DIMIA contacted RRT to clarify if review application withdrawn. RRT advised that review application finalised in error as client had been confused with another applicant of the same name. RRT review application reinstated
20 July 1999	RRT requested DIMIA file
22 July 1999	MP requested that Minister intervene in the case (s417 request)
3 August 1999	DIMIA decided FOI request and released relevant documents

7 September 1999	MP informed that the review application had not been decided by the RRT, but that if RRT affirmed decision, Public Interest Guidelines Assessment (PIGA) would be conducted by DIMIA and MP's comments and support would be taken into account;
5 October 1999	RRT conducted hearing
11 October 1999	client's agent made further submissions to RRT
3 November 1999	RRT affirmed primary decision
1 December 1999	client appealed the RRT decision to the Federal Court
8 February 2000	PIGA assessment conducted – Guidelines not met
22 March 2000	Federal Court upheld the RRT decision
17 April 2000	client's new agent requested that Minister intervene in the case (s417request)
31 May 2000	DIMIA conducted Ministerial Interest Guidelines Assessment – Guidelines not met
31 May 2000	case referred to Minister on a schedule
5 June 2000	Minister requested a brief
4 April 2001	case referred to Minister in a Stage 1 submission
14 April 2001	Minister indicated he wished to consider the case and requested further information (health and character checks and evidence of ongoing relationship with an Australian citizen)
4 September 2001	case referred to Minister in a Stage 2 submission
14 September 2001	Minister intervened and granted a subclass 820 (spouse – temporary) visa.



## Case 5

Number of persons included in application - 4

### (i) Nationality

Ethiopian

### (ii) – (vi) Timeline

2 February 1998	client arrived in Australia as the holder of a subclass 428 (Religious Worker) visa
24 February 1998	client lodged a Protection Visa (PV) application
7 April 1998	PV application refused
24 April 1998	client applied to the RRT for review of the PV decision
3 March 2000	two of the client's daughters, who were born in Australia, lodged a PV application (a third daughter was born in New Zealand and is a citizen of that country)
26 April 2000	daughters' PV application refused
15 July 2000	daughters applied to the RRT for review of the primary decision
25 July 2000	RRT affirmed the primary decisions in respect of the client and daughters
22 August 2000	Public Interest Guidelines Assessment (PIGA) conducted – Guidelines not met
27 August 2000	representative of a local church requested that Minister intervene in the case (s417 request)
29 August 2000	client requested that Minister intervene in the case (s417 request). Included in request were letters of support from the director of a religious organisation and a member of the public. Also included was a petition signed by other members of the public
17 October 2000	case referred to Minister on a schedule
30 October 2000	Minister requested a brief
6 December 2000	case referred to Minister in a Stage 1 submission
31 December 2000	Minister indicated he wished to consider the case and requested further information (health and character checks and an employer nomination)

13 September 2001 case referred to Minister in a Stage 2 submission

18 September 2001 Minister intervened and granted an Employer Nomination  
(subclass 856) visa.

## **Case 6**

Number of persons included in application - 1

### **(i) Nationality**

Sri Lankan

### **(ii) – (vi) Timeline**

19 January 1997	client arrived in Australia as the holder of a subclass 676 (Visitor - Short Stay) visa
12 March 1997	client lodged a Protection Visa application
1 December 1997	PV application refused
31 December 1997	client applied to the RRT for review of the PV decision
14 July 2000	RRT affirmed the primary decision
4 August 2000	Public Interest Guidelines Assessment (PIGA) conducted – Guidelines not met
24 August 2000	client requested that the Minister intervene in the case (s417 request). Other letters of support were received from community representatives and family members
20 September 2000	case referred to Minister on a schedule
16 October 2000	Minister requested a brief
20 October 2000	case referred to Minister on a Stage 1 submission
26 October 2000	Minister indicated that he wished to consider the case and requested further information (health and character checks)
29 November 2001	case referred to Minister on a Stage 2 submission
6 December 2001	Minister intervened and granted a Spouse (Provisional) (subclass 820) visa

## Case 7

Number of persons included in application - 1

### (i) Nationality of Applicant

Lebanese

### (ii) – (vi) Timeline

- |                   |  |
|-------------------|--|
| 16 November 1993  | client arrived in Australia as the holder of a subclass 673 (Tourist) visa   |
| 15 August 1994    | client lodged a Protection Visa (PV) application   |
| 16 January 1996   | PV application refused   |
| 15 February 1996  | client applied to RRT for review of PV decision  |
| 12 December 2000  | RRT affirmed decision not to grant a PV  |
| 22 December 2000  | Public Interest Guidelines Assessment (PIGA) conducted - Guidelines not met  |
| 7 March 2001      | community leader requested that the Minister intervene in the case (s417 request)  |
| 12 June 2001      | case assessed by Department as meeting the Guidelines  |
| 27 June 2001      | DIMIA received further information from client   |
| 21 September 2001 | case referred to Minister in a stage 1 submission  |
| 27 September 2001 | Minister indicated that he wished to consider the case and requested further information (health and character checks and an Assurance of Support) |
| 3 April 2002      | client's spouse requested that the Minister intervene in the case (s417 request)   |
| 31 May 2002       | case referred to Minister in a Stage 2 submission  |
| 4 June 2002       | Minister intervened and granted subclass 820 (Spouse - Provisional) visa.  |

## Case 8

Number of persons included in application - 1

### (i) Nationality

Iraqi

### (ii)- (vi) Timeline

19 May 1999	client arrived in Australia as an unauthorised air arrival, was refused immigration clearance and detained at an IDC
23 May 1999	client lodged a Protection Visa (PV) application
28 June 1999	PV application refused
29 June 1999	client applied to the RRT for review of the PV decision
22 March 2000	RRT affirmed the primary decision
24 March 2000	client appealed the RRT decision to the Federal Court
30 March 2000	Public Interest Guidelines Assessment (PIGA) – Guidelines not met
22 June 2000	client withdrew from judicial review
10 July 2000	client appealed to the High Court seeking orders to quash the RRT decision
11 September 2000	High Court remitted the case in part to the Federal Court
23 February 2001	Federal Court remitted the case to the RRT for reconsideration
16 March 2001	Minister appealed to the Full Federal Court
25 June 2001	Full Federal Court upheld Minister's appeal
19 July 2001	client escaped from detention
20 July 2001	client appealed full Federal Court decision to the High Court
1 July 2002	client located by DIMIA residing unlawfully in the community and was detained
6 August 2002	client withdrew from all outstanding judicial review matters

31 March 2003	a supporter and spouse, accompanied by a statement from a sporting organisation, requested that Minister intervene in the case (s417 request). Other letters of support received from community representatives, prospective employers and numbers of persons associated with the sporting community
22 April 2003	sporting organisation representative, accompanied by further letters of support requested that the Minister intervene in the case (s417 request)
15 March 2003	case assessed by Department as meeting the Guidelines
10 June 2003	case referred to Minister in a Stage 1 submission
21 June 2003	Minister indicated that he wished to consider the case and requested further information (health and character checks)
1 October 2003	case referred to Minister in a Stage 2 submission
7 October 2003	Minister intervened and granted subclass 856 visa

## Case 9

Number of persons included in application - 1

### (i) Nationality of Applicant

Chinese

### (ii) – (vi) Timeline

22 February 1997	client arrived in Australia as the holder of a subclass 456 (Business Short Stay) visa
22 March 1997	client became unlawful non-citizen
9 April 1998	client lodged Protection visa (PV) application
21 April 1998	PV application refused
14 May 1998	client applied to RRT for review of PV decision
27 January 1999	RRT affirmed decision not to grant PV
8 February 1999	Public Interest Guidelines Assessment - Guidelines not met
3 March 1999	client became unlawful non-citizen
8 November 2001	client voluntarily reported to DIMIA to regularise her immigration status
3 December 2001	s417 intervention requests to Minister from client, client's husband, sister and counsellor
28 December 2001	DIMIA requested further information from client
24 January 2002	client provided further information
4 February 2002	DIMIA requested further information from client
12 February 2002	client provided further information
28 March 2002	DIMIA requested further information from client
7 June 2002	client provided further information
30 July 2002	case assessed by Department as meeting the Guidelines
17 December 2002	case referred to Minister in a stage 1 submission

19 December 2002 Minister indicated that he wished to consider the case and requested further information (health and character checks and an Assurance of Support)

3 April 2003 case referred to Minister in a Stage 2 submission

9 April 2003 Minister intervened and granted subclass 820 (Spouse – Provisional) visa



## **Case 10**

Number of persons included in application - 1

### **(i) Nationality of Applicant**

Tonga

### **(ii) - (vi) Timeline**

15 January 1998	client arrived in Australia as holder of a subclass 676 (Visitor – Short Stay) visa
15 April 1998	client lodged a Protection Visa (PV) application
12 May 1998	PV application refused
12 June 1998	client applied to the RRT for review of PV decision
11 March 1999	RRT affirmed the primary decision
17 April 1999	Public Interest Guidelines Assessment conducted (PIGA) - Guidelines not met
4 March 2002	client's migration agent requested that the Minister intervene in the case (s417 request)
30 July 2002	case assessed by Department as meeting the Guidelines
17 December 2002	case referred to Minister on a Stage 1 submission
19 December 2002	Minister indicated that he wished to consider the case and requested further information (health and character checks)
15 April 2003	case referred to Minister in a Stage 2 submission
21 April 2003	Minister intervened and granted the client a subclass 820 (Spouse - provisional) visa

## Case 11

Number of persons included in application - 1

### (i) Nationality of Applicant

Lebanese

### (ii) – (vi) Timeline

14 December 1994	client arrived in Australia as the holder of a subclass 560 (Student) visa
19 June 1995	client lodged an application for and was granted a subclass 560 visa
11 June 1997	client lodged an application for and was granted a subclass 560 visa
27 July 1998	client lodged a subclass 560 visa application
28 July 1998	client granted a subclass 560 visa
13 March 1999	client lodged a subclass 560 visa application
7 April 1999	client granted a subclass 560 visa
15 October 1999	client's education provider advised DIMIA of the client's failure to meet the course requirements
8 December 1999	client advised of DIMIA's intention to cancel his subclass 560 visa
21 December 1999	client lodged a subclass 457 (Business Long Stay) visa application
22 December 1999	DIMIA cancelled the client's subclass 560 visa
12 February 2000	migration agent provided supporting documentation in relation to the subclass 457 visa application
24 February 2000	subclass 457 application refused
26 February 2000	client married an Australian citizen
23 March 2000	client applied to the Migration Review Tribunal (MRT) for review of the decision to refuse subclass 457 visa application
3 November 2001	client's daughter was born in Australia
5 March 2002	MRT affirmed the primary decision

28 March 2002	community leader makes written representations requesting that the Minister intervene in the case (s351 request)
12 April 2002	Minister requested a brief on the case
31 May 2002	case assessed by Department as meeting the Guidelines
31 May 2002	case referred to the Minister in a Stage 1 submission
5 June 2002	Minister indicated that he wished to consider the case and requested further information (health and character checks)
15 November 2002	case referred to the Minister in a Stage 2 submission
21 November 2002	Minister intervened in the case and granted a subclass 820 (Spouse – Provisional) visa

## Case 12

Number of persons included in application - 1

### (i) Nationality of Applicant

South African

### (ii) – (vi) Timeline

- |                  |  |
|------------------|--|
| 21 November 1995 | client arrived in Australia as the holder of a subclass 676 (Tourist Short Stay) visa  |
| 19 August 1996   | client lodged a subclass 806 (Family – Special Need Relative) visa application   |
| 17 April 2001    | visa application refused   |
| 14 May 2001      | client applied to MRT for review of subclass 806 visa decision   |
| 30 April 2002    | MRT affirmed decision not to grant a subclass 806 visa   |
| 2 May 2002       | client requested that Minister intervene in the case (s351 request)  |
| 13 May 2002      | client and her family requested that Minister intervene in the case (s351 request)   |
| 22 May 2002      | MP requested that Minister intervene in the case (s351 request)  |
| 18 December 2002 | case assessed as not meeting Guidelines and referred to Minister on a schedule   |
| 11 January 2003  | Minister declined to consider the case   |
| 13 February 2003 | Minister met with the MP, who provided further information about the case (including supporting documentation from medical practitioners and family members) |
| 13 February 2003 | Minister's Office requested a brief  |
| 20 February 2003 | client requested the Minister intervene in the case (s351 request)   |
| 26 February 2003 | case assessed as not meeting Guidelines and referred to Minister in a stage 1 submission   |
| 4 March 2003     | Minister indicated he wished to consider the case and requested further information (health and character checks and an Assurance of Support)                |

2 October 2003

case referred to Minister in a Stage 2 submission

6 October 2003

Minister intervened and granted a subclass 836 (Carer) visa

## **Case 13**

Number of persons included in application - 1

### **(i) Nationality of Applicant**

Greek

### **(vi) Timeline**

- |                   |  |
|-------------------|--|
| 18 February 1998  | client arrived in Australia as the holder of a subclass 309 (Spouse – Provisional) visa                                |
| 27 April 2000     | DIMIA requested supporting documentation   |
| 20 September 2000 | client wrote to DIMIA, with the assistance of a counsellor, advising of the breakdown of the relationship              |
| 24 August 2001    | application for a subclass 100 (Spouse) visa refused   |
| 17 September 2001 | client applied to the Migration Review Tribunal (MRT) for review of the decision                                       |
| 20 November 2002  | MRT affirmed the primary decision  |
| 6 December 2002   | MP requested that the Minister intervene in the case (s351 request)  |
| 16 December 2002  | migration agent provided further information in support of the s351 request  |
| 23 January 2003   | migration agent provided further information in support of the s351 request  |
| March 2003        | case referred to the Minister in a Stage 1 submission  |
| 25 March 2003     | Minister indicated that he wished to consider the case and requested further information (health and character checks) |
| 6 August 2003     | case referred to the Minister in a Stage 2 submission  |
| 14 August 2003    | Minister intervened in the case and granted a subclass 100 (Spouse) visa   |

## Case 14

Number of persons included in application - 1

### (i) Nationality of Applicant

British

### (ii) – (vi) Timeline

5 December 1997	client arrived in Australia as the holder of a subclass UD 976 (Electronic Travel Authority) visa
13 February 1998	client lodged a subclass 820 (Spouse) visa application
1 March 2002	subclass 820 visa application refused
29 March 2002	client became an unlawful non-citizen
17 July 2002	client lodged a subclass 802 (Dependant Child) visa application
22 July 2002	client requested that Minister intervene in the case (s351 request)
25 July 2002	subclass 802 visa application refused
13 August 2002	client advised that Minister had no power to intervene in the case as there had been no Tribunal decision
15 August 2002	client applied to the MRT for review of the subclass 802 visa decision
3 February 2003	MRT affirmed decision not to grant a subclass 802 visa
3 March - 27 March 2003	s351 intervention requests to Minister from the client, MPs, client's partner, ex-partner, ex partner's mother, partners children and friends
7 April 2003	case assessed by Department as meeting Guidelines and referred to Minister in a Stage 1 submission
9 April 2003	Minister indicated that he wished to consider the case and requested further information (health and character checks and an Assurance of Support)
15 April 2003	MP requested the Minister intervene in the case (s351 request)
22 July 2003	case referred to Minister in a Stage 2 submission
14 August 2003	Minister intervened and granted a subclass 832 (Close Ties) visa.

**U. Intervention requests by Mr Fahmi Hussain**

**V. Individuals about whom further information was requested at public hearing on 18 November 2003**

- 1) RRT case file N01/37400
- 2) Ibrahim SAMMAKI
- 3) Bedweny HBEICHE
- 4) Boutros AL DRAIBI
- 5) Faoud EL ASHWAH



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

### **U. Intervention requests by Mr Fahmi Hussain**

#### **Question U1**

How many representations did Mr Fahmi Hussain make to the former Minister Ruddock regarding s351 and s417 ministerial intervention applications, and in relation to how many cases?

#### **Answer**

Fahmi Hussain has made 23 ministerial intervention requests in relation to 13 cases. A further piece of correspondence is recorded on the DIMIA PCMS system, but because no client details have been recorded in PCMS, it is not possible to identify the case to which it refers.

#### **Question U2**

In how many of the cases where Mr Fahmi Hussain made representations did the Minister intervene to grant a visa under the s351 and s417 intervention powers?

#### **Answer**

s351 – 3  
s417 – 1.

**V(1) Could DIMIA provide information on the outcome of a request for Ministerial intervention for RRT case file N01/37400**

- 22/11/02 The client requested that the former Minister intervene in the case (s417 request)
- 24/3/03 The case was referred to the former Minister on a schedule (Sydney 2002/212)
- 29/3/03 The former Minister decided not to consider exercising his intervention powers

**V(4) Could DIMIA provide information on any investigations into allegations about Mr Al Draibi, and the outcome of any requests for Ministerial intervention**

The Department is currently investigating a range of matters that include the allegations made by Mr Al Draibi. As these matters are current and ongoing, it would not be appropriate to elaborate on these investigations.

The Minister has no power to intervene in Mr Al Draibi's case at this time. A number of intervention requests have been made by or on behalf of Mr Al Draibi. However, his case has not been referred to the Minister for consideration following these requests as the Minister has no power to intervene.

**V(5) Could DIMIA provide information on the outcome of a request for Ministerial intervention for Fouad El Ashwah**

DIMIA has not been able to identify the person referred to as Fouad El Ashwah.

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

### **W. Representational Allowance to return hospitality**

The Secretary to the Inquiry into Ministerial Discretion in Migration Matters, Mr Alistair Sands wrote to Ms Philippa Godwin, Deputy Secretary of DIMIA on 26 November 2003 with the following questions:

#### **Question W1**

The Committee has now asked whether DIMIA has a policy relating to the allowances and Financial Management Guidelines for their use. If so, what are the provisions in the guidelines for the approval and reporting of expenditure, and could a copy be provided to the Committee?

#### **Answer**

DIMIA does not have a policy specifically relating to allowances and their use. DIMIA Chief Executive Instruction No. 7, however, relates to general spending of public money and the requirement to spend public money in accordance with the policies of the Commonwealth, and to make efficient, effective and ethical use of public money. A copy of Chief Executive Instruction No. 7 is attached at "A".

#### **Question W2**

If representational or hospitality allowances are included in individual officers' AWAs, could the department inform the Committee of how this is done, and submit a typical example or template for AWAs that include these allowances?

#### **Answer**

Representation allowances are provided to relevant employees through AWAs. The allowance is paid through the salary system on a pro-rata fortnightly basis.

A template of the clause and schedule relating to Representation Allowance included in individual AWAs is attached at "B".

#### **Question W3**

Also, if records are available, would you please provide details of any expenditure of Mr Kelly's or any other officer's allowances on hospitality for Mr Kisrwani, or on attending functions for any parliamentarian.

#### **Answer**

As outlined in AWA clause 6.1.2 above, there is no requirement that records be kept regarding details of expenditure of representation allowances.

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You are here → [Home](#) > [Corporate Services](#) > [Financial Management](#) > [Financial Fastfind](#) > [Instructions](#) > **CEI 7 - Spending Public Money**

## CEI 7 - Spending Public Money

[Financial Fast Find](#) 

This Chief Executive Instruction (CEI) provides direction in relation to the expenditure of public money, including:

- proposals to spend public money,
- purchasing and contracts,
- travel,
- Corporate Travel Cards,
- taxi services,
- cabcharge vouchers,
- credit cards,
- payments and prepayments,
- payroll operations,
- claims against the Commonwealth, and
- incidents involving Commonwealth officials.

### Other topics in this CEI

This CEI contains the following topics:

- [CEI 7 - Spending Public Money \(this page\)](#)
- [About CEI 7 - Spending Public Money](#)
- [CEI 7 - Spending Public Money - Expenditure](#)
- [CEI 7 - Spending Public Money - Travel](#)
- [CEI 7 - Spending Public Money - Cards & Claims](#)

### Important

Staff **must** adhere to the CEI. Some staff have the responsibility to ensure that they are familiar with a CEI in its entirety.

**See:** [About Chief Executive Instructions - Staff Responsibilities](#)

[top](#)

DIMIANet: Intranet for the Federal Department of Immigration and Multicultural and Indigenous Affairs

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You are here → [Home](#) > [Corporate Services](#) > [Financial Management](#) > [Financial Fastfind](#) > [Instructions](#) > [About CEI 7 - Spending Public Money](#)

## About CEI 7 - Spending Public Money

### On this page:

[This instruction authorised by](#)

[This instruction replaces](#)

[Definitions](#)

[Source legislation and references](#)

[Delegations](#)

[Realted CEI](#)

[Related policies, processes, and procedures](#)

[Other topics in this CEI](#)

### This instruction authorised by

The following table provides the authority for this instruction.

Authorised by:	Chief Executive
Area responsible:	Financial Management and Reporting Section, RMB
Date of issue:	31 October 2003

### This instruction replaces

The following table lists the most recently replaced version of this CEI and any previous obsolete versions.

This instruction replaces	CEI 7 - Spending Public Money issued 23 September 2002.
Previous obsolete instructions	CEI 5.1 to 5.10; 5.11 to 5.13; 5.16; 5.17; and 5.20 to 5.26 issued through Administrative Circular 1014 of 10 December 1997. Administrative Circular 1021 issued 29 May 1998 (credit cards). Administrative Circular 1038 issued 27 July 1999 (prepayments). The interim instruction relating to the departmental Travel Card issued 29 June 2001 by the First Assistant Secretary, Corporate Governance Division.

### Definitions

The following definitions from this CEI are listed in the Financial Glossary:

- Cabcharge
- Cardholder
- Manager
- Corporate Travel Card

See: [Financial Glossary](#)

### Source legislation and references

The following table outlines the source legislation and references that apply to this CEI.

Source legislation and references	See
FMA Act	<ul style="list-style-type: none"> <li>☞ <a href="#">FMA Section 44</a></li> <li>☞ <a href="#">FMA Section 60</a></li> </ul>
FMA Regulations	<ul style="list-style-type: none"> <li>☞ <a href="#">FMA Regulation 8</a></li> <li>☞ <a href="#">FMA Regulation 9</a></li> <li>☞ <a href="#">FMA Regulation 10</a></li> <li>☞ <a href="#">FMA Regulation 12</a></li> <li>☞ <a href="#">FMA Regulation 13</a></li> </ul>
FMA Orders	<ul style="list-style-type: none"> <li>☞ <a href="#">FMA Order 2.5.1</a></li> <li>☞ <a href="#">FMA Order 2.5.2</a></li> <li>☞ <a href="#">FMA Order 2.5.3</a></li> </ul>

**Delegations**

The following delegations apply to this CEI:

- See:** [F105A](#) Expenditure - to approve a spending proposal within forward estimates  
[F105B](#) Expenditure - to approve a spending proposal outside the period of forward estimates  
[F105C](#) Expenditure - to approve a spending proposal relating solely to a contingent liability  
[F107](#) - Payment of an amount to a deceased person without probate or letters of administration  
[F108](#) - Credit cards - enter into an agreement for issue and use of cards and vouchers  
[F114](#) - Accounts - ensure the accounts and records record and explain transactions and the financial position  
[F120](#) - Expenditure - to approve proposals to spend public money  
[F121](#) - Contracts - enter into contracts, agreements  
[F122](#) - Procurement - decide methods of procurement  
[F123](#) - Keys and safe combinations - determine security arrangements  
[F125](#) - Credit cards - to issue a Commonwealth credit card to an official  
[F126](#) - Credit cards - to authorise a card holder to pay a claim that includes private expenditure  
[F127](#) - Credit cards - to approve the use of a personal card for an official purpose  
[F128](#) - Certifying Officials - to appoint Certifying Officials

**Related CEI**

This instruction should be read in conjunction with the following instructions.

- See:** [CEI 3 - Debt Management](#)  
[CEI 5 - Refunds and Repayments](#)  
[CEI 12 - Insurance](#)  
[CEI 18 - Act of Grace Payments](#)  
[CEI 19 - Compensation for Detriment caused by Defective Administration](#)

The departmental Code of Conduct, Administrative Circular 1045, supports this CEI.  
**See:** Legend

**Related policies, processes and procedures**

The following is a list of links to information that supports, or is related to, this CEI.



- [Spending Money](#)
- [Managing Assets](#)
- [Tendering and Contracting](#)
- [Banking and Cash Management](#)
- [Travel](#)

**Other topics in this CEI**


This CEI contains the following topics:

- [CEI 7 - Spending Public Money](#)
- [About CEI 7 - Spending Public Money \(this page\)](#)
- [CEI 7 - Spending Public Money - Expenditure](#)
- [CEI 7 - Spending Public Money - Travel](#)
- [CEI 7 - Spending Public Money - Cards & Claims](#)

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## CEI 7 - Spending Public Money - Expenditure

[Financial Fast Find](#) 

### On this page:

- [Proposals to Spend Public Money](#)
- [Purchasing and Contracts](#)
- [Other topics in this CEI](#)

### Proposals to Spend Public Money

Only an official authorised under Financial Delegations Schedule F120 as an approver may approve a proposal to spend public money.

An approver **must** not approve a proposal to spend public money unless satisfied that the proposed expenditure:

- is in accordance with the policies of the Commonwealth (FMA Regulation 9(1)(a)),
- will make efficient, effective and ethical use of public money (FMA Regulation 9(1)(b)), and
- is in accordance with this Instruction and the procedures and guidelines provided by the Chief Financial Officer (CFO).

Delegation Schedule F120 can only be exercised after checking that the Division has uncommitted funds available in the current year's budget to meet to total cost of the contract or proposal. If there are insufficient funds to meet to cost of the spending proposal, then the Financial Delegation Schedules F105A, F105B and F105C apply.

An approver **must** not approve a proposal for any expenditure for which an appropriation of money is not authorised by the provisions of an existing law, or a proposed law that is before the Parliament, unless the Finance Minister has given written authorisation for the approval.

A proposal to spend public money for the engagement of consultancy services **must** be approved by:

- an SES employee in Central Office,
- a State or Territory Director for regional offices; or
- FAS Corporate Governance Division or AS Overseas Coordination & Client Services Branch for overseas posts

A proposal to spend special public money, **must** be consistent with the terms under which the money is held by the Commonwealth.

- See:** [F105A](#) Expenditure - to approve a spending proposal within forward estimates  
[F105B](#) Expenditure - to approve a spending proposal outside the period of forward estimates  
[F105C](#) Expenditure - to approve a spending proposal relating solely to a contingent liability  
[F120](#) Expenditure - to approve proposals to spend public money

**See also:** [CEI 16 - Special Public Money & Trust Money](#)

### Purchasing and Contracts

Only officials authorised under Financial Delegations Schedule F122 may decide on a method of procurement for goods or services. Goods includes property in this Instruction.

An official performing duties in relation to the procurement of goods or services **must** have regard to this Instruction, the procedures issued by the CFO, and the Commonwealth Procurement Guidelines.

Only an official authorised under Financial Delegations Schedule F121 may enter into a contract, agreement (including an agency agreement) or arrangement under which public money is or may become payable. A contract includes a Purchase Order or similar document or electronic communication.

A contract, agreement or arrangement that includes an indemnity or similar clause **must only** be approved in accordance with Financial Delegations Schedule F121.

**See:** [F121 Contracts](#) - enter into contracts, agreements  
[F122 Procurement](#) - decide methods of procurement

### Other topics in this CEI

This CEI contains the following topics:

- [CEI 7 - Spending Public Money](#)
- [About CEI 7 - Spending Public Money](#)
- [CEI 7 - Spending Public Money - Expenditure \(this page\)](#)
- [CEI 7 - Spending Public Money - Travel](#)
- [CEI 7 - Spending Public Money - Cards & Claims](#)

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## CEI 7 - Spending Public Money - Travel

### On this page:

[General Travel](#)
[Domestic Travel](#)
[International Travel](#)
[Travel Allowance](#)
[Corporate Travel Card](#)
[Taxi Services](#)
[Cabcharge Use](#)
[Security of Corporate Travel Card or Cabcharge Vouchers](#)
[Corporate Travel Card and Cabcharge Accounts](#)
[Other topics in this CEI](#)

### General Travel

Travel incurring expenditure **must** be approved by an official authorised to approve expenditure under Financial Delegations Schedule F120.

A delegate **must not** approve a proposal to spend public money for travel unless satisfied that the proposed expenditure:

- is in accordance with the policies of the Commonwealth; and
- will make efficient, effective and ethical use of public money.

A delegate approving travel **must** ensure that:

- a travel form (a travel itinerary statement in Australia, or a DFAT or Austrade Movement Requisition overseas) is prepared for the purchase of all official travel services
- travel details contained in the travel form are in accordance with the traveller's proposed itinerary
- the proposed class of travel and travelling allowance entitlements are in accordance with the department's certified agreement, the *Public Service Act 1999* or any other legislation relating to travel entitlements
- the proposed travel is arranged through the department's travel agent when appropriate
- variations to the proposed travel are adjusted on the original travel form and approved accordingly.

A travel form is essential for the monitoring and control of travel undertaken in the department. The travel form details the traveller's itinerary, records approval of the expenditure, and generates the travelling allowance entitlement. It is also the formal record of an official's absence from work on official business and covers the traveller in the case of accident or injury for insurance and compensation purposes.

When travelling allowance is received by the traveller it becomes private money and its safe custody is the responsibility of the traveller (that is, the travelling allowance will not be reimbursed if it is stolen).

A ticket issued to a traveller represents the right to travel and is the property of the Commonwealth. A traveller **must** return any unused ticket, or unused portions of a ticket to

the department's travel agent, if in Australia, or the DFAT or Austrade administrative staff, if overseas.

A delegate may approve the use of a private vehicle for travel on official business. Such a decision **must** be consistent with the efficient and effective use of resources.

A traveller using their private vehicle for official travel **must** have a current driver's licence, current registration and adequate insurance cover.

Bonus flights and other benefits offered to officials through frequent flyer or similar schemes cannot be used by those officials for personal travel, unless it can be shown that the flights have been accrued against personal travel. Bonus flights gained as a result of official travel constitute public property and can therefore only be used for official purposes.

In accordance with financial delegations F120, no official shall approve their own travel, but an official who is a Corporate Travel Card holder may approve their own non accommodation and non-air fare costs when the card is used in accordance with this instruction.

Where the actual travel differs from the planned travel, the traveller **must** provide details of the variations to the official who approved the original travel. The approver should ensure that any variations were undertaken for the purpose of official business.

If a variation of travel results in a reduction of travelling allowance entitlement any overpaid allowance becomes a debt owing to the Commonwealth and **must** immediately be repaid by the traveller.

If a variation of travel results in an increase in travelling allowance entitlement the traveller may claim the additional allowance. Any additional allowance **must** be approved by the delegate who approved the original travel or the delegate who manages the cost centre to which the allowance will be charged.

**See:** F120 Expenditure - to approve proposals to spend public money

#### Domestic Travel

Domestic travel **must** be approved by an delegate under financial delegations schedule F120.

Domestic travel is:

- for staff in Australia – travel within Australia, including offshore territories
- for overseas A-based staff – travel within their country of posting; and
- for overseas locally engaged staff – travel within their country of employment.

**See:** F120 Expenditure - to approve proposals to spend public money

#### International Travel

The following table describes the approving officers for International travel.

Traveller	Approver
Official in Australia	Deputy Secretary, Executive Coordinator, First Assistant Secretary, or equivalent.
Executive Coordinator, Deputy Secretary, or First Assistant Secretary	Secretary
Official travelling with respect to a posting	Assistant Secretary, Human Resource Management Branch, or

	Director, Overseas Recruitment and Conditions Section or Assistant Director, Overseas Recruitment and Conditions Section.
Regional Director/CMO travelling within the region	Department of Foreign Affairs and Trade Senior Administrative Officer, or Assistant Secretary, Overseas Coordination & Client Services, or First Assistant Secretary, Corporate Governance Division
Regional Director travelling outside the region	Assistant Secretary, Overseas Coordination & Client Services, or First Assistant Secretary, Corporate Governance Division
Principal Migration Officer	Regional Director, or Assistant Secretary, Overseas Coordination & Client Services, or First Assistant Secretary, Corporate Governance Division
Senior Migration Officer, Locally Engaged Employee	Principal Migration Officer, or Regional Director, or Assistant Secretary Overseas Coordination & Client Services, or First Assistant Secretary, Corporate Governance Division

### Travel Allowance

International travel allowance may be undertaken from Australia or an official's post.

Travel allowance for international travel may be calculated and paid prior to travel, based on exchange rates applicable prior to departure.

The amount shall be adjusted after return if there is a change in travel undertaken that impacts upon the traveller's entitlement.

The amount of the travelling allowance may also be adjusted if there is a variation of more than 5% between the exchange rate used to calculate the allowance prior to departure and the rate applying in the country at the time the traveller paid their bills (proof of the exchange rate **must** be provided and be from a bank, registered money changer or hotel reception).

The amount of travelling allowance may be adjusted if the traveller incurred expenses in excess of the allowance paid. To enable this to be claimed total official expenses for the trip **must** exceed the total allowance paid and the receipts **must** be provided for all expenses incurred.

The departmental overseas travel guidelines provide information relating to records and documentation that should be maintained for international travel on short term missions. These guidelines, which replace the departmental overseas travel diary, are available on the departmental intranet or from the Overseas Recruitment and Conditions Section.

### Corporate Travel Card

The Corporate Travel Card may only be issued by an official with authority under Financial Delegations Schedule F125 (to issue a Commonwealth credit card to an official).

Cardholders, when using the Corporate Travel Card, **must** ensure that:

- any proposed usage is in accordance with the policies of the Commonwealth (FMA

- Regulation 9(1)(a)); and
- the proposed expenditure will make efficient and effective use of public money (FMA Regulation 9(1)(b)).

Use of the Corporate Travel Card **must** be in accordance with the procedures and guidelines issued by the CFO.

**See:** [F125 Credit cards](#) - to issue a Commonwealth credit card to an official

### **Taxi Services**

The use of Corporate Travel Card and Cabcharge for taxi services may only be used if the use of taxi services is the most cost effective and efficient means of transport in the particular circumstances.

The staff member **must** provide details and obtain written approval from the CFO when it is proposed to use the Corporate Travel Card or Cabcharge facility for something outside related procedures and guidelines.

### **Cabcharge Use**

Cabcharge may only be used for travel on official business. Cabcharge **must** not be used for personal or private purposes.

If a loss of public money is suffered by the department as a result of misuse, loss or theft of a Cabcharge voucher, and that misuse, loss or theft is due to negligence or an irresponsible act by the voucher holder, the voucher holder will be required to reimburse the Commonwealth for the amount of the loss.

**See:** [CEI 3 - Debt Management](#)

### **Security of Corporate Travel Card or Cabcharge Vouchers**

The person who receives a Corporate Travel Card or Cabcharge voucher becomes its nominal custodian and is personally responsible for its security and protection to prevent loss, theft, misuse, etc.

Any misuse, or undisciplined use, of the Corporate Travel Card or a Cabcharge voucher **must** be referred to the CFO and the Director, Internal Investigations Section, for action.

Cabcharge vouchers are high-risk accountable documents and bulk stocks **must** be recorded in a Register of Cabcharge Vouchers and managed in accordance with instructions relating to CEI 17, Accountable Documents, and the procedures issued by the CFO.

### **Corporate Travel Card and Cabcharge Accounts**

Corporate Travel Card and Cabcharge accounts **must** be processed promptly to ensure the department avoids any late payment charges.

### **Other topics in this CEI**

This CEI contains the following topics:

- [CEI 7 - Spending Public Money](#)
- [About CEI 7 - Spending Public Money](#)
- [CEI 7 - Spending Public Money - Expenditure](#)
- [CEI 7 - Spending Public Money - Travel \(this page\)](#)
- [CEI 7 - Spending Public Money - Cards & Claims](#)

<a href="#">About DIMIA</a>	<a href="#">Staff Services</a>	<a href="#">DIMIA Services</a>	<a href="#">Computers &amp; Systems</a>	<a href="#">Corporate Services</a>	<a href="#">Exec, &amp; Min</a>
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## CEI 7 - Spending Public Money - Cards & Claims

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### On this page:

[Payments and Prepayments](#)

[Credit Cards](#)

[Payroll Operations](#)

[Claims against the Commonwealth](#)

[Incidents involving Commonwealth Officials](#) [Other topics in this CEI](#)

### Payments and Prepayments

All claims for payment **must** be certified prior to payment by a Certifying Official appointed by an official authorised under Financial Delegations Schedule F128.

The Certifying Official **must** comply with the procedures issued by the CFO.

All prepayments **must** be authorised in accordance with the procedures issued by the CFO.

See: [F128 Certifying Officials - to appoint Certifying Officials](#)

### Credit Cards

Credit cards **must** only be issued, or authorised to be issued, in accordance with Financial Delegations Schedule F125.

Cardholders, when using a credit card, **must** ensure that its use is within the limits set by the Card Issuing Official and complies with the requirements for a proposal to spend public money. They **must** also ensure that these cards are only to be used for the purposes intended and in line with the guidelines issued by the CFO.

See: [F125 Credit cards - to issue a Commonwealth credit card to an official](#)

### Payroll Operations

The Assistant Secretary, Human Resource Management Branch is responsible for, and **must** issue directions and procedural instructions relating to, the payroll operations of the department.

Officials involved in payroll operations **must** comply with the relevant directions and procedural instructions issued by the Assistant Secretary, Human Resource Management Branch.

A Personnel Manager/Officer, being the official in charge of the payroll preparation but not the official preparing the payroll, **must** approve the payment of salaries. Overseas, the Personnel Manager/Officer may be an A-based DFAT or Austrade official.

### Claims against the Commonwealth

Except where the Commonwealth is indemnified by insurance (as detailed in CEI 12), an official who receives a Claim against the Commonwealth **must**, in the first instance, refer the matter to the Legal Services and Litigation Branch (for a non-OATSIA matter), or the Land, Legal and Economic Branch (for an OATSIA matter), for a legal opinion and any other appropriate action. A claim against the Commonwealth under this section excludes a normal



claim for goods or services acquired under normal procurement processes.

Claims for the following are to be processed in accordance with the relevant CEI and related Procedures and Guidelines:

- CEI 3 - Debt Management
- CEI 12 - Insurance
- CEI 5 - Refunds & Repayments
- CEI 18 - Act of Grace payments
- CEI 19 - Compensation for Detriment caused by Defective Administration (CDDA)

Claims not detailed in the section above are to be processed in accordance with the Procedures and Guidelines issued with this instruction by the CFO and with any relevant Legal Services Directions issued by the Attorney-General's Department.

### **Incidents involving Commonwealth Officials**

Incidents involving Commonwealth officials are to be reported to the Assistant Secretary, Human Resource Management Branch.

The processing of action concerning reported incidents is to be in accordance with the Procedures and Guidelines by the CFO and any instructions or directions given by the Assistant Secretary, Human Resource Management Branch.

### **Other topics in this CEI**

This CEI contains the following topics:

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## 6 Representation Allowance

- 6.1.1 A representation allowance will be made to the employee to cover expenses associated with the employee's official duties. This allowance will be paid annually and covers expenses related to official hospitality, additional clothing requirements and child minding costs. It recognises the role of an employee's partner in the conduct of such duties (Refer Schedule 2).
- 6.1.2 Based on an assessment of the representation demand of the employee's office, an annual taxable representation allowance of \$XXX will be paid fortnightly to the employee. This allowance is not acquittable.
- 6.1.3 The rate of representation allowance will be reviewed at appropriate intervals.

### SCHEDULE 2 – REPRESENTATION ALLOWANCE

Representation allowances is a taxed allowance, which will be paid fortnightly. It will not be necessary for unspent monies to be returned to the Department.

Representation allowance would be used for the following purposes:

- . working lunches
- . hosting a dinner at home
- . childminding, if the employee is required to attend an official function
- . hiring of formal attire required for a function.

Other DIMIA colleagues can attend a function, such as a working lunch for example, where it is considered appropriate.

Funds for Representation Allowance will come out of the local budget.

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

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

**QUESTIONS TAKEN ON NOTICE – 17, 18 NOVEMBER 2003**

No.	Hansard Page no.	Senator	Information/Material to be Provided	Date answered	Sub number
1	68 (18/11/03)	Wong	Did the Minister intervene in the case of RRT file number N01/37400, and if so, what was the date of that intervention?		
2	69 (18/11/03)	Ludwig	Of the nine non East Timorese cases in which Minister Ruddock intervened between 1 October 2003 and 6 October 2003, were any the subject of representations by people or organisations that appear on the Top 10 lists previously prepared by the Department?		
3	75 (18/11/03)	Wong HOLD	In nine of the 24 cases identified by Ms Julia Gillard MP and Mr Laurie Ferguson MP, the Department was unable to find any indication that Mr Kiswani was involved. By reference to the numbers already provided, is the Department able to identify those nine?		
4	76-77 (18/11/03)	Ludwig	In relation to Ibrahim Samaki, is the Department able to detail the processes that led to the Minister intervening? Did Minister Vanstone's office contact the Department requesting the Samaki file? Was it on the schedule or was it on the active list?		
5	80 (18/11/03)	Ludwig	How many representations did Mr Cameron make on behalf of Mr Hbeiche and were they the final representations before Minister Ruddock decided to intervene in the case? Did Minister Ruddock previously decline to intervene in the case or was it on a schedule and whereabouts it had been in the process?		
6	84 (18/11/03)	Wong	Was the Hbeiche case the subject of a full submission before December 2001?		
7	87 (18/11/03)	Wong (Ms Godwin)	Ms Godwin, in response to a series of questions from Senator Wong, indicated that in relation to Mr Hbeiche, the Department will provide a case summary in a format consistent with T4.		

No.	Hansard Page no.	Senator	Information/Material to be Provided	Date answered	Sub number
8	88 (18/11/03)	Wong	Were familial relations in Australia considered by the case officer when assessing the Hbeiche case against the guidelines?		
9	91 (18/11/03)	Wong	Is it the case that the Department is no longer issuing offshore humanitarian visas out of Beirut? If so, from what date?		
10	91 (18/11/03)	Humphries	Could the Department response to the ideas that the Ombudsman puts forward in their submission to the Committee and give us a view about whether you think these proposals are sensible or whether they have problems that you can draw our attention to?		
11	94 (18/11/03)	Wong	In relation to the case RRT file number N01/37400, could the Department advise if a visa was not issued under the discretion, what was the outcome? For example, was the bar in 48B lifted so that another application could be made?		
12	94, 95 (18/11/03)	Ludwig	In the client A summary provided by the Department, folio 215 is described as an ASU file raising task force procedural checklist. What is that?		
13	95 (18/11/03)	Ludwig	In the client A summary provided by the Department, folio 39 it says 'internal email requesting file'. What would that be about?		
14	96 (18/11/03)	Ludwig	Is the Department investigating the allegations raised by Ms Cynthia Banham in her article in the Sydney Morning Herald on Tuesday 22 July?		
15	98 – 100 (18/11/03)	Ludwig	Is there a separate legal advice that the Department has raised in relation to the view that intervention is not actually a visa process or part of the visa application process? If there is, could the Department provide it to the committee? If the Department cannot provide the legal advice or other substantive information about how it arrived at that, when did it arrive at that view? The Department indicated that it was an issue that was raised in a previous bill, in 2002, but was it aired in that committee or was it a matter that the Department already had a view about?		

**QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003**

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

Senator Wong asked (Hansard page 68) – Did the Minister intervene in the case of RRT file number N01/37400, and if so, what was the date of that intervention?

*Answer:*

Please refer to response to question V(1).

## QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003

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

Senator Ludwig asked (Hansard page 69) – Of the nine non East Timorese cases in which Minister Ruddock intervened between 1 October 2003 and 6 October 2003, were any the subject of representations by people or organisations that appear on the Top 10 lists previously prepared by the Department?

*Answer:*

1 case involved a request for Ministerial intervention under s417 by the Hon Tony Abbott MP.

1 case involved a request for Ministerial intervention under s417 by Ms Marion Le.

The above cases do not impact in any way on the number of representations previously reported. However, in terms of success rates, this represents an increase of rates of three and five percent, respectively.

QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003

SENATE SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Senator Ludwig asked (Hansard pages 76 and 77) – In relation to Ibrahim Samaki, is the Department able to detail the processes that led to the Minister intervening? Did Minister Vanstone's office contact the Department requesting the Samaki file? Was it on the schedule or was it on the active list?

*Answer:*

Please refer to response to question V(2).

## QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003

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

Senator Ludwig asked (Hansard page 80) – How many representations did Mr Cameron make on behalf of Mr Hbeiche and were they the final representations before Minister Ruddock decided to intervene in the case? Did Minister Ruddock previously decline to intervene in the case or was it on a schedule and whereabouts it had been in the process?

*Answer:*

One request that the former Minister intervene in the case was made by Mr Cameron. This request was not the final request before Minister Ruddock decided to intervene in the case. Minister Ruddock had previously declined to consider the case.

The case had been to Minister Ruddock on 2 schedules prior to the request by Mr Cameron. Mr Cameron's request was assessed as not meeting the Guidelines and was therefore not referred to Minister Ruddock. The case was subsequently referred to Minister Ruddock following additional information provided by a community leader.



**QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003**

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

Senator Wong asked (Hansard page 84) – Was the Hbeiche case the subject of a full submission before December 2001?

*Answer:*

Please refer to response to question V(3).

**QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003**

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

Senator Wong asked (Hansard page 87) – Ms Godwin, in response to a series of questions from Senator Wong, indicated that in relation to Mr Hbeiche, the Department will provide a case summary in a format consistent with T4.

*Answer:*

Please refer to response to question V(3).

## QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003

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

Senator Wong asked (Hansard page 88) – Were familial relations in Australia considered by the case officer when assessing the Hbeiche case against the guidelines?

*Answer:*

There is no indication on the case file that the existence of Mr Hbeiche's adult siblings in Australia was considered by the case manager when preparing the earlier intervention schedules referred to the Minister for his consideration. However, when it became known to the Department that Mr Hbeiche's Australian citizen sisters supported him remaining in Australia, this issue was noted in the submission forwarded to the Minister on 7 November 2001 for his consideration.

## QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003

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

Senator Wong asked (Hansard page 91) – Is it the case that the Department is no longer issuing offshore humanitarian visas out of Beirut? If so, from what date?

*Answer:*

The Beirut and Dubai posts have not been processing new humanitarian visa applications since 1 October 2003. Both posts continue to process those applications that were previously lodged there and have reached an advanced stage of processing. However, those applications received by Beirut and Dubai on which processing had not commenced have been transferred to the Amman post. All humanitarian visa applications for persons living in Lebanon, Syria, Jordan, the Gulf States and Yemen are now processed in Amman.

## QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003

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

Senator Humphries asked (Hansard page 91) – Could the Department response to the ideas that the Ombudsman puts forward in their submission to the Committee and give us a view about whether you think these proposals are sensible or whether they have problems that you can draw our attention to?

*Answer:*

The Ombudsman's comments focus in large part on policy issues. The Government's policy in relation to the exercise of the Minister's public interest powers is outlined in the Department's submission to the Inquiry. Any further consideration of the policy issues raised are a matter for the Government. To the extent that the Ombudsman's submission raises matters relating to the administration of the intervention powers, these will be considered in the context of the outcome of this Inquiry.

**QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003**

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

Senator Wong asked (Hansard page 94) – In relation to the case RRT file number N01/37400, could the Department advise if a visa was not issued under the discretion, what was the outcome? For example, was the bar in 48B lifted so that another application could be made?

*Answer:*

The case is currently subject to Judicial review. There are no records of requests under s48B, and no further visa applications have been made.

## QUESTION TAKEN ON NOTICE – HEARING OF 18 NOVEMBER 2003

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

Senator Ludwig asked (Hansard pages 94 and 95) – In the client A summary provided by the Department, folio 215 is described as an ASU file raising task force procedural checklist. What is that?

*Answer:*

The ASU (Administrative Support Unit) File-Raising Taskforce Procedural Checklist is an administrative pro-forma which indicated finalised action in relation to:

1. Nominal File Request Form complete
2. Movements checked for all applicants  
Registry system checked for all applicants
3. File assembled, folioed, etc
4. Recorded on Registry system
5. File raised on PV system
6. Acknowledgment letter/s prepared  
Photocopied for file and agent.

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Senator Ludwig asked (Hansard page 95) – In the client A summary provided by the Department, folio 39 it says 'internal email requesting file'. What would that be about?

*Answer:*

The folio is a hard copy of an email from one area of the Department to another, requesting that the case file be sent to them.



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Senator Ludwig asked (Hansard page 96) – Is the Department investigating the allegations raised by Ms Cynthia Banham in her article in the Sydney Morning Herald on Tuesday 22 July?

*Answer:*

Yes.

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Senator Ludwig asked (Hansard page 98-100) – Is there a separate legal advice that the Department has raised in relation to the view that intervention is not actually a visa process or part of the visa application process? If there is, could the Department provide it to the committee? If the Department cannot provide the legal advice or other substantive information about how it arrived at that, when did it arrive at that view? The Department indicated that it was an issue that was raised in a previous bill, in 2002, but was it aired in that committee or was it a matter that the Department already had a view about?

*Answer:*

Under the *Migration Act 1958* (the Act), an application is finally determined when it has been subject to a decision by a review Tribunal, or the period for seeking such review has elapsed. Requests for Ministerial intervention are made after an application has been finally determined, and are therefore not part of the visa application process.

This is clearly expressed in the Explanatory Memoranda for the *Migration Reform Act 1992*, which introduced a power for the Minister to intervene after a decision of the Refugee Review Tribunal (now section 417). The Memoranda makes clear that the discretionary power of the Minister means that "...the Minister can grant a visa that the person did not apply for, and may grant a visa even if the applicant did not satisfy the prescribed criteria." The intention of the provision expressed here is that the power is outside the provisions of the visa application process – as underlined by the fact that the Minister, in exercising the powers, does not have to have regard to Subdivisions AA and AC of Division 3 of Part 2 of the Act.

The Department has been advised by the Australian Government Solicitor in several legal advices that intervention is not actually a visa process or part of the visa application process. In summary, that advice is that a person making representations to the Minister under sections 351 or 417 is not a visa applicant or a cancellation review applicant since, for these sections to apply, the application must have been refused at both the primary and review stage, and therefore the application no longer exists. This advice makes clear that the powers set out under section 351 and 417 are outside the visa application process.

Further, the Courts have indicated on a number of occasions that the Minister's discretionary powers are exceptional, specific, and outside the visa process. The Departmental submission, at pages 34 to 37, refers.