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SENATE

SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Reference: Ministerial discretion in migration matters

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SENATE

SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS

Friday, 5 September 2003

Members: Senator Ludwig *(Chair)*, Senator Santoro *(Deputy Chair)*, Senators Bartlett, Humphries, Johnston, Sherry and Wong

Senators in attendance: Senators Bartlett, Humphries, Johnston, Ludwig, Santoro, Sherry, Wong

Terms of reference for the inquiry:

To inquire into and report on:

(a) the use made by the Minister for Immigration of the discretionary powers available under sections 351 and 417 of the Migration Act 1958 since the provisions were inserted in the legislation;

(b) the appropriateness of these discretionary ministerial powers within the broader migration application, decision-making, and review and appeal processes;

(c) the operation of these discretionary provisions by ministers, in particular what criteria and other considerations applied where ministers substituted a more favourable decision; and

(d) the appropriateness of the ministerial discretionary powers continuing to exist in their current form, and what conditions or criteria should attach to those powers.

WITNESSES

Committee met at 9.06 a.m.

CHAIR—Good morning. I declare open this public hearing of the Senate Select Committee on Ministerial Discretion in Migration Matters. This is the first public hearing of this committee's inquiry. On 19 June 2003, the Senate agreed that a select committee, to be known as the Select Committee on Ministerial Discretion in Migration Matters, be appointed to inquire into and report on the following matters:

a) the use made by the Minister for Immigration of the discretionary powers available under sections 351 and 417 of the *Migration Act 1958* since the provisions were inserted in the legislation;

b) the appropriateness of these discretionary ministerial powers within the broader migration application, decision-making, and review and appeal processes;

c) the operation of these discretionary provisions by ministers, in particular what criteria and other considerations applied where ministers substituted a more favourable decision; and

d) the appropriateness of the ministerial discretionary powers continuing to exist in their current form, and what conditions or criteria should attach to those powers.

Submissions were called for, with a deadline of 1 August 2003. The committee received 30 submissions, 28 of which have now been published.

Today's hearing will begin with hearing evidence from witnesses from the Department of Immigration and Multicultural and Indigenous Affairs. At 4 p.m. the committee will also hear from Ms Johanna Stratton by telephone link from Tokyo. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanation from parliament or its committees unless the parliament has expressly provided otherwise. I further remind officers that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. Evidence given to the committee is protected by parliamentary privilege. This means that witnesses are given broad protection from action arising from what they say and that the Senate has the power to protect them from any action which disadvantages them on account of the evidence given before the committee.

I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers to conduct its hearings in public. However, if there are any matters which you wish to discuss with the committee in private, we will consider your request. I also draw to the attention of witnesses the Senate rules concerning adverse comment. Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall consider whether to hear that evidence in private session. Where evidence is given which reflects adversely on a person, the committee may consider expunging that evidence from the transcript of evidence. Alternatively, in the event that the evidence is published, the committee shall provide reasonable opportunity for the person to have access to the evidence and to respond to it in writing and by appearing before the committee.

[9.10 a.m.]

CHRISTOPHER, Mr Michael, Director, Business Skills Section, and Former Departmental Liaison Officer, Office of the Hon. Philip Ruddock MP, Department of Immigration and Multicultural and Indigenous Affairs

GODWIN, Ms Philippa Margaret, Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs

HUGHES, Mr Peter Gerard, First Assistant Secretary, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs

ILLINGWORTH, Mr Robert Laurence Mark, Assistant Secretary, Onshore Protection Branch, Department of Immigration and Multicultural and Indigenous Affairs

JOHNSTON, Mr Francis William, Director, Special Residence Section, Migration Branch, Migration and Temporary Entry Division, Department of Immigration and Multicultural and Indigenous Affairs

KNOBEL, Mr Peter John, Departmental Liaison Officer, Department of Immigration and Multicultural and Indigenous Affairs

NICHOLLS, Mr Nick, State Director, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs

RIZVI, Mr Abul, First Assistant Secretary, Migration and Temporary Entry Division, Department of Immigration and Multicultural and Indigenous Affairs

STORER, Mr Des, First Assistant Secretary, Parliamentary and Legal Division, Department of Immigration and Multicultural and Indigenous Affairs

WALKER, Mr Douglas James, Assistant Secretary, Visa Framework Branch, Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—Welcome. I now invite you to make an opening statement.

Ms Godwin—The department welcomes this opportunity to assist the committee in its inquiry into ministerial discretion in migration matters. In order to gain a full and accurate appreciation of the minister's discretionary powers under sections 351 and 417 of the Migration Act, it is necessary to understand the importance that successive governments have placed on managed humanitarian and migration programs. This has influenced the statutory framework which has been put in place and under which these programs are managed. These discretionary powers are an important tool in effectively managing these programs. The department's submission to the committee addresses these matters and provides details of the philosophical context and statutory

framework of which the minister's non-compellable discretionary powers under sections 351 and 417 are integral parts.

Australia has a comprehensive statutory framework which provides a non-citizen visa applicant with an entitlement to be granted a visa where specified statutory criteria are satisfied. There is no discretion for a decision-maker to refuse a visa where the criteria are satisfied. Similarly, there is no discretion to grant a visa where an applicant does not meet the relevant visa criteria. Persons who are unsuccessful, who have a connection to Australia—either through presence in Australia or an Australian sponsor—may seek an independent merits review of the primary decision. The statutory criteria provide uniform standards at both the primary and review stages.

The statutory framework set out in the Migration Act 1958 and the Migration Regulations 1994 enables the government to effectively manage its migration program. The key elements of this framework were put in place in 1989 and arose in part due to concern that external influences, such as court decisions, were causing the government to lose control of its humanitarian and migration programs. The government of the day was concerned that uncontrolled migration would lead to a loss of community support for migration and cause tensions within the Australian community.

Following much debate in 1989, the reforms to the Migration Act, which commenced in December 1989, included the precursor of the discretions in sections 351 and 417. An important factor in the development of these powers is that they were available only after the visa applicant had exhausted their merits review rights. They were recognised, and have continued to be recognised, as providing flexibility for the minister to address individual circumstances which do not come within the criteria required for the granting of a visa but in a way that did not provide any further requirement for the person's circumstances to be assessed. The powers were made non-compellable in order to ensure that unsuccessful visa applicants could not go through another process solely to delay or frustrate their departure from Australia. I note that several of the submissions that the committee has received have canvassed whether there should be further visa classes to address the circumstances referred to in the minister's guidelines in relation to his possible exercise of these discretionary powers. These are matters of policy which are for the government to determine.

Notwithstanding the number and types of visa classes that may be created, the main issue remains: whether there should be a ministerial discretion to intervene in compelling cases that do not come within the visa requirements. Finally, it is important to bear in mind that the powers that are the subject of this inquiry are exercisable personally by the minister. The department's role in this area is to provide information to the minister in relation to requests made for his intervention.

Before concluding my remarks I would like to comment on additional statistical information which the department may be able to provide to assist the committee. In our submission we noted that relevant information is located in a variety of areas and databases around the department and much of it requires time consuming manual processes to identify and collate. In addition to the statistics already provided, the submission identified additional types of information which could be collated. Work is well advanced to draw that information together but is not yet completed. We anticipate that today's proceedings will assist us to clarify the

committee's further interests in relation to statistical information. Where this can be readily collated, we would seek to provide it to the committee as soon as possible. We would now be pleased to assist the committee in explaining the department's role in this important area.

CHAIR—Thank you, Ms Godwin. Before I call Senator Wong, I have a question in respect of the statistical information that you say you are presently collating or obtaining. Can you provide at some point in the morning the nature of that material that you may be able to make available to the committee? The additional issue I had in the back of my mind is that there has been a statement to the effect that something like 27,000-odd requests have been made. Is that able to be broken down by country or representation on behalf of a person to at least distil or disaggregate some of that data so that the committee can have a look at how those requests are made and their composition by country and by origin?

Ms Godwin—I could make a couple of comments. We are aware that you are interested in that—the secretariat approached us, I think, last week. We have made a preliminary examination. Perhaps I can explain part of the difficulty and then try and explain what we might be able to do to assist. The requests themselves are not collated in any single database. They are, in effect, to use that now fashionable word, 'embedded' in the client records of the individuals involved. To get you some of the information you are asking for would require us to individually check the client record for each of the individuals who have been the subject of a request, and we do not have a simple way of doing that. The short answer to your question is that we probably cannot provide it in quite the way you have asked for it.

What we are attempting to do, however, is put together from a variety of other sources a single set of data which we could then interrogate for a variety of reasons. What I am not clear of this morning—and we will check it and, hopefully, give you an answer today—is whether that exercise would enable us to give you any of the nationality information that you have asked for. We clearly have nationality information where there has been a decision to intervene, and I think we have already provided that to the committee, but because there is no single database of the requests it is a difficult piece of information to pull together without a considerable amount of individual client record examination.

CHAIR—As I understand it—and correct me if I am wrong—the minister has made certain comments about the database. I assume he was talking about the request database and what it might contain over the last four years. My recollection is that there has been some comment about the number of requests that have been made on behalf of certain individuals, so it seems to me that that is available. I am just a bit perplexed that you might now be saying that it may not be available.

Ms Godwin—My point is that there is no single database that simply lists all of the requests by name, nationality et cetera. There are various ways of going backwards, if I can put it that way. For example, the department has what is called—and Des will have to help me out on what the letters stand for—the PCMS database.

Mr Storer—That is the parliamentary correspondence management system, which was only put in place towards the end of October 1999. I draw your attention to attachment 25 of the submission, while Ms Godwin is going through what is available. The attachment gives quite a comprehensive overview of the various systems that have developed in the course of the years

which would have records of clients and other people regarding requests they may have made for ministerial intervention. As is pointed out, it is quite a complex system.

Over the years we have had different ways of monitoring entry arrangements due to the different IT we have had at different stages, and they have developed into quite a complex system. After explaining that system, the attachment goes on to the possible scope of providing any information. Senator Ludwig, regarding the question you were mentioning, we can provide a reasonable amount of statistical analysis of information, primarily following January 2000, but even more so after July 2000 until the present.

CHAIR—That would be a good start. At least we can have a look at that.

Mr Storer—After that it gets harder because we had old systems, old ways of doing things. We would have to go back to the files per se in most cases. We are confident of being able to provide reasonable statistical analysis—as we say in the attachment—from after July 2000, but we could probably push that back a little bit to January 2000 if need be.

CHAIR—It would be good if you could work on that and see if you can retrieve it as soon as you can.

Mr Storer—After that we get into all sorts of problems with not only the files but archives. Under the Archives Act we are able to keep files only for a certain amount of time, depending on the particular application, but generally for no more than five years. They are then destroyed for Archives Act purposes.

CHAIR—The other matter that was outstanding, as I recall, was the list of cases that we had requested. I have just been handed correspondence that is not yet public but that we will soon be able to make public.

Mr Storer—We apologise for that, Senator.

CHAIR—I will leave that for the moment on the basis that you have provided that information.

Senator SANTORO—In terms of the information that the department may be making available, obviously this inquiry will develop within it a strand of comparative analysis. How many of those files, if we have to go to them prior to 2000, would realistically be available for comparative purposes? If we are looking at nationality statistics from 2000 onwards for comparative purposes, how difficult would it be to get information prior to 2000, say from 1990 onwards?

Ms Godwin—I think the difficulty is that the information exists where the file exists, but it does not necessarily exist in a database that we can readily access. It is not that there is not the information; the way of getting at it is increasingly more difficult for files prior to 2000. The work that is going on at the moment is to try to pull together all of the relevant databases for post 2000 so that we can interrogate them for the sort of information that we have been talking about. I was just checking with one of the staff, who says that the nationality information ought to be available for that post 2000 period. But, as I say, it is not that the information does not exist pre

2000; it is increasingly more difficult to get at it because it is not necessarily in statistical databases. We would increasingly need to start to interrogate either individual client records or, indeed, the actual paper files.

Senator SANTORO—But, if necessary, it could be got to?

Ms Godwin—It could be, but it would be a very significant task. It would require many hours and, we have worked out, multiple millions of dollars of staff time to get at that material. That is why we have been trying to concentrate on getting together the statistical material that is, in a sense, able to be collated from various sources. But it means that we have had to focus on the post-2000 period.

CHAIR—There are the 10 cases which I think we have now dealt with and we will be able to make public shortly. The other outstanding matter was the RRT returns by those who were provided with intervention by the minister. As I understand it, you have provided some detail in respect of that. My recollection is that something in the order of 1,010 cases were referred.

Ms Godwin—Yes.

CHAIR—The information you have provided does not seem to tally with that.

Ms Godwin—A bit over 1,000 cases covered a four-year period. In order to check the question asked, we needed to go through the records for each of those four years. We have gone through the records for two years and those are the figures you currently have. The current year is the largest year and, of course, most of those are still going through the process—that is, the RRT may well have made a recommendation or at least drawn it to the minister's attention. But if they are still going through the process there is still not necessarily a outcome know. So we have not done the last year. For the first year of the four, we need to get from the RRT their client record number so that we can use that to interrogate our system. We have not yet got that from the RRT. It is not that it cannot be done; it is that we have not yet done that piece of the work.

CHAIR—Can you at least make it up to a certain date this year? It may not be the full year, but in that way we can identify that it is a part year up to a particular date—the last date you have got it from. We can tidy that amount up perhaps by morning tea or lunchtime. In respect of the earlier matter, can you advise us how long it will take for that information from the RRT to come back to you so that we can have a look at that as well?

Ms Godwin—We will certainly undertake to give you an answer by morning tea, but I think that in respect of the current year, even with the actual client record number, we still have to go in and individually interrogate the database, which is a relatively time-consuming process. I doubt that that can be completed by morning tea—that is my point. That is work which is ongoing. On the question of how soon we could get the answer and how soon we could get the other material we need from the RRT, we would certainly be able to give you that.

CHAIR—What do you tell the RRT every six months?

Ms Godwin—I am sorry, I am not sure—

CHAIR—The submission says that the RRT are advised every six months by the department of the outcome of the cases they have referred. That is my understanding. So every six months you must tell them something.

Ms Godwin—Our submission or the RRT's submission says that?

CHAIR—I think it was the RRT's submission. I cannot recall which submission, but I do recall six months as being the time after which the immigration department advises the RRT of the number of successful interventions by the minister in respect of section 417. Therefore, I am a bit surprised that you do not seem to have that available.

Ms Godwin—I am basing my answers on information I was provided with yesterday.

CHAIR—It is in the RRT's submission.

Ms Godwin—Okay. I will have to take advice from colleagues.

Mr Storer—Perhaps I can help, although I do not know the exact answer while the experts are seeking it. As you would realise, we have to table all the successful interventions every six months in parliament, or within the six months after it. It may be that those six-monthly tabling statements that they have compiled for parliament and advised back to the RRT are the successful ones.

CHAIR—Thank you for that. I do not want to guess. Why don't you take the opportunity to find out and then, in a short time, come back with an appropriate response in respect of that matter. I am trying to use my time this morning to clear up some matters before I call Senator Wong to deal with the particular issues. The other outstanding matter was about the submission that you have presented to the committee today. Is that your submission from the department?

Ms Godwin—It is the department's submission.

CHAIR—Has it been through the minister's office?

Ms Godwin—We are obviously in consultation with the minister's office about this whole issue, but the submission is the department's submission.

CHAIR—And it has not been altered or modified by the minister's office?

Ms Godwin—It is the department's submission.

CHAIR—Appendix 2 does not seem to be mentioned anywhere in the primary submission and it appears to be a fulsome explanation as to what appendices 8 and 9 are, which relate to the MSI 225, or the migration series instruction. You have had the opportunity to either alter or correct your submission. I was just unclear about what appendix 2 is.

Ms Godwin—Again Mr Storer may be able to comment in more detail, but appendix 2 is the most recent migration series instruction that has been issued.

CHAIR—But it does not say that; it is actually blank in respect of what it is. Then the submission refers to appendix 9, from memory, as being the most recent MSI 225, and it is labelled as such, whereas appendix 2 is quite a detailed document. It seems to be drawn from those two documents but with far more detail, but it is unnamed.

Ms Godwin—I think there are two issues. One is that it could have been better labelled, so you are correct in drawing that to our attention. At the front of the group of attachments there is a table of attachments which refers to appendix 2 as the 'New Migration Series Instruction on Ministerial Intervention Processes' and appendix 8 as the MSI that was dated May 1999. I apologise that it is not as clear as it could have been to the committee. Appendix 8 is the May 1999 MSI and appendix 2 is the updated MSI. Appendix 9 is the guidelines that go with appendix 2—they are the actual guidelines that go with the MSI.

CHAIR—Regarding appendix 2 then, you will note that on the cover sheet it says, 'MSI no.' and there is nothing highlighted there. When is it operational from? When did it come about? If appendix 8 is the MSI 225 which was dated 4 May 1999, when did the new migration series—the NMS—come into operation?

Mr Johnston—The submission to the minister for his new ministerial series instruction, which is appendix 9, went to the minister on 1 August and was approved approximately a week later. In the terms of the submission, we included the MSI as it had been approved, but it had not gone through the formal departmental process of issue via what we call LEGEND. That occurred about a week later. I do not have the exact date but it was about 15 or 20 August.

CHAIR—So is it in use now?

Mr Johnston—Yes.

CHAIR—From what date?

Mr Johnston—I can get the date, but it was about 15 or 20 August.

CHAIR—And does the entire department have it?

Mr Johnston—Yes, they do.

CHAIR—Is that what people are operating on? Does MARA have it? Do migration agents have it? Has it been put on the Web? Is it available?

Mr Johnston—It has been placed on LEGEND, but I will have to get the exact date for you.

CHAIR—If you would not mind, we would appreciate you coming back with not only the exact date but also, if it is the new MSI, who actually has it in their possession and is utilising it from that date. And how have you dispersed it and ensured that it is a document that is now in the possession of those relevant people who may use it? There may be further questions in respect of that. I was just trying to identify what appendix 2 was. I will finish the general questions I had on process and call Senator Wong.

Senator WONG—Can I clarify appendix 2. I did not hear a response to the chair when he asked if it had been distributed. You said it had gone out by letter—is that right?

Mr Johnston—I can recall that the submission to the minister to provide guidelines, which are at attachment 9, went to the minister on 1 August.

Senator WONG—Are we talking about attachment 2?

Mr Johnston—They are concurrent in the sense that the minister approved his own guidelines at attachment 9. The administrative guidelines for departmental staff, which underpin the processes of putting into effect the minister's guidelines, were issued simultaneously.

Senator WONG—That is attachment 2?

Mr Johnston—That is attachment 2. Once the minister endorsed his own guidelines at attachment 9, the department simultaneously issued the administrative guidelines. They then went through a process of what we call LEGEND, where all our migration series instructions are recorded and they go out to the department. I do not have the precise date, but it would have been middle to late August.

Senator WONG—The MSI go to the department, but not necessarily to practitioners in the field?

Ms Godwin—It might be helpful if either Mr Des Storer or Mr Walker tell you how LEGEND works, because that is the mechanism we use for distributing this material.

Senator WONG—I am interested in whether or not the MSI goes to people outside the department.

Mr Storer—Mr Walker is in charge of what we call LEGEND, which is our legal instruction series. He will explain this to you, and it might cover some of Senator Ludwig's earlier questions too.

Mr Walker—LEGEND is a database that we have established that integrates our act, regulations, procedural advice manual and also the migration instruction series. It is published internally on our computer network, but we also have arrangements with Lawbook Co. for publication of LEGEND by the Lawbook Co. in their migration series. We provide CDs to them with the updated version on a regular basis, generally monthly. However, sometimes where there are significant changes we do provide floppy disks and they in turn update them. They are provided by subscription through the Lawbook Co. to practitioners and migration agents.

Senator WONG—If they subscribe?

Mr Walker—That is right.

Senator WONG—And that applies to both the guidelines and the MSI—is that right?

Mr Walker—That is right.

Senator WONG—Is there any other process whereby applicants can obtain the details of current MSI and guidelines, other than through that process?

Mr Walker—They are certainly available on request from the department. They are provided there. Also, hard copies were available through government bookshops. Because of the changes in the way government bookshops operate, I am not sure whether that is still the case, so I cannot categorically say that they are definitely available, but certainly they are available in hard copy through the department.

Senator WONG—Is there any notification anywhere on your web site of the changing of the guidelines?

Mr Walker—I am not aware whether there is. There is certainly something put on our web site that updates our legislation. Whether it is included as part of that process, I am not quite sure.

Ms Godwin—We could take that on notice and give you a specific answer about what goes onto the web site, if you wish.

Senator WONG—That might be useful. As I understand what you have said to me, unless one is a subscriber, an applicant seeking the exercise of the discretion is not necessarily advised of a change in the guidelines or the MSIs.

Mr Walker—No.

Senator WONG—Does that no mean that I am right or I am wrong?

Mr Walker—Persons may request ministerial intervention, but there is no application process.

Senator WONG—I am aware of that.

Mr Walker—Hence there is no notification process of changes to the guidelines to specific people who have been visa applicants.

Senator WONG—Can I return to Mr Storer on this issue of the PCMS database. Mr Storer, you said that this has been operative since October 1999 and the best data is available after January 2000. Does that log all requests by members of parliament, all requests by anybody or both?

Mr Storer—It logs requests by anybody, including parliamentarians, so there is a different system. Any correspondence that comes to the department will get logged into that system. So all the various ministerials sent in and all of that would go through that system and would be logged, at least since October 1999, in this way. So if at any time you had sent correspondence in we could pull that out from that data.

Senator WONG—And similarly with any other—

Mr Storer—Any correspondence.

Senator WONG—So we could identify all requests that Mr X from Sydney had made?

Mr Storer—This is correspondence to the minister, and then it comes to the department following that.

Senator WONG—What about non-written requests? Are they logged on the system as well? For example, is a record of a phone call or a conversation logged?

Mr Storer—No, it would not be. Emails would be, I believe, but not phone calls.

Senator WONG—Is there any record of telephone calls?

Mr Storer—To the minister's office?

Senator WONG—No, requests in relation to an application pursuant to section 417 or section 351?

Mr Storer—Not to the department.

Senator WONG—What about the minister's office?

Mr Storer—I do not know.

Senator WONG—That is for them to do?

Mr Storer—That is up to them.

Senator WONG—Within a very short time frame in the last parliamentary session the minister was able to identify the number of requests made by a particular member of parliament. Presumably, you were asked to obtain that through this database. Is that how that worked?

Mr Storer—That is correct, yes, and that is some of the information that was provided earlier this morning.

Senator WONG—This is the top 10 that you were talking about?

Mr Storer—Yes.

CHAIR—Just on that, it does not say the number.

Mr Storer—No. We could give you the number if you would like.

CHAIR—Yes, that would be helpful. When you refer to—and I am not sure how far I can go on a document that is not public yet but I am sure the secretariat will tell me—the case

correspondence, can you tell us whether that amounts to one question or one request or whether there are multiple requests embodied in that?

Mr Storer—Further analysis—which would take some time, but we can do—would be able to distinguish that. In other words, if a person had put in a representation—the biggest representations are obviously from agents or legal firms in the community group that you see—it would be able to say how many cases that covers as against the number of requests re each case.

CHAIR—If you could make that available, it would be helpful.

Mr Storer—Yes, we should be able to.

CHAIR—How long would that take?

Mr Storer—I will have to turn to my data analysts. Let me preface that by saying that there are some where there are huge numbers. I have not got them in front of me, but there are some firms that have well over 500 representations in that period, correspondence with the minister's office that comes to us et cetera.

Senator WONG—To clarify, is that 500 cases?

Mr Storer—I do not know, I cannot tell you. It is 500 pieces of correspondence that have come into the minister's office that we would have to interrogate in detail to see how many cases it covered.

Senator WONG—I thought you indicated before that your database does identify the case in respect of which the request or the—

Mr Storer—It does, but we have to go back to those pieces of correspondence, pull them all out and go through them. We have done that for some people but we have not done it for a large number, as of yet. So I was responding to how long that might take. Each time we go back it takes quite a bit of time—perhaps half an hour to go through each piece of correspondence. When you are dealing with some that only have 80 representations you can do that in a reasonable amount of time. When you have 600 pieces of correspondence et cetera that you have to go through and then look at it against the file, it takes a longer period of time.

Senator WONG—You must be able to do it reasonably quickly, because my recollection of how the parliamentary session went last time is that the information in respect of, I think, the member for Reid was provided to the House very quickly.

Mr Storer—Some information on that was provided but not the full amount. I cannot remember how many particular cases for him that would give you.

Ms Godwin—I wish to clarify things. Regarding one of the things that I was trying to refer to before, we have in fact tried to pull a lot of this data together into a single source so we can interrogate it in the way that you are talking about. It is that work of pulling it all together in order to do the interrogation that is currently in train and is being progressively done.

Mr Storer—I have just found out that to do it all for all of the top 10, as we call them, representations both parliamentary and community—and we certainly will give you the numbers of representations later today—would take two weeks.

Senator WONG—I think the chair asked for the number of cases in respect of the representations which were made.

CHAIR—Can we clarify a point? If there is no objection, we can publish the letter provided by the department. I take it there is no objection to that from the committee? It is the letter of 4 September 2003. What I am at least looking for at the start is the number of representations in the top 10 and then, in terms of the correspondence, whether you can disaggregate that by the number of correspondents in relation to a representation of a person or an individual—in other words, can you tell us whether there are 500 representations by the one organisation in respect of one person or whether there are 500 separate representations in respect of 500 separate individuals, or by group or class? It provides a better snapshot than simply rank order or gross number. We get to understand the way your request systems operate.

Ms Godwin—We will take that on notice. I think the two weeks that are being talked about are to do a thorough analysis of all of it. I will try to establish during the course of today whether we can break it down into chunks and progressively give you elements of the information in a way that assists the committee.

CHAIR—What about the gross numbers? How long would it take you to provide those?

Ms Godwin—We probably have some of those today, so we could provide them during the course of today.

Senator WONG—Are they the gross numbers—meaning the total number of requests per each of these top 10 MPs, legal firms and community representatives?

Mr Storer—That is correct.

Ms Godwin—With the proviso that the gross number I think we have at the moment has not yet been sifted. For example, there may be a request that goes to another section of the act, not to 351 or 417, and so all intervention type correspondence would be need to be sifted. But as I understand it we could provide the gross figure today.

Senator WONG—Presumably you did that in order to identify the top 10?

Ms Godwin—Part of the difficulty is that the PCMS is a database that is created when a piece of correspondence comes in and an officer goes in and records the correspondence and certain bits of information. There are what we call flags in the system—intervention, representation and those sorts of things. If the intervention has '417' in the flag, that works; but if all that has been flagged is 'intervention' and not the specific type of intervention then it will not necessarily, on those raw figures, be disaggregated. I am saying that it may be very close, but we would need to sift it to see.

Senator WONG—I understood what you were saying. I am just making the point that in order to identify the top 10 you must have done some analysis that led to the gross numbers, pre sifting.

Ms Godwin—We have done it down to the intervention level. I am saying that if someone gets 100 of them, that may be 100 of 351s and 417s or it may be 95 of 417s and 351s and 5 of something else.

Senator WONG—I understand that. Presumably you can also track the cases in respect of which requests for interventions have occurred, in accordance with your top 10? I think Mr Storer said before you can do it by case.

Mr Storer—Yes, that is the two weeks.

Ms Godwin—It is essentially working backwards—

Senator WONG—Hang on. Can you not pull out from your database which cases these requests were made in respect of, or does that require you to go back to the correspondence?

Ms Godwin—It certainly requires us to interrogate the system for each named client to see whether it was an intervention request or just a case related representation, letter of support or whatever. It is that sort of interrogation. I am trying to be helpful, but I am also explaining the system. We have tried to pull all of that together into a database so that, instead of keeping on telling you that we have to go back to the individual things, we can actually have this thing that we can interrogate. That is what is currently being drawn together and, hopefully, we will be able to draw out the information that you are asking for in a way that is helpful and does not require individual record case examinations.

Senator WONG—Does the database record some identification of the applicant in respect of whom the request, lobbying or whatever you want to call it is made?

Ms Godwin—As I understand it, it often records their name, but we then have to look up the other client system to identify the client by their client record number so that we can then interrogate their client record.

Senator WONG—Is that right, Mr Storer—it only identifies by name, not by case number?

Mr Storer—It varies depending on the correspondence. The other thing it does not record, of course, is the outcome of all of this. The PCMS system does not record that.

Senator WONG—That is in a different database, presumably?

Mr Storer—Yes. That is why we are trying to match up—to give you the information that I believe you are seeking.

Senator WONG—I see. So you would need to match it against your case database—whatever that is called—in order to determine how many of a particular case where there were certain representations—

Mr Storer—What happened. That is correct.

Senator WONG—What happened with it. And you will look at that and advise us?

Mr Storer—I believe that is the one that we have just said we will be able to do for all of the representations. I cannot remember the total figure, but it is something like 1,700. Perhaps it is many more than that. We will give you the raw figures today, subject to the provisos that Ms Godwin mentioned. It will take two weeks to then do what I believe you are really after, which is to find out from all of those representations what has basically happened to them.

Senator WONG—Regarding the RRT referrals, will you get back to us on what it is you report to them every six months—that is in the RRT submission?

Ms Godwin—We will.

Senator WONG—I understood that that was reporting on the progress and outcome of cases that the RRT had referred.

Ms Godwin—We will need to take it on notice. We are not aware of a reporting system such as that, so we need to check what they are actually referring to.

Senator WONG—Your submission canvasses some of the legal framework and policy objectives of the ministerial discretion. I was somewhat surprised, as there seems to be very little reference at all to community representations.

Ms Godwin—I am not sure of the question.

Senator WONG—It is obviously one of the matters that has been rather prominent in terms of the public interest, and I am interested that your submission does not at all seem to raise how community representations are dealt with by the department.

Ms Godwin—There are other flowcharts in the attachments, the MSIs and so forth that describe the process for managing requests. We regard all requests as part of the process. Requests can come from a variety of sources: the individuals themselves, their migration agent or other representative, community representatives or interested organisations. It is not all that uncommon for there to be more than one representation in respect of an individual. What we were essentially trying to explain is how we deal with a request as opposed to the source of the request, because for us the issue is the request and that it is managed and dealt with.

Senator WONG—To summarise what I understood you to be saying in your submission, we have a reasonably highly regulated migration system, and the only way in which Australia's obligations on non-refugee convention grounds—that is, the International Covenant on Civil and Political Rights, the convention against torture and the Convention on the Rights of the Child—can be realised is essentially by the retention of ministerial discretion.

Ms Godwin—I might ask Mr Hughes to comment.

Mr Hughes—That is correct, Senator. That is the process, although I think it is worth observing that, since those issues are dealt with by ministerial discretion, in a sense as a last resort, those issues are often very much tied up with refugee claims. Therefore, people who are in the protection visa stream and receive a protection visa may in fact have issues under those conventions as well, but they are dealt with, in effect, by receiving a protection visa.

Senator WONG—But they would be required to have grounds under the Refugee Convention in order for that to occur, wouldn't they?

Mr Hughes—Indeed. I guess what I am saying, though, is that, for a convention related reason, a ground under Refugee Convention might be persecution in the form of torture. That means that there would be issues under both conventions, but the protection visa system would have taken care of that under the Refugee Convention.

Senator WONG—I think it is reasonably well accepted that the Refugee Convention has reasonably narrow grounds, that people will make claims which may fall outside of the convention and that those claims are required to be assessed. The only avenue for people who have those sorts of claims would be under ministerial discretion.

Mr Hughes—I am not sure that I agree that the convention has narrow grounds. It just has a set of grounds, and I would not regard them as being narrow—

Senator WONG—Some people do.

Mr Hughes—Indeed, but they intersect with the grounds under other conventions. But you are right to say that, where a person is unable to establish a protection need under the Refugee Convention but has some other need under the other conventions you have mentioned, that will usually be taken care of under the ministerial discretions.

Senator WONG—In fact, that is the only avenue in our system where it can be taken care of, isn't it?

Mr Hughes—Again, theoretically people might have some claims for a visa somewhere else in the system; so there are other filters, but that is the final filter.

Senator WONG—Which is one of the reasons we have to have a system that has probity and integrity.

Mr Hughes—Indeed.

Senator WONG—Could I clarify exactly how the process of a request works in practical terms. The applicant fails at either the MRT or the RRT. Let us assume, for the purposes of this part of the questioning, that there is no referral from the RRT. I do want to deal with that, because it seems to me that there is a little bit of inconsistency in how the referral from the RRT actually occurs and in that process, but I would like to come to that later. The applicant then would most commonly write to the minister or write to the department requesting consideration under one of the statutory provisions.

Mr Illingworth—As a matter of course, every case in which the Refugee Review Tribunal affirms the primary decision is then assessed automatically on return to the department by DIMIA officers. So the first step that would be initiated is the department's examination of the material that relates to that case to see if there is any matter that falls within the guidelines for referral. Irrespective of whether the individual concerned takes any action, we have a mechanism to bring matters that fall within the guidelines to the minister's attention.

Senator WONG—Yes, your submission does go through that. That does not occur in relation to MRT matters, presumably.

Ms Godwin—No.

Mr Johnston—It is not an automatic assessment, no.

Senator WONG—Who performs the automatic assessment in relation to RRT matters?

Mr Illingworth—There are officers in our state offices—DIMIA officers at the APS6 level—who are trained.

Senator WONG—Is that at the MIU or at a different level in the department?

CHAIR—By the MIU, you mean the Ministerial intervention unit, I take it.

Senator WONG—Yes.

Mr Illingworth—The automatic assessments are normally done by the case officers, in my understanding, so you have a person who is qualified and trained to examine cases at that level of complexity.

Senator WONG—So the automatic checking is not done by the Ministerial intervention unit?

Mr Illingworth—In my understanding, it is done by the onshore protection areas, but there is no reason that it needs to be done by an onshore protection case manager. It could also be done, conceivably, by an officer who is trained in the Ministerial intervention unit.

Senator WONG—You said, Mr Illingworth, that that is your understanding. Is that something you need to check or perhaps confirm with someone?

Mr Illingworth—I can confer with one of my colleagues from the states to ensure that my understanding is correct.

Senator WONG—Thank you.

Senator JOHNSTON—Can I just have that again: what was your understanding of who does it?

Mr Illingworth—The onshore protection case managers.

Senator WONG—Would it generally be the case manager who was the primary decision maker, the decision being the one that was taken to the tribunal?

Mr Illingworth—It may be. It is conceivable.

Senator WONG—By definition, that person would already have had to have rejected the claim. Would they be looking for something new in the RRT decision?

Mr Illingworth—They would be looking at the entire case against a different set of criteria to those which were applied in the original decision and those applied by the tribunal. The section 417 powers are not considered in the internal assessment process as being some opportunity for a third review of the same material. It is looking at the case from a different perspective.

Senator WONG—Is there a different process in place if the RRT itself, either in its decision or through its notification, has recommended consideration of the use of the discretionary powers?

Mr Illingworth—Where there are requests made for intervention, those are handled by the Ministerial intervention unit.

Senator WONG—So any request, whether it is from the RRT, the failed applicant, a third party—

Mr Illingworth—Or a community group.

Senator WONG—or a community group would mean the case officer in the onshore protection unit would not deal with it and the matter would be dealt with by the Ministerial intervention unit.

Mr Illingworth—It would be dealt with in the Ministerial intervention units.

Senator WONG—Before we get to that, the assessment by the case officer, presumably, is against the guidelines.

Mr Illingworth—That is right.

Senator WONG—Is that the point at which the decision is made to either place the case on the schedule, as in it is assessed as being outside the guidelines, or provide a full submission to the minister?

Mr Illingworth—Yes, a decision is made at that point as to whether the guidelines are met. On that basis, wherever the guidelines are met, it goes to the minister in a submission.

Senator WONG—And, if they are not met, the case is placed on a schedule. Is that how it works?

Mr Illingworth—That is my understanding, yes. I will just check—yes, that is correct.

Senator WONG—And the minister receives copies of the schedules?

Mr Illingworth—That is right. The difference between the schedule and the submission is really just the level of detail provided to the minister. They are both vehicles to bring the case to the attention of the minister; it is just that one vehicle provides more detail than the other.

Senator WONG—Certainly. At the departmental officer level, is the decision to either place the matter on the schedule or provide a full submission to the minister entirely with the case officer, or is it after he or she has made a decision that the MIU considers that decision?

Mr Illingworth—It is an assessment made by the case officer. There is a reasonable amount of flexibility at the local level to apply the normal management controls for quality assurance purposes and supervision purposes—

Senator WONG—What does that mean?

Mr Illingworth—so the case managers have superiors who will take whatever steps they need to take at the local level to ensure that there are proper volumes and quality of work. No doubt at the local level, if there are case managers who find a case that they think is a bit tricky and they are not quite certain then they will consult their boss.

Senator WONG—Did they consult the MIU?

Mr Illingworth—I am not aware that that occurs, but it is conceivable that they would consult peers.

Ms Godwin—Senator, one of our colleagues may be able to assist with this group of questions.

Mr Nicholls—I am the state director for the department in New South Wales.

Senator WONG—Did you want to add anything to the answers so far, Mr Nicholls?

Mr Nicholls—The MIU is involved in the assessments that you were asking about.

Senator WONG—I just want to clarify this: this is automatic RRT assessment with or without a request?

Mr Nicholls—I can only speak for Sydney, but in the Sydney office the automatic assessment is done by a collection of officers—either the people who normally work on the primary decision case load or people in the Ministerial intervention unit. What determines that is workload and work flow factors. Secondly, there is a process of discussion within the MIU in Sydney and with other folk who are outside the MIU in assisting the process in determining whether the matter will go forward as an individual submission or as part of a schedule of cases.

Senator WONG—So you are in the Sydney office. Where are the MIUs located in Sydney?

Mr Nicholls—They are part of the onshore protection structure of the operation.

Senator WONG—So where are they?

Mr Nicholls—Physically located?

Senator WONG—Yes.

Mr Nicholls—In the Gateway Building, 26 Lee Street.

Senator WONG—In the city?

Mr Nicholls—In the city.

Senator WONG—Are there any other offices?

Mr Nicholls—No. There are other offices of the department, but there is only one MIU and it is at that location.

Senator WONG—So the MIU may or may not be involved in the automatic assessment of RRT matters, depending on workload?

Mr Nicholls—They would always be involved. Staff who are not part of the MIU may do the initial assessment, but it would all flow through the MIU.

Senator WONG—So at the end of the day it is a decision by the MIU officers as to whether a matter is assessed as being within or outside the guidelines?

Mr Nicholls—Yes. Sometimes there is an individual officer and at other times it is a collective decision, and sometimes I am personally involved in that decision. I sign all individual submissions that go to the minister and another manager signs off the schedules that go to the minister. So there are opportunities at other layers in the department for those judgments to be made.

Senator WONG—Does the department have an office in Western Sydney?

Mr Nicholls—In Parramatta, yes.

Senator WONG—And it has members of the onshore protection unit?

Mr Nicholls—No. All onshore protection—

CHAIR—Sorry, there seems to be some other noise going on which is preventing some people from clearly hearing the questions. I ask people to speak clearly into the microphones and I have asked for the microphones to be turned up a little bit to help overcome the noise.

Senator WONG—I asked if they had an office in Parramatta.

Mr Nicholls—There is an office in Parramatta. They do not deal with onshore protection or ministerial intervention matters other than to receive applications or requests. They would then all be transmitted to the Gateway office.

Senator WONG—Does the MIU in Sydney deal with all applications for ministerial discretion within New South Wales?

Mr Nicholls—Yes.

Senator WONG—Is it allocated by state?

Ms Godwin—I would just like to clarify that: they deal with section 417 discretion only in New South Wales. All section 351 discretionary matters are dealt with by the Ministerial intervention unit based here in Canberra.

Senator WONG—So section 351 matters from around Australia are dealt with in Canberra?

Ms Godwin—Yes.

Senator WONG—Section 417 applications are dealt with in Sydney, Melbourne and where else?

Mr Nicholls—Perth.

Senator WONG—Perth. They are the three MIUs?

Ms Godwin—Yes.

Mr Nicholls—That is right.

Senator WONG—They are each located in the city?

Ms Godwin—Yes, and as I understand it—Mr Illingworth or Mr Nicholls may be able to clarify this—we have three locations where we manage onshore protection. They essentially break up the case load from around the country. The case load that they are responsible for, in terms of onshore protection, is also geographically the case load they are responsible for in relation to section 417 interventions.

Senator WONG—While we are on this matter, who deals with what?

Mr Illingworth—Victoria deals with South Australia. We have WA dealing with WA, and New South Wales deals with Queensland and the Northern Territory, I believe.

Senator JOHNSTON—Who deals with Tasmania?

Senator WONG—I thought, 'You're about to get belted!'

Mr Illingworth—I think Victoria deals with Tasmania.

Senator WONG—Victoria, presumably.

Ms Godwin—Well caught, Senator!

Mr Illingworth—I might add that there are small numbers of section 417 intervention matters which do end up at some point being dealt with in the central office, largely because of issues that might require a very quick turnaround. It is difficult to get files back to a state office to perform that work in a time frame that requires quick handling.

Senator WONG—I have lots more questions, but I have to take my turn.

Senator SANTORO—Thank you. I am interested in exploring the process that Senator Wong has been questioning you on—that is, the process leading up to ministerial intervention. When a request is made in a minister's office, what happens from that point onwards?

Ms Godwin—I will have a go at answering that and, if we need to expand on this, we will. As I understand it, when a piece of correspondence comes into the minister's office it is vetted by staff in the office. There is a well-established procedure between the office and the department. All correspondence is stamped and directed to a particular part of the department. In the case of ministerial intervention requests, it would normally be directed first to the special correspondence unit in central office so that an acknowledgment can go back quickly saying that their request has been received.

Senator SANTORO—That acknowledgment is provided by whom?

Ms Godwin—The correspondence is prepared in central office and signed according to the requirements of the minister's office, usually these days by Minister Hardgrave.

Senator SANTORO—So it is fair to say that the minister himself at that stage would have very minimal involvement, if any involvement at all?

Ms Godwin—That would certainly be my understanding. As I say, it is essentially handled at that point as an administrative matter—the correspondence is simply farmed out to be dealt with in the appropriate way. Once that first administrative step has been completed, the correspondence is then transferred to an intervention unit. Depending on the nature of the power, whether it is 417 or 351, it is transferred to the relevant ministerial intervention unit and then they process it in the way that we have been discussing.

Senator SANTORO—What sort of level would a typical officer within an MIU be working at? What type of qualification or experience would an officer within a unit like that have?

Ms Godwin—I may ask Mr Johnston to comment on the unit here in Canberra first, and then Mr Nicholls for the Sydney unit.

Mr Johnston—The Ministerial intervention unit here in Canberra is managed at what we call EL1 level. We would have a number of officers at APS6 and APS5 levels, and some even at APS4 level, depending on the complexity of the work.

Senator SANTORO—In terms of cross-fertilisation between MIUs, I am interested in any system or any correlation that exists between say, an MIU in Sydney and the central MIU here in Canberra. I am asking a series of questions in terms of the interaction that MIU officers have. I would like to build on some of the answers provided to Senator Wong.

Ms Godwin—Sure. Nick, could you comment on the levels and also on the relationships?

Mr Nicholls—Attachment 10 to our submission gives you a breakdown of the numbers and classification levels of staff involved across Australia in MIUs. I should add that these numbers—certainly for New South Wales, where I have personal knowledge—change from time to time as different workloads and work flows require the numbers to differ. But essentially, it is in that ballpark.

With regard to your question as to what interaction takes place, to my knowledge there is very little interaction between MIUs around Australia; each works as an independent unit from each other and an integrated unit into whatever local structure exists. But there is a great deal of interaction with the central office policy area, particularly in matters of receiving guidance in understanding how to apply the relevant considerations, and in terms of formal training.

Senator SANTORO—In terms of quality control—if I can put it that way—what oversight function relates and applies to an MIU?

Mr Nicholls—Again, I can only speak about Sydney—there are different layers. There is a range of internal quality controls. For example, as I mentioned earlier in relation to another question, I personally see every submission that goes to the minister and I give regular feedback to the more junior officers who are involved in the preparation. That feedback also ends up in both formal and informal training sessions that we run, both on our own and in conjunction with colleagues from the relevant area in central office. We have many informal audits where people who are experienced case officers outside of the MIU will regularly look at the work that they do. Of course, we have regular examinations of the submissions by the relevant people—the policy people—in central office.

Senator SANTORO—After what you have just said, would you say the internal probity and audit systems are fairly stringent?

Mr Nicholls—Yes. I would certainly say so. And, senators, my apologies, but what I have been explaining is only in relation to the section 417 interventions.

Senator SANTORO—Could you explain, for my benefit if not for the benefit of all the committee, why section 351 is exclusively considered in Canberra and section 417 is considered in the respective states?

Ms Godwin—It is just a management decision we have made over the years. Section 351 requests flow out of cases considered essentially at the Migration Review Tribunal. There are, I

think, proportionally less of those than there are section 417 requests, which follow from decisions of the RRT. As we have operational units for onshore protection matters in three locations, we have sought to match up the intervention workload with those three operational locations. In relation to the 351 matters, as they come from all over Australia and go across a whole range of potential work units, we decided that rather than disaggregating them to match up with those work units it would make better sense to keep them centralised in Canberra. But when I say 'in Canberra', it is not in central office; it is based in our ACT regional office where it is managed as an operational unit with policy guidance and oversight from Mr Rizvi's division.

Senator SANTORO—So it is basically an administrative management decision?

Ms Godwin—Yes.

Senator SANTORO—Could I just go back to individual officers handling cases within MIUs: would those officers normally contact people outside the department, such as people who have made representation on behalf of an applicant or ministerial intervention, to discuss the requests?

Mr Nicholls—Yes, depending on the circumstances, that would occur.

Senator SANTORO—Does it happen often?

Mr Nicholls—I could not be definitive and I could not give you a percentage, but it would happen regularly, yes.

Senator SANTORO—What about contact with liaison officers in the minister's office? Does that contact occur and how frequently?

Mr Nicholls—That does occur. It would be quite regular.

Senator SANTORO—Would somebody at your level be aware of the discussions that are taking place there?

Mr Nicholls—No, not at my level. It would be predominantly the people at APS 5 and 6 levels and, on fewer occasions, more senior managers. But I cannot recall a recent situation where I have personally spoken to anyone in the minister's office.

Senator SANTORO—In relation to a ministerial intervention case, would it be fair to summarise, from what you have said, that somebody at your level would not have a great deal of contact with the minister's office in relation to individual cases?

Mr Nicholls—Not regarding the overwhelming majority of cases, no—not at my level.

Senator SANTORO—And you would not have officers from the minister's office making contact with you in relation to individual cases?

Mr Nicholls—No, not from the minister's office. It may have occurred but I cannot recall one in recent times.

Ms Godwin—It might be helpful to put into context what the subject of that liaison is. As I understand it, and others may want to comment in more detail, sometimes there is a need to clarify the particular circumstances of a case, or particular things that might be raised that go beyond those which have already been considered in the application process. Sometimes in the requests for intervention it is not really clear what those matters are and, even when things go on schedules or in other ways to the minister's office, there may well be additional information sought to clarify the request.

So the bulk of that contact would be by way of trying to tease out the elements of the case, if I can put it that way, and that is why it would largely happen at that operational level. If you look at attachment 10, you will see that the bulk of staff in the ministerial intervention units are APS6 or APS5 officers. Those are the two levels that we would normally regard as our decision-making levels, and therefore they are the people who have in a sense the facts of the case, generally speaking, available to them. The more junior officers would normally be involved more in administrative functions—preparation of correspondence and those sorts of things—and so the sort of information level contacts would normally be happening at that level and not at the state director level.

The other sort of information that may in fact be the subject of discussion is what the visa options might be in a particular case. As you would be aware, the minister can intervene and grant any type of visa, if he decides to intervene. But often there will be a question of what the relevant options might be, so that sort of information would also often be the subject of discussion between officers in the intervention units and the liaison officers in the minister's office.

Senator SANTORO—The answer to this question is obvious from what you have just said, but, for the record, the contact is in relation to technical and factual aspects of any case before an officer. Is that correct?

Ms Godwin—That is certainly my understanding of the bulk of the contact. We have one of the minister's liaison officers here. If you wish, they could probably clarify that.

Senator SANTORO—I am satisfied with your answer. It may be difficult to provide a definitive answer, but how long would each officer dealing with a case typically spend on each one?

Ms Godwin—I will be guided by my colleagues.

Mr Nicholls—The answer is difficult to formulate, because it is not that I work on one case and then leave it and work on another. It also depends on the degree of complexity, the mass of information or the paucity of information that the person making the request may have put forward. I would estimate on average in the section 417 case load that probably about a day or so per request would be a good average, but I would have to ask if I could take it on notice to be more accurate. I need to go back and check that.

Mr Johnston—In the Canberra MIU it would be very similar to what Mr Nicholls has just outlined. It really depends on the amount of time spent. For example, you might have a request where there is simply no power of the minister, in which case that could be handled very quickly. We have a statement of work with the Canberra regional office where we expect certain functions to be taken within certain times and we fund them on that basis. There are different stages that would have different times, but on a more complex case, we would average out about seven or eight hours in total.

Senator SANTORO—So, typically, how many cases would an officer within an MIU handle over a year?

Mr Johnston—If he worked on one a day on average—but staff rotate, it is very rare that you would have one staff member in an MIU for 12 months.

Ms Godwin—But if you are asking for the average workload that is handled, we probably could provide some information but we may need to take it on notice. We have provided some information about the number of requests in a year and the average staffing levels. We could tease that out a bit and give you a sense of the average workload that an MIU and individual staff would deal with, if that would be helpful.

Senator SANTORO—It would be helpful to the committee. I want to pick up on the last answer from Mr Johnston, in which, if I heard him correctly, he said that a staffer in an MIU rarely stays for a year. Is that what you said, Mr Johnston?

Mr Johnston—That is my understanding. There is obviously quite a significant rate of staff turnover. I guess the point I was making is that you might have new staff who have to undergo training, and therefore the productivity might be less for certain periods.

Senator SANTORO—I was more interested in picking up on the experience factor that would accrue to more permanent staff members and therefore their capacity to handle the workloads before them.

Mr Johnston—It would all have to go through the normal selection process. There is quite an interaction between central office staff and the ACT regional office, and they would obviously be assessed for their suitability to undertake the work.

Ms Godwin—I would like to add a couple of things. Based on my personal knowledge, I think it would vary a bit. There are some staff who clearly stay in work areas for a considerable period of time and other staff who rotate through. The ACT regional office is often used by us as a way of giving people who have had only central office experience some experience at a regional office level. So there is a degree of rotation and churn. I think the same would be true in state offices; there would be a number of staff who would have been there for a period of time and others who may rotate in and out.

The other thing about the MIUs in the state offices is that because they are related to the work of the onshore protection area there may well be transfer between the two areas—someone who has been a case officer works in the MIU and someone who has been in the MIU goes and becomes a case officer in onshore protection. In those ways, even though a person may not

necessarily be permanently in the MIU—that is, for a two- or three-year period—there would certainly be a body of experience and knowledge that is resident within the unit, if I can put it that way.

The other point I will refer to is a point that Mr Nicholls was making, which is about the important role of the oversight provided by central office areas in terms of quality, training, monitoring what is happening and, indeed, auditing from time to time the actual product that is being prepared in the units.

Senator HUMPHRIES—I want to clarify a couple of things that were raised by Senator Santoro. The question of people moving in and out of the MIUs is a question of multiskilling people and giving them a chance to experience a range of areas in the department. Is the work force within this whole area of DIMIA generally fairly stable or is there a relatively high turnover of people in comparison with other areas of the Public Service?

Ms Godwin—I may need to take on notice the issue of whether comparatively it is more or less. There would certainly be a degree of turnover for a whole variety of reasons, particularly here in the central office ACTRO configuration, if I can put it that way, because of people moving between central office and the ACT regional office. Also, these are the two feeder groups, for example, for all of our overseas postings, so people go on postings. There would be a significant degree of turnover. We may need to take on notice what that degree of turnover is and how it compares to other areas.

Senator HUMPHRIES—But the turnover is within DIMIA—you are not necessarily losing people out of DIMIA or the Public Service?

Ms Godwin—No. Interestingly, as an agency we have a relatively lower separation rate than a number of other agencies.

Senator HUMPHRIES—That is what I have heard and I was just confirming that.

Ms Godwin—Most of the churn would be internal, if I can put it that way.

Senator HUMPHRIES—What contact does the officer who handles a matter under a ministerial intervention process have with the applicants? There might have been a letter initiating the process from some source, or there would have been a decision by the MRT or the RRT which led to a review that triggered it. I assume that there is regular communication with the affected person or persons in the form of phone calls, letters and things of that kind?

Ms Godwin—There is certainly an acknowledgement of the original request, if there is a request, but as for ongoing contact I will have to ask Nick to answer.

Mr Nicholls—In Sydney, yes, there is regular contact by way of letter or telephone with either the person making the request, their agent or some other representative. This contact is generally focused on clarifying matters that the person may have put forward or to seek further information where relevant. For example, the person may have claimed a compassionate factor because of their relationship with an Australian citizen or resident, and it would be quite common for the officer handling the case to then ring the person and make inquiries as to further

details of that relationship so that that could be included in the submission that goes to the minister. So it is in those kinds of situations that contact occurs.

Senator HUMPHRIES—I assume that very often in these circumstances the question of bridging visas also arises, with people wanting to know what the status of their visa within Australia might be while the intervention question is being resolved. Are they handled by the officer who is also handling the intervention question or are they referred to somebody else?

Mr Nicholls—That varies. Again, I am talking about Sydney and the section 417 case load. For the people who are in Villawood detention centre—because they are included in this group—their requests about bridging visas or changes to their immigration status would not be handled by the Ministerial intervention unit; they would be handled by the detention case officer. For the larger number of people who are in the community, issues such as bridging visas and changes to immigration status would certainly involve the Ministerial intervention unit but would also involve others, depending on the particular circumstances and any specifics of the questions. So it can be, but it is not always, handled by the same person.

Senator HUMPHRIES—Would it be common for officers in the MIU to meet with the applicants themselves?

Mr Nicholls—No, that would not be common. The only need for a meeting would be for an interview to verify whatever factors needed to be sorted out. My knowledge of it is that formal interviews at this stage are not common.

Senator HUMPHRIES—Thank you.

Proceedings suspended from 10.39 a.m. to 10.57 a.m.

CHAIR—Before I go to Senator Bartlett there is a matter I would like to raise with Mr Storer. Mr Storer, as I understand it I asked you a question about the now published letter in respect of case correspondence from parliamentarians on page 3, and the two top 10 lists. I am told that during the break you had the opportunity to brief others about indicative numbers that may be on those two top 10 lists. I thought my questions actually went to at least providing that indicative number as well, but could you go to that now so that at least the committee can have the benefit of your knowledge more broadly than just people outside this room.

Mr Storer—I apologise for that; you are quite right, Senator. I can give the committee the top 10 figures that are currently being typed up. Do you want me to read those out?

CHAIR—Yes, please.

Mr Storer—The first one on the list relating to correspondence from prominent legal firms, agents and community individuals is Adrian Joel—they are a group of lawyers, as you would be aware—at 537.

Senator WONG—Can I clarify that those are individual pieces of correspondence.

Mr Storer—Yes.

Senator WONG—And not notes regarding telephone calls or emails?

Mr Storer—No; this is just the correspondence.

Ms Godwin—Senator Wong, can I clarify your comment about telephone calls. It would be very unusual for a telephone call to be the only instigator of an intervention request. Normally, if someone rings in with that sort of request they would be asked to put it in writing and it would then subsequently become part of the correspondence that we have been talking about.

Senator SANTORO—Is it fair to say, in fact, that a telephone conversation, a request over the telephone, is not sufficient to initiate a ministerial intervention and that there must be a formal request in writing?

Mr Illingworth—There is no prescribed form for making a request. A person would write in; I understand the minister has on a number of occasions said publicly that he would like people to write in. If a phone call were received and it raised a matter that required the attention of a departmental officer, it does not mean the matter is ignored. It can be actioned—there is no impediment to that—but it would not necessarily be flagged as a request. It would be handled as a departmental examination of the case to see whether it meets the guidelines.

Senator SANTORO—But an actual request in almost every case, if not every case, would come in a more formal manner than a telephone call?

Mr Illingworth—Yes, that is correct. Overwhelmingly, the usual way in which requests are brought to the department's attention is in correspondence.

CHAIR—How many requests were there from Erskine Rodan?

Mr Storer—There were 519. From Parish Patience, there were 277; the Reverend John Murphy, 77; Ms Marion Le, 68; Karim Kisrwani, 55; Wimal and Associates, 46; Paris Aristotle and his group in Melbourne, the torture and trauma service, 26; Father Frank Brennan, 2; and Mr Mark Clisby, 1. That is that group.

CHAIR—At some point, you will be able to depack those in terms of whether they relate to one representation and whether they relate to an RRT or MRT case or a 417 intervention.

Mr Storer—That is correct. That is the analysis we said would probably take two weeks.

Senator SANTORO—Is that all of them?

Mr Storer—No. They are the top 10, as it were, drawn out of the period between October 1999 and June 2003, from whom pieces of correspondence have come in, through our correspondence system from the minister's office, mentioning words such as 'ministerial intervention', 'seeking intervention' or 'We are supporting the application for an intervention.' As Ms Godwin said, we think they cover most requests for intervention, certainly interventions under sections 417 and 351. There are other non-compellable ministerial intervention powers that are sometimes also referred to, so we need to do a bit more scrutiny over this two-week period to finalise these figures. They will be roughly in that order.

CHAIR—You will then be able to line up those that have been successful as well.

Mr Storer—Yes; we will be able to provide the outcomes.

CHAIR—Perhaps I should say it that way.

Mr Storer—We will be able to say what happened to them, basically.

Ms Godwin—Can I just say one other thing by way of explanation to Senator Santoro. You said, 'Is that all of them?' As Mr Storer said, it is the top 10. There would obviously be multiple correspondences where there is only one piece of correspondence, so they have obviously been sifted out of this.

Senator SANTORO—How then does Mark Clisby get a guernsey with only one piece?

Ms Godwin—It may well have been alphabetical; I am not sure. We would need to check that.

Mr Storer—Or Frank Brennan. They are very low, as they say. The other list relates to parliamentarians. As you know, there have been 212 parliamentarians who have made requests and over that period they have made representations for 2,050 people. Of the top group there, Laurie Ferguson has made 86, Roger Price has made 63, Frank Mossfield has made 56, John Murphy—the non-reverend John Murphy—has made 52—

Senator SHERRY—I have always found him very reverend.

Ms Godwin—He would not like you saying that.

Mr Storer—There is an internal reason.

Senator SHERRY—We understand. We will pass on your best wishes.

Mr Storer—Andrew Bartlett has made 49, Tony Abbott has made 48, Leo McLeay has made 42, Anthony Byrne has made 41, Alan Cadman has made 38 and Simon Crean has made 37.

CHAIR—You will be able to provide the outcomes for them and the breakdown of what they relate to?

Mr Storer—That is correct.

CHAIR—Much appreciated.

Senator SHERRY—I have one point I would like to raise. As a total number, that is a fairly small proportion of the 2,050.

Mr Storer—That is correct.

Senator SHERRY—Could you go further and give us the top 100 perhaps?

Mr Storer—Yes. I could give you the list of all the 2,050, I guess, if you would find that helpful.

Senator SHERRY—I will only be embarrassed because my name will not be on it at all.

Mr Storer—I will just check.

Senator SHERRY—I think that will be useful for the committee.

Ms Godwin—I will clarify, though, that if you want us to go to the level of analysis that we were talking about for the top 10 that obviously starts to sort of expand—

Senator SHERRY—I understand. My point is that, when you look at parliamentary representation, the top 10 in terms of the total is a small proportion of the 2,050.

Ms Godwin—Yes.

Senator SHERRY—Looking at your top 10 of prominent legal firms, agents and individuals, it looks as though that would be your only 10. If Mr Mark Clisby with one is in the top 10 there are not going to be too many more at all.

Mr Storer—I take that. I can inform you that you probably will be embarrassed because you did not make any representations over that period.

Senator SHERRY—That is Tasmania, isn't it? That is maybe why you left it off the list earlier.

Senator SANTORO—They are normally trying to get away.

Senator SHERRY—They are flooding in at the moment.

Mr Storer—I should apologise for my faux pas. I thought the information would be in here.

Senator WONG—I am a little confused, for example, as to why some rather prominent refugee advocacy groups such as Amnesty do not appear at all on your top 10 list. Are you suggesting that they have made no representations?

Mr Storer—No, I am not. I would have to go back and have a look at the whole detail of that correspondence over that period to see precisely how many they have made. I have not got all the data in front of me here.

Senator WONG—Why would they be out and Mr Clisby and Father Brennan with one and two respectively be in?

Ms Godwin—This goes to some of the analytical issues we were talking about before. That is what the system has thrown up at the moment. You are right: it raises those questions. One of the explanations in relation to Amnesty may well be that it depends on how they have been logged in the system. If they have been logged by the name of the individual signatory to the letter as opposed to the organisational name that may be one explanation. I do not know but we will certainly take it on notice and check that for you.

Senator BARTLETT—I am interested in the issue of transparency with the use of ministerial discretion. You mentioned towards the end of your submission that the parliamentary reporting requirements and the ministerial guidelines provide transparency while balancing the right to privacy. As somebody who is in that top 10—the only senator in the list, I note—I work with a lot of people who do make a lot of requests for intervention and it seems to me that there is consistently very little understanding of why the minister uses his discretion in one case and not in another. That suggests to me that the requirement for transparency is not as strong as it could be.

If you have a system that is not just about ministerial largesse but also in part about meeting international obligations, like the convention against torture et cetera, and where people who are regularly involved in that system do not have any idea why one case is successful and another one is not, then the transparency is not as good as it could be. What do you suggest to ensure that statements that are tabled in parliament—for example, those relevant to section 417—which give no detail at all, have an adequate degree of transparency?

Ms Godwin—There are a few things to say on that. First of all, the nature of those tabling statements is consistent over the years; the pattern or the style of them has been relatively consistent throughout the period that these powers have existed. There are minor variations in wording, but essentially they reflect, I think, successive views about the balance between the need for information and the need to meet, in some instances, statutory requirements. As you are probably aware, the act talks about what information can and cannot be—what information cannot be, in particular—in a tabling statement, especially information that identifies the individual. And that is not just a question of their name but details of their case which may result in their becoming publicly known. As I say, the style of those tabling statements has struck a balance between those various elements for consideration, and if you look at the tabling statements over a period of years the pattern has remained pretty much the same.

Senator BARTLETT— That may well be the case, but it does not necessarily go to the question of whether or not they are adequate for transparency.

Ms Godwin—What I am saying is that it has been the view of successive ministers that, in presenting information, that style of presentation with that degree of information—the balance between how much and how little is provided—is appropriate. It has remained relatively the same, and therefore the judgment is presumably that it is an adequate discharge of the requirement.

Senator BARTLETT—The judgment of the minister?

Ms Godwin—Yes. They are his tabling statements.

Senator BARTLETT—Wouldn't it be helpful from your point of view—particularly with the large number of requests that you now deal with, compared to earlier years—for there to be a greater degree of understanding amongst people in the community about why some cases are successful and others are not?

Ms Godwin—Again, there are a number of things to say on that. One of the issues of course goes to the fact that, in the end, it is a matter for the minister—he has to weigh a variety of factors to determine whether or not the public interest requirement is met. I know you know this, Senator, but if I could just set the context. The requirement is for the minister to assess whether it is in the public interest to intervene. So, clearly, it goes beyond the personal factors in relation to an individual to a judgment that the minister makes about the public interest. The guidelines give an indication of the variety of factors that the minister may consider in coming to a view about the public interest. The guidelines also indicate what you might call countervailing factors that the minister has asked to be included in any material so that there is a variety of information to use in coming to a judgment about the public interest.

Clearly, as I say, because it is a power exercised by the minister personally, I am not in a position to comment on why the minister may make a particular decision in a particular circumstance. But the difficulty of trying to compare cases in the way that I think you are proposing is that, in the end, it is a conjunction of a variety of factors both positive and countervailing that the minister is required to weigh up in forming a judgment about the public interest. So not all of those factors would necessarily be known to people who regard their circumstances as similar to those where one or other decision has been made.

Senator BARTLETT—A rationale is given and it is mentioned in your submission that these powers are used to ensure that relevant international obligations that Australia has are satisfied where the applicant would not otherwise be eligible for the grant of a visa. The convention against torture and the civil and political rights convention are a couple that are mentioned. In your submission in paragraph 71 and 72, you say that one of the rationales for 417 is that it 'ensures'—to use your word—our international obligations are satisfied where they would not otherwise be met through the operation of the act. You mention in particular that there are no migration provisions regarding the convention against torture and the convention on civil and political rights as opposed to the refugee convention. How can a power that is non-compellable—let alone all the other aspects of it—ensure in all cases that relevant international obligations are satisfied?

Ms Godwin—It goes in part to some of the points that Mr Hughes was making earlier in the morning. There is a considerable intersection or overlap, if you like, between various elements of a number of those conventions. In many respects, the sorts of things that are likely to go to issues of torture or ICCPR and those sorts of considerations would already have been analysed, assessed and in many cases acknowledged in the protection visa process. So with respect to many of the people who have got—in a sense, if you look at the various conventions—claims that could be relevant to a number of conventions, those characteristics or those factors have already been acknowledged and recognised in a positive protection visa decision.

What is left over is very much a smaller exceptional group of individuals where the claim would be that there is a particular factor that, notwithstanding that they are not a refugee, there is still this other element. For instance, the convention on torture may well be relevant to some

individuals but the fact is it is a different test. The standard is a higher test than the protection visa test. The view has been taken again—

Senator BARTLETT—What do you mean by a higher test?

Ms Godwin—The refugee convention requires that there is a real chance, which is again a weighing-up of all the evidence. The convention on torture—and I will need to be guided by someone who can give me a quote—essentially requires that there is a very high likelihood, not just a reasonable chance but a high likelihood and a well-established high likelihood, that the person would face torture. So if someone is claiming that they may potentially face torture, it would often have been part of the overall process of assessment in their protection visa application.

As I say, the view has been taken by successive ministers that the small number of exceptional cases that may well go to those other international obligations usually present circumstances which are themselves fairly exceptional and which are hard to quantify in a formal visa decision process. Therefore these are the subject of the minister's intervention in those exceptional circumstances as opposed to having been embedded in a visa class. The number of those is very small—the circumstances are usually quite exceptional.

Senator BARTLETT—Are you able to give an indication of what the numbers are when you say they are very small?

Ms Godwin—I do not think I have that information at my fingertips, but we could try to provide you with some information. We will take it on notice.

Senator BARTLETT—That is fine. I am partly thinking of efficiency again in my next question, and I am not sure if this is in the act or part of the guidelines, but the minister can only use their discretion—and, again, you have listed it all here under paragraph 69 in your submission—when a whole lot of things have happened, not least of which is that there has been a decision by the tribunal to reject the application. You would be aware of circumstances where people know they are not going to meet the right refugee criteria but think they have other humanitarian grounds. Before they can seek ministerial intervention they have to go through almost the facade of going to the tribunal—and the expense for the government and for them. Why isn't it possible to enable earlier intervention in that sort of circumstance? Surely it would be more efficient all around.

Mr Hughes—Looked at in isolation, I can see why one can come to that conclusion. I think, though, if you look at the bigger picture it would by no means necessarily be more efficient. Let us say, for example, that the government chose to set up new visa classes to deal with those particular convention obligations. You would then end up in a situation potentially of people applying for multiple visa classes for different convention obligations, such as the refugee convention, CAT, ICCPR and perhaps CROC issues. I think it would open up, in a sense, whole new areas for people to apply to remain in Australia. It then also opens up the area of the interaction between applications for particular visa classes. The net result could be many thousands more applications and more litigation, because it would also flow through to litigation, and potentially it would be much more expensive than the current system—which recognises the interplay between refugee convention obligations and other obligations and tries

to filter those where a commonality exists through the protection visa process and the RRT process so that most of the cases that might have such an issue would be dealt with through the protection visa process, leaving perhaps only a very small remainder that might need exclusive consideration for protection obligations.

So if you compare the two possibilities, I think a government choosing to go the other way could find that, in the long term, it became a great deal more resource intensive than using the current approach, which is more a filtering process. I think it is also worth mentioning that there is no particular obligation on a government to choose any particular type of process. There is nothing in those conventions that says that obligations have to be assessed in a particular way; it is just that the obligations arise through the conventions. It is completely open to any government that is a signatory to choose how it gives effect to meeting those obligations.

Senator BARTLETT—I guess part of what we are looking at with this inquiry is whether we can have a better system for meeting those obligations. I understand what you are saying about not wanting to open it up to potentially thousands more, although there is a question there of the significant increase in the last few years compared to a decade ago. But surely you could have a circumstance where people would almost waive the right to the tribunal or say, 'I know I don't meet the refugee criteria.' If people specified that up front, it would save everybody time and expense if they seek intervention straight away. I do not know how many cases that would be. It is probably just the difficult ones that come to my attention, and it is probably a small percentage.

Ms Godwin—Clearly, the system is as it is at the moment and any decision to change it would be a matter for the parliament. We have from time to time looked at what might happen if you tried to inject the intervention power at different points. One of the difficulties is, as you say, that if people waive their right to pursue their claims all the way through and say, 'No, I'll opt to go straight to ministerial intervention,' then what happens at the end of that if they are dissatisfied with the outcome? So there is that question of whether you have an opt-in, opt-out arrangement. If you do not have an opt-in, opt-out, you could end up with a quite cumbersome dual process happening, where people are on the one hand pursuing their various applications and reviews and at the same time trying to go ahead of that to intervention or to seek intervention.

The view that has been taken—it is taken in the act and it is taken as a matter of practicality as well—is, again, that successive ministers have wanted to see whether there are any claims that bring the person within the ambit of the normal operations of the Migration Act, and not just in the 417 context. If there is any other type of visa that the person may qualify for, the view has been taken that they ought to test that thoroughly first so that the ministerial intervention power remains very much as that sort of exceptional power for the circumstances that are not able to be encompassed through normal visa processing.

Senator BARTLETT—When you say it has been considered from time to time, has that been a formal process?

Ms Godwin—No. There has been no formal review as such. It is a question that has arisen over the years. I am certainly aware of it arising in discussions with community organisations and so forth—it is just, as I said, when we think as a procedural matter, 'How might that work?' What I am putting to you is that those are some of the issues that arise. It has not been a formal

review or whatever, but those are the practical considerations that we believe arise in that sort of situation.

Senator BARTLETT—I accept what you are saying about it not being a formal review, but has any analysis or research been done as part of those considerations at any stage that we might be able to get access to?

Ms Godwin—Not that I am aware of. I could take it on notice and see if officers in the relevant areas have got any other information.

Senator BARTLETT—Thanks. On a similar theme, and I think this is purely the guidelines rather than the legislation, one of the areas where the minister may consider it inappropriate to consider is if there is migration related litigation that is still under way. I guess that is, in a way, a similar question to: why don't you allow people to circumvent the tribunal?

Again it would seem to me—certainly from my experience, and perhaps it is just the matters I have dealt with—that, by the time people are getting to the stage of court appeals in the full Federal Court or the High Court, when they get to the end, if they are unsuccessful, they will get a 417 anyway. Why is it the policy not to consider that? Is that a hard and fast policy or just a matter where it may be considered to be inappropriate to consider but still be possible to consider if people want to?

Ms Godwin—There are two things. It is in the guideline as a guideline. Clearly, at any given point, given that it is the minister's non-compellable power, the minister can choose to intervene or to consider intervening at any point post the merits review stage. It has been the practice, if people have chosen to test their eligibility beyond the merits review stage, at the courts, to let that take its course, so to speak, but there would probably be occasions when, for a variety of reasons, that may not be the case. The guidelines refer to some circumstances where, if there is something compelling—if someone had a significant health issue or whatever and it needed to be resolved more quickly—there is the discretion to pursue it.

Mr Storer—Perhaps I could add a little to what Ms Godwin said. From reading the parliamentary debates, it was parliament's intention that that is what would happen. That was very much in the debate when they were established in 1989. With all the guidelines, as you read through the attachments there, that is spelled out by all of the successive ministers.

Senator BARTLETT—With the increasing numbers that you are dealing with, and with what I understand to be increasing numbers going to the courts as well, it is a matter of whether there has been any reconsideration of that, given the change in circumstance. It might have been a good idea back in 1989, but the numbers are much bigger now, particularly given the frequent comments about delays in the court system, the costs to the taxpayer and the like.

Mr Walker—Certainly the minister, as I think you would be aware, at the time that the judicial review reforms were brought before the parliament, made statements that he wished to see more people, if they felt that they had a reason to remain in Australia, seek his intervention in preference to going to the courts. He was in fact discouraging people from using the courts, bearing in mind that the best outcome that they could get from a court would be remittal to a tribunal, not a visa outcome. I mention that in the overall context of the framework and structure.

Certainly in 1989 the philosophy—and I think it is fair to say what is recorded in the parliamentary debates and comments of the minister at the time—was that the intervention power was seen very much as something that came at the very end of the process after people had exhausted all the other merit review rights and so forth, and when they had exhausted the possibility of coming within the statutory criteria.

CHAIR—By saying that, are you effectively saying that the present minister has encouraged the increase in the number of requests by asking people to use requests rather than other means, so that part of the contributing factor to the rise in the number of requests is from the minister requesting people to go down that particular path?

Mr Walker—I do not necessarily draw that conclusion.

CHAIR—That seems to be what you just said.

Mr Walker—You may draw the conclusion from it. Certainly I am aware of the minister's comments—saying that judicial review is costly, that ministerial intervention processes are a cheaper, quicker alternative that are available to individuals.

CHAIR—Sorry, Senator Bartlett.

Senator BARTLETT—Just getting back to the issue of 417 being adequate to ensure compliance with international conventions, which has been the position of the department or of the government, why is it, particularly bearing in mind the increase in numbers both in the courts and in those seeking intervention, that it is appropriate for the refugee convention to be assessed through proper legal independent process, but not the other conventions?

Mr Hughes—It is a much broader and longstanding convention obligation that has had, over many years, very sophisticated processes, law and practice developed with it. If you look around the world, therefore, most governments that are signatories have quite formal processes for refugee determination—for determination of protection needs under the convention. The other, newer conventions are of a somewhat different nature as to their structure and purposes, so, generally speaking, obligations not to return people under those conventions have been dealt with by different kinds of processes.

Senator WONG—Could I just clarify something, Mr Hughes? As I understand Senator Bartlett's question, we are talking about, amongst others, the International Covenant on Civil and Political Rights. That is hardly a new convention.

Mr Hughes—I was thinking more of the convention against torture.

Senator WONG—Was that 1984? It has been around for quite a while.

Mr Hughes—And the refugee convention, which is 1951.

Senator WONG—But they are not what you would call recent international obligations, are they?

Mr Hughes—I guess I am saying that, by comparison with the refugee convention and the way that processes of adherence to the refugee convention have grown up internationally, the way governments have chosen to implement their obligation under these conventions has been different. I was trying to respond to the specifics of Senator Bartlett's question.

Senator BARTLETT—How can you guarantee—or ensure, to use the word you used a few times—that the powers, given that they are individual powers, will be used to ensure that convention obligations are met? It may be the case that the current minister is fabulous in all ways, but it is always possible that we get a less fabulous minister down the track, perhaps if Labor gets back into government or something. How will you guarantee that?

Mr Hughes—I have never struck that occurrence in my time in the department, so I could not possibly comment on that particular issue. But let me go back to the filtration system, in effect, that we mentioned. There is a broad filter of the protection visa system, the Refugee Review Tribunal, to pick up those kinds of issues. There is the departmental system of looking at cases as well, which allows them to be identified. Any minister in this portfolio is going to be conscious of Australia's international obligations and therefore is going to exercise the power accordingly.

Senator BARTLETT—I appreciate that it may be difficult, but are you able to get any figures in terms of the use of the intervention power where it has been specifically to meet those obligations?

Mr Hughes—We will look at how close we can get to that, but I think you are right: it is going to be difficult to isolate that.

Senator BARTLETT—And, if it is possible, again going back over time, can you give any assessment as to why there has been a sudden increase in the number of people who need to have their entitlements met under that criterion. There is one other thing I want to clarify briefly. It is probably a bit of a side issue. Paragraph 73 of your submission says:

> The ministerial discretion powers under sections 351 or 417 are used to enable Australia to meet those obligations in respect of individual applicants ... the Ministerial discretion powers may only be used once a relevant Tribunal has made a decision about the visa applicant against specific visa criteria. This provides the opportunity firstly to assess protection claimants against criteria for recognition and protection under the Refugees Convention, the most beneficial form of protection ...

Why is that? I do not understand why you say that the refugee convention is the most beneficial form of protection.

Mr Illingworth—Being a refugee is a status which is internationally recognised. It brings the person within the UNHCR mandate for care and protection, and also, more importantly, when you compare it to the other conventions, like the convention against torture, it actually obliges the protecting state to provide a range of treatment and benefits to the individual while they remain in the territory. The convention against torture non-refoulement obligation is simply that: don't send them back. There is no commitment in terms of an obligation on the state to provide things like access to the social welfare support system, Medicare and work rights. The refugees convention is quite detailed in outlining the sorts of things that need to be provided to refugees who have been provided protection by a state. That is why we consider it to be the more

beneficial form of protection. That is in addition to the point that Ms Godwin mentioned earlier—the test being, in many cases, a much broader and lower test than would be applied to people seeking protection simply under the CAT.

Senator BARTLETT—If the minister exercises discretion for CAT reasons, we would normally provide people with some form of visa. It would not be a lesser visa in terms of entitlements than a protection visa?

Mr Illingworth—The minister is able to grant whatever visa he wishes. Mr Hughes mentioned that we would need to look to see how close we could get to some form of idea that would connect visa type with grounds for intervention. Historically, though, there has been little information that would aid us in trying to make that connection. There would be a range of factors that would be in the minister's mind and that would conceivably have weight when he decides what visa to grant. It may be the need to confer a particular level of benefit to meet international obligations. It may be that he finds the visa type that the person had originally applied for to be a visa type that he would decide to intervene on and grant. It might be that the particular package of benefits—removing waiting periods to access social welfare, for example—is something that he has in mind. He might pick a visa according to the package of benefits it confers. We will see what we can get.

Senator WONG—Ms Goodwin, I was going to return to where we left off before the break in terms of the process. Would it be correct to say that the majority of requests for ministerial intervention would be first received by the minister's office?

Ms Godwin—That is probably correct, although I am hesitating because I want to check to what extent either individuals themselves or migration agents or representatives write to the department first as part of their follow-up of the case. The bulk of them would go first through the minister's office, I think.

Senator WONG—And how are they handled in the minister's office? What happens with them?

Ms Godwin—As I said before, they are logged into the minister's office. There is someone who literally sits there opening envelopes, pulling out the correspondence and sorting it into types. Clearly, correspondence that goes into the minister's office includes a whole variety of factors that may not necessarily be departmental matters. Anything that is identified as being a departmental type matter is stamped and transferred to the department. In the department there is then a process of logging that correspondence into the PCMS that we have been talking about. It is then farmed out to the relevant area of the department to be dealt with.

Senator WONG—Are we to assume that any request for the exercise of discretion pursuant to sections 351 or 417 is a departmental matter?

Ms Godwin—They are routinely simply transferred for handling in the way that I have described.

Senator WONG—In paragraph 169 of your submission there is a suggestion that there is a preliminary examination in the minister's office of any request before it is referred to the

department for assessment. What guidelines apply to that initial assessment and who performs it?

Ms Godwin—My understanding is that that reference to a preliminary examination is the point that I have just been making. Essentially, when they stamp the correspondence—this is getting very detailed—they actually attach one of a variety of priorities to it or mark it as an intervention thing. Someone there literally does a very quick check to see what it is—whether someone is complaining about something or whether it is an intervention request. Based on that, they assign a priority and they also assign an area in the department. And away it goes. Usually, the interventions are all assigned—literally, as a matter of course—to the special correspondence unit in the department. They go from there to the ministerial intervention units.

Senator WONG—Are there occasions on which a request goes directly from the minister's office to the Ministerial intervention unit?

Ms Godwin—I would have to take on notice whether it would happen, but certainly that would not be the regular procedure.

Senator WONG—Who does that assessment in the minister's office? The DLO?

Ms Godwin—It is a combination, as I understand it, of admin staff in the office. The DLOs may be asked to give a view about whether something should go, for example, to migration and temporary entry or to citizenship and multicultural affairs. Sometimes when people write in they write in very general terms: 'I am writing on behalf of ...' The question then is: do they mean intervention? Should we deal with this as an intervention case? A judgment may well be made at that point, but it is an administrative judgment, if I can put it that way.

Senator WONG—But it is more than that, isn't it? Your submission itself suggests that there is some assessment in the minister's office as to whether or not a representation, a request for intervention, indicates that there are 'unique or exceptional circumstances'.

Ms Godwin—It says 'after preliminary examination'.

Senator WONG—It says:

> Where a request for intervention indicates that unique or exceptional circumstances may exist, the Minister's office may liaise with the MIU ...

Presumably the minister's office makes the assessment as to whether this is an exceptional and unique matter.

Ms Godwin—This goes to the question of things flowing back and forth, which they often do. As I said, the first thing that happens is that an acknowledgment is made. A process of examination starts, essentially, at that point.

Senator WONG—Do we have any of the DLOs present? I note that you keep saying it is your understanding, which I accept.

Ms Godwin—I did mention before that we have a DLO as part of our group.

Senator WONG—It might be useful to clarify this point.

Mr Storer—The following description is to set a broader context. The minister receives in the order of 45,000 pieces of correspondence each year. At the moment I think he gets more than the Prime Minister. Peter Knobel and Michael Christopher, who work in the office, will explain the process better than I can. As I understand it, the initial letters come to the front desk, as it were. There are now some other security checks for mail coming into Parliament House. The front desk person sorts it out and may then discuss it with other relevant members of the office, which is where Peter Knobel and Michael Christopher come in. Sometimes it is very difficult to sort out some of the letters—which are complaints, which are ministerial and which are mixtures. They can ask for interventions. In the course of perusing a letter it might, at first glance, appear to be something else. That is the context.

Senator WONG—Mr Knobel, what happens when a request for an exercise of discretion is received in the minister's office? Do you make an assessment as to whether or not the particular matter raises unique and exceptional circumstances?

Mr Knobel—A large amount of correspondence does come into us every day. We do a very initial assessment to determine if it is an intervention request. The letters can be quite detailed, quoting relevant sections of the act, or they can be just a short handwritten letter by someone on behalf of someone else, asking the minister to intervene but not going into any detail. We try to identify which power of the act these clients are seeking intervention under and then simply mark it off to the relevant ministerial intervention unit. We really do not have time to read each individual submission to determine if there are exceptional or compelling circumstances. We provide an initial screening of these requests to get them moved on to the department.

Senator WONG—Do you make a decision as to where they then go?

Mr Knobel—We do. We will make the decision as to which intervention unit they should be referred to.

Senator WONG—Do you ever refer it back to a case officer or is it always to the MIU?

Mr Knobel—We just mark it off to the relevant MIU and leave it up to them to then distribute it to the relevant case officer, if appropriate.

Senator WONG—When you receive a request, you say that you do an initial assessment to determine under which sections of the act it has been made. Is that right? What do you then do?

Mr Knobel—In terms of an individual intervention request?

Senator WONG—Yes.

Mr Knobel—We simply mark it off and forward it on. Very rarely would there be something mentioned in the submission that would result in any further action by us.

Senator WONG—Is there a covering note that then goes with the submission to the MIU?

Mr Knobel—No. There is simply a stamp placed on the front page of the letter or submission. We will simply annotate that to indicate where it is to go and the date it was received in the office.

Senator WONG—You do, however, make an assessment as to whether you consider unique or exceptional circumstances should be made, don't you?

Mr Knobel—No.

Senator WONG—Perhaps I have misunderstood the department's submission. I thought that is what it says at paragraph 169.

Mr Knobel—I think the problem is that, with the vast number of requests that come in, we do not have the time to individually go through the merits of the particular case. They are referred on to the department to undertake that. I do not know whether my colleague would wish to make any more comment, but certainly I do not recall any intervention request that has come through where, after having a very quick perusal, I would have expedited that because I could see there being compelling or exceptional circumstances.

Mr Christopher—As Peter said, the sheer volume precludes us from being able to make any assessment of what is in front of us. The things that I have always looked for are under paragraphs 351 or 417, and then I basically tick it off and put it with the rest of the correspondence, which then goes back to the department.

Senator WONG—Mr Knobel and Mr Christopher, do you base the decision as to which MIU is used purely on the geographic location of the applicant?

Mr Knobel—Yes, generally. Occasionally, in the rush to get the process going, we may go on the geographic location of the author. We sometimes refer to departmental databases, if we have the time, to try and identify where the applicant may be located if it is not clear from the letter.

Senator WONG—So on occasion you would allocate it to an MIU on the basis of who made the representation, not the location of the applicant?

Mr Knobel—Rarely. Generally, where the applicant is located is fairly clear. There may be a small number of cases where we need to move to departmental databases to clarify that. We would very rarely refer it to an MIU based on the geographical location of the writer.

Senator WONG—But occasionally you have?

Mr Knobel—It would be in very rare circumstances.

Senator WONG—It goes off to the MIU and then, as I understand it, Ms Godwin, they make an assessment against the guidelines as to whether the case falls within the guidelines and should be the subject of a submission or whether they consider it as being outside the guidelines and one which should be placed on the schedule. Is that right?

Ms Godwin—The MIU?

Senator WONG—Yes.

Ms Godwin—That is the usual procedure. From time to time, as Mr Nicholls mentioned before, senior officers may say, 'This one requires particular focus.' I am personally aware that that has arisen from time to time in relation to detention matters. You might actually say, 'This is a complex case which maybe needs a full submission, not just a reference on a schedule.' From time to time, it may well not be the MIU that makes the decision about whether it goes on a schedule or an individual submission, but generally that would happen in the MIU.

Senator JOHNSTON—Chair, I would like to add one short question in there, because I think it is relevant to the questions that have been asked. I only have one question. I do not want to disturb Senator Wong's process, but she seems to have moved out of the minister's office; I want to pause for one second.

Senator WONG—It is all right; I was going to go back there.

Senator JOHNSTON—Good. Can I ask my question?

CHAIR—I think so.

Senator JOHNSTON—Mr Christopher and Mr Knobel, how long have you been doing this sort of work in the minister's office?

Mr Knobel—I have been in the minister's office since April last year. I will clarify the roles we take within the office. Between the two offices we break up Australia into geographical areas. At the moment, I am looking after New South Wales electorates.

Mr Christopher—I look after the rest of Australia.

CHAIR—It seems very fair!

Mr Christopher—I have been in the minister's office since February this year. I finished there earlier this week and I am now back in the department.

Senator JOHNSTON—So in a nutshell, save for identifying 351 and 417 issues, there is no merit based assessment of those applications at that level when you first confront the mail?

Mr Christopher—We do not assess the cases at all; it is simply an allocation process.

Senator SANTORO—For the clarity of the public record, which I think you have just confirmed as a result of the question from Senator Johnston which you have answered, is it correct that the words 'preliminary examination' describe a simple cataloguing technique or mechanism?

Mr Christopher—Yes.

Mr Knobel—Yes.

Senator SANTORO—What are the unique and exceptional circumstances which may apply, as outlined within the department's submission? Could you give the committee a bit of a feel for what those unique or exceptional circumstances may be?

Mr Knobel—I said earlier to Senator Wong that because of the sheer numbers we rarely have the opportunity to look at individual cases. There may from time to time be cases that a member of the public raises with us to alert us to circumstances that they feel may warrant a case being expedited but there are very small numbers of those cases.

Senator SANTORO—That in fact was my next question. In how many cases has that particular criterion of unique and exceptional circumstances been applied, for the record?

Mr Knobel—I mentioned earlier that very rarely can I recall that we have had a particular case that we have seen as being exceptional or compelling—

Senator SANTORO—So rare that you can hardly remember one.

Mr Knobel—in our initial assessment.

Senator SANTORO—Is it also worthy of note that when such a case does come up—if it does come up—you actually liaise with the relevant MIU, as opposed to, say, somebody else in the minister's office?

Mr Knobel—No, we would deal directly with the department.

Senator SANTORO—I was very interested in a—

Ms Godwin—I apologise for interrupting. I want to make one other point. This discussion relates a little bit to the discussion we had earlier about the liaison between MIUs and the intervention units. Clearly, once something is in the process things start to go back and forth. Form time to time the intervention unit may say, 'We've started to look at this and there's something urgent about it. We think we shouldn't just do it on a schedule; we should put it forward now urgently as a case.'

Equally—and Peter and Michael may well be able to comment on this—from time to time once something is in process you continue to receive representations saying, 'This case is important or urgent,' or whatever. If that happens, the minister's office—the DLOs—may liaise with the MIU and say, 'Where's this one up to? Is it coming soon? If not, can we have it soon?' There would be a process of liaison which may well go to questions of unique or exceptional circumstances. But it is often when things are already in train, if I can put it that way.

Senator SANTORO—I appreciate your explanation because the point that I was trying to tease out there was: what is the prompt? I am interested in the start of the process. When and how does it leave the minister's office? I understand what you are saying—that once the ball gets rolling it gets kicked between players, and obviously the players are the minister's office, the department and the various people in there, including liaison officers. But I was more

interested as to who kicks the ball first. Where does it go? It goes very quickly—as I understand it; correct me if my understanding is defective—and almost forensically very efficiently from the minister's office straight to the department unless there are some unique and exceptional circumstances which are very rare.

Mr Knobel—Yes. The other thing to bear in mind, too, is that we feel it is important to get the request into the system because things like bridging visas cannot be generated until the request appears on our departmental systems. That is an imperative that we are conscious of—not to disadvantage clients by being slow in reacting to their requests.

Senator SANTORO—I was quite interested in a question asked by Senator Bartlett—the way that he put it and then the department's response. The suggestion was—and, Senator Bartlett, correct me if I misunderstood you—that one of the reasons why there has been a big increase in the use of ministerial discretion is because the minister has invited people to consider its use. Looking at your submission, there is a very comprehensive outline of the use of ministerial discretion and increases in it.

I note that, under 'Public awareness', you refer to the 'increasing use of registered migration agents'. That is paragraphs 210 to 213. Then I note that, in terms of applications or requests for ministerial discretion, migration agents and individuals are the group that put in the most referrals. For the record, could you go through the major reasons why there has been an increase in the use of ministerial discretion, other than the invitation by Minister Ruddock for people to consider it?

Ms Godwin—I think the graph on page 46 at paragraph 205 gives an interesting indication. The increase in intervention, give or take some blips here and there, is as much being driven by the size of the available pool, if I can put it that way. The number of decisions being made by the RRT and the MRT is increasing, so the available pool of people who can seek the minister's intervention is increasing. So there is that element to it. Clearly, it is a power that is now well known by agents, a range of community representatives and other interested parties, and that is probably also contributing. The total number of requests is clearly increasing rapidly, but in a sense so is the available pool.

The other interesting thing to draw attention to in that context is that the actual proportion of interventions—the actual outcomes—has remained very steady as a proportion of the available pool. So, while it looks like the number is increasing, the proportion actually remains relatively steady over a period of years. There have been some highs and lows. The highest figure, according to our table at attachment 15, is nearly up to nine per cent—8.79 per cent—and there is a low of around 1.3 per cent; that is of the available pool. So, yes, there have been some fluctuations, but for the last several years it has been around five per cent. As I say, while the actual number of requests is increasing so is the available pool—

Senator SANTORO—Just for the benefit of the committee, could you define what the 'available pool' is?

Ms Godwin—Given that the minister can only intervene once there has been a merits review tribunal decision, we would regard the available pool as those cases that have had a merits review decision. So if you look at the cases coming out of the MRT and the RRT where the

initial decision has been affirmed—so it is the affirmed cases coming out of the MRT and the RRT—that is the pool, and that pool has been increasing as the number of decisions that the tribunals have been making has been increasing.

We have tried to show the proportion of the available pool at attachment 15—where it says 'percentage of affirms intervened'. So 'affirms' is the pool and the percentage is the number where there has been a positive intervention. That is the proportion that has actually stayed relatively steady, give or take a few blips. The biggest blip, if I can put it that way, was in 1992-93, when these powers were relatively new and the base was fairly small. Then we go down to 1.3 in 1997-98. For the last few years, it has been around four to five per cent—a bit over five per cent—give or take. That is why I am going to this issue of the increase. Yes, there has been an increase in requests, but there has also been an increase in the number of people who can make requests, if I can put it that way. Although the number of interventions has increased, the proportion—as a proportion of that available pool—has stayed reasonably steady. Sorry to go into length on that.

Senator SANTORO—I have appreciated your advice. So, really, the minister is not simply being a masochist by asking for more workload; it is very much part of the process?

Ms Godwin—Yes, that is certainly as I would put it. I think Mr Rizvi may want to add to that.

Mr Rizvi—I would like to supplement Ms Godwin's comments. She is absolutely correct to define the pool as those decisions being made by the RRT and the MRT. A wider question, of course, goes to what has driven that increase. There is a step before the MRT and RRT which you have to look at in order to decide what has been driving that increase. An equally important question is: will that rate of increase simply continue, or are there factors that might lead to it either going even faster or perhaps slowing down? I think those are some issues that are worth thinking through.

One hypothesis is that that increase that has taken place may well be transitory. Why do I say this? If you go back to the sources of the increases in cases going to the MRT and RRT, you can identify perhaps half-a-dozen or so critical factors. You then have to ask yourself whether those critical factors will continue into the future. I will relate to the critical factors and then the question of whether they will continue into the future. One of the sources of the increase is simply the increase in people movements. People movements through Australia have been rising, and that is, of itself, going to be a source of potential case loads. The second is the very steep rise in unauthorised arrivals a few years ago. That has certainly been a contributing factor.

Another contributing factor has been the resolution of status case load, which in many senses is the last remnants of Chinese students. Another source is the East Timorese case load. Another source has been large numbers of community protection visa applications—not unauthorised arrivals but persons who have entered Australia either as a visitor or as a student, or whatever, and then sought protection. If you look at those case loads, you see that there is an argument to suggest that it is transitory, because many of those case loads are actually expiring or will expire. There are finite numbers involved in many of those.

I believe there is a hypothesis to suggest that, over time, the volume of ministerial intervention requests will either stabilise or, indeed, decline. Why do I say this? Firstly, in the non-protection

visa case load, our approval rates are actually rising. We are actually saying yes far more often than we were in the past. If we say yes far more often at the primary stage, of course the potential for review et cetera evaporates. Secondly, there has been a major decline in unauthorised arrivals. Thirdly, there has been a major decline in the community based protection visa application case load. Over the last three years it has come down quite dramatically. Fourthly, there has been a major decline in non-return rates associated with visitors coming to Australia. Three or four years ago, non-return rates from many countries where the kinds of case loads we are talking about come, were above eight, nine or 10 per cent. They are now down to around two per cent and falling.

There has been a major decline in family stream applications onshore—increasingly, where visitors are returning, that means that, in order to make a family application, you have to be offshore. There has been a very substantial clearance of applications backlogs. Our backlogs are just nowhere near as large as they used to be compared to the volume of case load we are dealing with. Finally, through the increased use of objective criteria—and this links back to approval rates—we are seeing far fewer cases actually going on to review, at least in the non-PV area. If you take all of that together, and if the government is successful in continuing that trend, eventually you must reach a point where the intervention case load must either stabilise or start to decline. That is on the assumption that the successes of the last three to four years continue.

Senator JOHNSTON—I am very much obliged to Mr Rizvi for that, because that was in fact my question, but I will take it a little further. With respect to the output of the MRT and the RRT, to your knowledge have they undertaken any particular type of efficiency output measures that have increased the size of the available pool? In other words, have they broken themselves up into a number of tribunals sitting at varying times so that they can process the backlog at an increasing rate?

CHAIR—Senator Johnston, that question should perhaps be directed to the tribunal, but if the department has any information I am sure they will assist you.

Senator JOHNSTON—The reason I ask it is that we are talking about the available pool and that very helpful graph on page 48—

CHAIR—Yes, I am happy to let you ask the question.

Senator JOHNSTON—Mr Rizvi obviously is a bit of an expert in this area, and I thought I would take advantage of that.

CHAIR—I do not have any difficulty with that. I was just ensuring that the department understood that it was a question that could be directed to the RRT and they may provide comment if they can.

Ms Godwin—Thanks.

Mr Rizvi—Certainly the RRT would be better placed to answer that question than we would, but we do have some understanding of those issues, because we do meet senior members of the RRT and MRT from time to time and we discuss with them issues of efficiency in case loads. There are two dimensions to your question, Senator. The first is that it is certainly true that the

two tribunals have put in some significant efficiency measures in recent times and as a result their throughput has increased quite considerably. Those efficiency measures have predominantly been associated with administration—streamlining the administrative processes. They have certainly improved the efficiency of the two bodies.

Secondly, from time to time the MRT has noticed what you might regard as—I do not want to put the wrong light on this; I want to pick the right word—initiatives which may be associated with some migration agents where they have identified an opportunity to delay departure by targeting a portion of the case load in the MRT. They may well put in a large number of cases which may be quite unmeritorious but because they know that that will create a backlog they are getting a benefit for the client even though they know the decision will be a negative one.

CHAIR—But that also has to happen in the humanitarian stream to access section 417, doesn't it? Even if you have a reasonable belief that you are not going to meet the refugee convention requirements but that you may meet the CAT, CROC or ICCPR requirements, to access ministerial discretion under section 417 you must then go through the RRT even if your prospects are close to nil. So there is an added component in the RRT decisions of those cases—or people who might say they may have a refugee convention related claim but it is not strong and it is far stronger in respect of the others. The use of ministerial discretion directs them to go through the RRT, doesn't it?

Mr Rizvi—That may well be right in the context of the RRT and others would be more expert to comment on that. I was really referring to some initiatives in the MRT area whereby—

CHAIR—As a whole.

Mr Rizvi—Not as a whole—some specific instances. I refer, for example, to situations where the MRT has received 500 or 600 applications associated with people who are in Australia who did not have an employer sponsor but instead simply applied for review of their cases, even though they did not have a sponsor, in a sponsored case load. So they applied in a visa stream which requires you to have an employer who has sponsored you; even though they do not have an employer who sponsored them, they have lodged an application anyway. That application is going to be rejected fairly quickly, but if you have enough volume, it may take time before the MRT gets to you.

CHAIR—Yes, but the same process applies in the MRT as well. Even if you think that you do not have a reasonable prospect in the MRT but you want to access section 351, again you have to go through the system. There is no other way. So there is a component of triers; it is not only those people you have identified who might want to go through the system because they want a successful outcome or they at least want to demonstrate that they have tried.

Mr Rizvi—That is true. I guess it is a question of the level of merit in the initial review application, and it is in that respect that the MRT has from time to time taken initiatives to target a particular, simple case load, just to deal with it very quickly, to clear it out and to discourage use of that mechanism. That is leading to some increases in volume of the potential case load that Ms Godwin was referring to.

Senator HUMPHRIES—I want to go back to the questions about the ministerial statements. The suggestion was made earlier that these statements have become less fulsome, less descriptive or less revealing of the minister's thought processes or reasons for decisions as they are laid on the table. Is it your perception that that is the case? If so, why would that be the case?

Ms Godwin—The statements are tabled, obviously, so it is possible to do a direct comparison. If you do that, you will see that over the years there are some minor variations in wording that reflect textual changes, but the actual substance has not changed significantly pretty much since the process started. The 351 type tabling statements on their face appear to have a little bit more information about the individual circumstance of the applicant. The 417s, which come post RRT and therefore go to the question of whether or not someone was initially a refugee, tend to have very general sorts of statements. While there have been some minor wording adjustments over the years, the overall pattern and, broadly speaking, the amount of information are reasonably consistent over a period of several years.

Senator HUMPHRIES—So you do not see evidence in the statements that the minister has tabled over the last five, six, seven or 10 years that there has been any decline in the level of information conveyed or the accountability for the use of that discretion?

Ms Godwin—I guess all I can comment on is the content of them, but the content has remained relatively similar. If you took two and compared them word for word, you would see differences, but the range of information included has stayed reasonably similar.

Senator HUMPHRIES—I was looking at a couple of sentences in the submission of Ms Stratton, who is speaking to us this afternoon from Tokyo, and she makes this observation about those statements—you may have seen them—in her submission:

The most alarming observation is that the current Minister—

She is implying there is some change of policy—

may be evading his legislative duty under s417(4)(c) to provide *reasons for believing* the decision to be in the public interest. Section 417(4) is the only check on the exercise of s417 power. Thus a Minister who only partially complies with the sole mechanism of accountability to Parliament and the wider public, is acting irresponsibly and with excessive autonomy.

Would you say that there is any basis to believe that the current minister, by virtue of what he says in those statements, is less accountable than his predecessors or than he is required to be under the legislation?

Ms Godwin—It is certainly my understanding that the statements comply with the requirements of the legislation. Clearly, it is for the parliament to decide whether or not it is a useful amount of information. I can only reiterate the point I have made: while there are variations—and, as I said, they are all public so you can see those variations—they have conformed to a pattern which has stayed steady, both in terms of the style of the statement and the amount of information. They appear to have stayed reasonably steady over a period of years.

Senator WONG—Ms Stratton is not here to defend herself, but I think the point she is making is that the formula that appears to be applied under this minister is a statement that the minister considered that it was in the public interest to issue a visa. Her point is that there does not appear to be an approach whereby the statement tabled actually lists factors which led to the conclusion that it was in the public interest. That differs from previous ministers. Have I made myself clear?

Ms Godwin—I understand the point.

Senator WONG—She makes the point that previous ministers might have actually referred to particular issues associated with the case as being amongst the bases of the assertion that it was in the public interest, whereas she describes the approach under this minister as being reasonably formulaic—the minister says, 'I think it would be in the public interest to allow him or her to remain in Australia.'

Ms Godwin—Statements going back some time have had basically similar statements. One from 1995 reads:

In the circumstances I have decided that, as a discretionary and humanitarian act to an individual with genuine ongoing need, it is in the interests of Australia as a humane and generous society to grant the applicant a protection visa.

The wording in a more current one is:

I took the view that the circumstances in this case justify its approval in the public interest as a reflection of Australia as a compassionate and humane society. Accordingly, I have exercised my powers under section 417.

My point is that the wording has changed slightly but the basic construction is very similar.

Senator WONG—We will have the opportunity to ask Ms Stratton the basis for her assertions. Have you done an analysis of all the ministerial statements and compared them? I presume you have not; I am not suggesting you should have.

Ms Godwin—As you know, there are several hundred of them. No, we have not gone through them one by one.

Senator WONG—You have picked up a couple of examples.

Ms Godwin—We have just tried to look at the pattern over the years of the statements.

Senator WONG—We might be able to find out whether or not she has done that exhaustive analysis.

Senator SANTORO—My question is particularly in the context of the assertion by Ms Stratton. Just for the record, there has not been, in substance, any significant or observable variation in the content of statements that have been tabled by Minister Ruddock since he has been required to table statements. Is that correct, from your point of view?

Ms Godwin—That is true, but with the caveat that Senator Wong alluded to: we have not looked at every single statement to see whether there are variations in all of them. We have just tried to look for a pattern. Broadly speaking, there are wording changes and sometimes phrases appear in one statement that are not in others. There is certainly a difference between the 417 statements and the 351 statements. They look a bit different. But over the years the pattern of the statements looks relatively similar. As I said, I certainly would not want to imply that we have looked at every statement, nor would I want to imply that there are not some wording changes and maybe some elements of information from time to time that look a little different.

The overall pattern and substance is the same. For a start, they are all less than a page long—they are all about four paragraphs long—and they all make reference to the fact that there has previously been a primary and a review decision. There is a lot of core material that is essentially reflected across a period of years. I understand the caveats that are being put, and we certainly have not done a one-by-one analysis, but I am simply making the point: the pattern looks very similar over a period of years.

Senator SANTORO—Is there any reason that you can put to the committee as to why the statements are brief? For example, could potential litigation be a factor?

Ms Godwin—For a start, there are requirements in the act about what cannot be in the statements. The name of the applicant or any information that may identify the applicant cannot be included; that is an obvious thing. I think the view has been taken over the years that things like nationality, summaries of claims and things like that could serve to start to identify the applicant. That is the view that has been taken. It is for others to judge whether that is what they would like to see, but that is certainly the view that has been taken. I guess the point I am trying to make is that it seems to be a view that has been taken over a period of time.

Senator SANTORO—I have no recollection, but has there been any parliamentary debate that you can recall in relation to this issue?

Ms Godwin—I would have to take on notice whether there has been parliamentary debate. We are certainly aware, and Senator Ludwig pointed this out this morning, that a number of these general areas—not the tabling statements per se—were considered by a parliamentary committee in 1999. I do not know that that went specifically to the issue of tabling statements. It did touch on issues to do with ministerial intervention.

Mr Storer—We could do a check for you, but it has come up a number of times. I would have to go through all the different debates about it. I remember Senator Bolkus asking about the six-month tabling period at one stage. The statement of reasons has to be tabled within six months, and that came up in one of the Senate committees. There would be a range of opportunities for parliamentarians to raise these issues, and it would take a while to go back through it, but there has not been a debate on that specific issue—to my knowledge, anyway.

CHAIR—On that point, will now adjourn for lunch.

Proceedings suspended from 12.33 p.m. to 1.34 p.m.

CHAIR—I call the committee to order. We left off with Senator Wong, but I have a few questions that I would like to ask before she resumes. If you do not mind, Mr Nicholls and Mr Walker. I ask that the DLOs return to the table. That is about where we left off. Thank you, Mr Knobel and Mr Christopher. There were a few issues that I wanted to go through with you; if we have already elicited the response from you, please indicate that and I will ask another question. I was trying to understand the process. First of all, you indicated that the applications or the requests were then processed in a mostly pro forma manner: they were stamped or moved on to wherever they were then supposed to be sent to. Is there a point where you are not sure that it is a request and you elicit more information from the person sending the request? How does that actually work? Does that happen?

Mr Knobel—Rarely. In the majority of cases I think we can identify from the letters that they are intervention requests. In the rare case where that is not clear, we have access to quite extensive departmental databases that allow us to interrogate and determine what the request is likely to be. In the rare case that at that stage we are not able to track the case down, we would refer it on to the department. We just do not have the time—

CHAIR—I see: in any event you would refer it on to the department and let them make their determination?

Mr Knobel—In the rare number of cases that we cannot identify.

CHAIR—Not all requests come from the individual who is seeking the exercise of the discretion; they also come from representatives acting on their behalf. Do they follow up with you what has happened with their particular request? How is that handled? Is that handled separately? Do they phone in or write in again and say: 'We've already sent it on. What happens?'

Mr Knobel—I guess I can answer that by saying we have an enormous volume of phone calls that come through our office every day. A major proportion of those would relate to questions on intervention—questions such as: has the request been received? How is my case going? We get phone calls from representatives or members of parliament seeking an update on how the intervention request is going.

CHAIR—How are they handled? They are not considered a second request?

Mr Knobel—No. They are handled by me and the other DLO on the spot.

CHAIR—What do you do? Do you answer them and say, 'We've forwarded it on to the relevant Ministerial intervention unit,' and then tell them which intervention unit and give them the phone number? Or do you elicit information and get back to the person?

Mr Knobel—The main question often is: what is the processing time likely to be? We try and give them a reasonable idea of how long it will take. It is often a difficult question to answer.

CHAIR—How long is that?

Mr Knobel—We respond by saying that individual cases can take various amounts of time but we are usually talking in months rather than weeks. When talking to members of parliament or their office members or community representatives there may be aspects to the case that are raised that may result in us contacting the ministerial intervention units to see what is happening and perhaps try and expedite a case. That happens from time to time.

CHAIR—Would the minister then contact them or would you then pass any matters on to the minister at that point or bring them to the attention of the minister? Perhaps I can use the example of where there might be a representative or a community representative that then said: 'I don't want to talk to you, Mr Knobel; I want to talk to the minister. He's got the discretion. Where is it at? Can I talk to the minister?'

Mr Knobel—The minister has made it clear that he is open to speak to parliamentarians and community leaders about individual cases. There are times when we will arrange an appointment at the request of somebody—generally a parliamentarian or community leader. Our other role is with members of the public who may seek to talk to the minister. The minister does not have the time to speak individually about cases, so we would deal personally with those. But there are some instances where the minister would be happy to speak with a member of parliament about a particular case.

CHAIR—Is this prior to or after you have sent it to the Ministerial intervention unit and before any determination or any processing has taken place?

Mr Knobel—In the majority of cases, the approach by the member of parliament—I will use that example—is generally after it has been received by the Ministerial intervention unit. There are occasional cases where the minister may be approached by a member of parliament, for example, on a case that is unusual or that may fall within the minister's guidelines but where there has not yet been a request.

CHAIR—What about coming back the other way? If X has made a request, does the minister ask you whether or not you have processed a ministerial request?

Mr Knobel—The minister is often out and about at functions and meets many people. Occasionally he will come back with a case that has been raised with him and he will just ask for some background information on where it is at.

CHAIR—At what juncture, or does it matter—in the sense that that is before you have got the letter or you have referred it on or a determination has been made or it is on the short list or the list?

Mr Knobel—It can happen anywhere in the process that you have mentioned.

CHAIR—Wouldn't you think as a matter of probity that the minister would rule himself out from asking those questions in relation to where a matter is in terms of whether it has gone to the department where the Ministerial intervention unit has dealt with it—at that point? It just seems unusual to me. You would imagine as a matter of probity you would say: 'I won't find out about where a particular case is because it has been referred off to the Ministerial intervention unit. The Ministerial intervention unit has not dealt with it at this point in time and I do not know

whether or not it meets the guidelines, so I shouldn't consider it at this point.' What you are saying, though, is that the minister can ask for background information and look at it even prior to that point. Wouldn't you imagine as a matter of probity that you would rule yourself out from that inquiry?

Mr Knobel—I will just clarify that. When the minister is seeking information, it is generally just a very brief idea on where it is in the process. He does not ask for facts of the case or the information—

CHAIR—You said he asked for background information. That is facts of the case.

Mr Knobel—I should clarify: on where the case might be in the process. That is mainly the interest.

Mr Christopher—Frequently the minister would not even be aware that it is an intervention case. People come to him all the time with cases, and he often just wants us to tell him what the case is about and what is happening.

CHAIR—So from there—and this is the next stage in the process, I guess—when does it come back to you again? If you have forwarded something to the Ministerial intervention unit, when do you see that representation again—if I can call it that? Do you have a special name for it? Do you call it a file or a case?

Mr Christopher—They usually come back in a folder, either in the form of a schedule or a background brief—a stage 1 submission. That is usually the next time we see it.

CHAIR—What is included in a stage 1 submission? What would be in the file of an individual case such as a section 417 intervention?

Mr Christopher—That is a more detailed background of the case than what would be in a schedule normally.

Ms Godwin—In the MSI that we were talking about this morning, there is quite a detailed description of the stage 1 submission and what is expected to be included in it and so forth.

CHAIR—I have seen that. What I was trying to ascertain, though, is that that is your view of how it works but then there is the minister's office and the DLOs, and I was just curious as to what happens as they perceive the process to operate. It may be the same or it may be different.

Mr Christopher—That is usually when we would see the case again—and, even then, we just simply pass the paperwork to the minister. We do not value add or make any comments; it is simply a matter of passing the—

CHAIR—How many files do you get?

Mr Knobel—We get many files. You measure it in centimetres and metres rather than numbers, I think. They are clearly marked in an orange folder, so it is clear to us which ones are interventions. There can be no mistake. There is also a colour coding for cases where people

may be in detention—they will come in a brown coloured folder. All staff in the minister's office are aware of these colours and the importance of these folders. We make sure that they are moved very quickly through the office when we see them.

CHAIR—In the minister's office, is it only the DLOs that deal with them? Is it only you or Mr Christopher that then deals with the orange or brown folders in presenting them to the minister for his consideration? How does that process work? Do you grab a bundle and put them on his table?

Mr Knobel—Our role there is simply to move one pile from our work areas through to the minister's various in-trays. We do try and divide them up into the various types of submissions. For example, we will have a pile of schedules, we will have a pile of stage 1 folders and a pile of stage 2s, which are the final consideration stage. We will separate detention cases so as to give them priority. There are also quite a number of letters in relation to interventions that come through for the minister's signature, so they will be in a separate file. We try and do that to help the minister streamline his actioning of these individual cases.

CHAIR—How long does that process take?

Mr Knobel—Of walking from—

CHAIR—No. How long do they sit on the table? I suspect you are not far away.

Mr Knobel—In terms of when they come into the office the first time and getting the process moving from the DLOs' side of things, it happens on the same day, more or less. We try and move them for the minister's consideration as quickly as possible. The minister will move them through incredibly quickly as well, often within the same day that we put them to him.

CHAIR—What happens from there? There are two avenues. Perhaps you could explain it rather than me making a guess at it. If the minister decides to do something or decides not to do something, what do you do?

Mr Christopher—We simply bundle them up. We make sure that any correspondence is signed, that he has not forgotten to sign and that he has signed where he is supposed to sign. We just vet to make sure that all the i's have been dotted and the t's crossed. Then they just get bundled into a cabinet for the departmental courier to take back to the department.

Mr Knobel—I should add that we do give priority to detention cases because we are aware that once the minister makes a decision to intervene in relation to a detention case, then the person who holds a visa should not be held in detention anymore. We will act immediately in those cases to contact the detention centres to have those people released.

CHAIR—When you say the minister signs, it is to sign to say either, yes, he intends to exercise his discretion or, no, he intends not to exercise his discretion. Is that right?

Ms Godwin—I would add that there is a middle road, of course: he will from time to time ask for more information.

CHAIR—I will get to that. I am just trying to deal lineally rather than in series.

Ms Godwin—Okay. That can happen a number of times, by the way.

Mr Christopher—It is basically a clerical function that we perform to make sure that submissions, letters and things are properly signed off. If he forgets to sign, we take it back to him and say, 'You need to sign this.'

Mr Storer—To add a little bit, the figures on attachment 16 show you the enormous number of requests that have been made over the last few years plus the numbers when he has decided to intervene. It is very important that these clerical crosschecks are done because he could be coming back from the chamber one day and one of the parliamentarians might grab him and say, 'How is it going?' et cetera. So they need to have the clerical crosschecking done, because he has got such a lot—there is a special bag that he often takes away on the weekends when he has hundreds of them to have a look at when he has time. People are hanging on these sorts of interventions. It is an enormous workload on the minister of the day.

CHAIR—That raises a subsidiary issue. Does that seem an efficient way of dealing with it—where you have a minister traipsing around with bags of files that could be mislaid or lost? I do not know whether he is as diligent as I am on an aeroplane but I have occasionally left material behind. Does that ever happen? Do you then have to go and try to find the files again?

Mr Knobel—Not in the time I have been in the minister's office.

Mr Christopher—No.

CHAIR—You are more fortunate than I then, I guess. I am not asking you to comment on it but it seems to be an inefficient way of dealing with it when you have bags of files. What happens if the minister decides to intervene? Does that just get signed and then go back to the department?

Mr Knobel—That is correct.

CHAIR—As I understand it—and correct me if I am wrong—in some cases the minister makes different decisions from what have been recommended. When is the process taken where, rather than the particular type of intervention recommended, another one is given? If you look at the statistics in terms of applications for humanitarian visas, in a lot of cases humanitarian visas are not given in the end—they are section 417 applications but something other than a humanitarian visa is then issued. When does that occur?

Ms Godwin—If the minister is intending to intervene it occurs right there and then. But I need to make sure that we are clear about a couple of elements. The submissions do not make a recommendation as such. They present a range of information. As you will see from the MSI, it has the issues that the individual has indicated they want to have put before the minister as well as any countervailing factors. A range of those are set out in the guidelines but any other countervailing factors also need to be included. Then the submission may well include a list of options that the minister can choose from if he is minded—

CHAIR—I have called it a recommendation, but if we keep to 'options available'.

Ms Godwin—In that case they are simply options—

CHAIR—Yes, that is accepted.

Ms Godwin—which is what an officer thinks might be the options. But if the minister himself thinks, 'Yes, I want to intervene but I do not particularly want to give one of those; I will give a different sort of a visa,' he is clearly able to do that and that is the point at which it would happen.

CHAIR—That is the other point that I was looking at. Is more information sought by the minister before making that decision or is it made on the run, so to speak? Does the minister look at the file and say, 'I do not particularly like 840, I will do an 845'?

Ms Godwin—He may well seek further information, as I understand it.

CHAIR—How does that process work?

Mr Knobel—It has rarely happened, in the time that I have been there, that the minister has suggested another visa category. Where it has, we simply refer the complete folder back to the MIU to respond to the minister's request.

CHAIR—Can you give me an example, without using names, of how that works? Does the minister say, 'I do not want an 840; find me a better one'? I am not sure exactly what you mean.

Mr Knobel—I will use as an example someone who has had an unsuccessful protection visa application. While they have been here they may have completed a course in pastry making, for example, or completed their medical degree—there could be a whole range of different scenarios. In most cases the department would pick up the possibility of the minister considering a skilled type visa. But there may be occasions where they may not have, and the minister may notice that this person does have skills and feels that it may be appropriate to look at considering one of the options as being a skilled type visa.

CHAIR—Does the minister make that determination on his own or does he ask the department to bring more information back about it? I say 'on his own' because I understand the power is exercise by him solely, but I am talking about information that he might gather.

Mr Knobel—I can recall one case where that sort of scenario arose. The minister questioned whether an employer nomination may be appropriate. The supporters for this particular person had lined up employment for this fellow and the minister just said, 'I would like to consider the employer nomination possibility but I would like to see the employer enter a formal arrangement with the department to support an employer nomination.'

CHAIR—Is there correspondence from other people that might suggest another or a particular type of visa that should be granted? Or does the minister then take that into consideration, add that to the file and then send it back to the Ministerial intervention unit? Does that happen?

Mr Knobel—I am sorry, I did not quite understand the first part of your question.

CHAIR—We will assume the Ministerial intervention unit has proposed three options: (a), (b) and (c). None of those suits the minister. The minister then comes up with a fourth option. How is that generated? One we know of is that the minister might come up with it off his own bat. Can it also be generated by another representation, by a letter from a supporter that says, 'Have you considered this option and could you consider this option?' The minister then accedes to that request, attaches it to the file and away it goes. Is that another possibility?

Mr Knobel—It certainly would be. There is nothing stopping parliamentarians, for example, if they raise the case with the minister, to raise issues like interest from employers.

CHAIR—So the Ministerial intervention unit never gets to look at that particular visa against the option because it is post the Ministerial intervention unit's decision?

Ms Godwin—I am not sure what you are getting at. As I understand the flow of the process—and certainly going back over years, having been involved in this at various stages—if the minister wants more information he can ask for that at any stage. Even at the point where he gets the submission and it has got various options, he may say, 'Are these the only options?' It might be as simple as that. Or he may say, 'Have you thought about X?' or 'I want you to think about X.' There are a variety of different things that could happen. Some of it may even just be general information that he wants in order to help him work out which of the options he believes is the most appropriate. It can happen in a variety of ways, I guess would be the best way to describe it.

On your proposition that other people might suggest types of visas: yes, that could happen but again, in my experience, not routinely. Mostly people are trying to put before the minister the factors that they think go to the circumstances of the case more than to the particular type of outcome. The outcome they want is for the minister to intervene and grant a visa, but they do not often go to the particular visa. However, they may put before the minister factors that they think ought to be taken into consideration.

CHAIR—But there is also the possibility that the minister makes a decision in respect of one of those options without it going back to the Ministerial intervention unit, in the sense that the minister says, 'I'll agree,' whichever way it comes to him, 'to an 845 visa related outcome rather than one of the three options that were put forward.' In that sense, it is not an option that is put forward by the ministerial intervention unit or one that has been considered by them in their deliberations to see whether it is a matter the minister should intervene on which is an exceptional circumstance.

Ms Godwin—That is absolutely correct. It is certainly open to him to simply make a decision to grant a different sort of visa. It is equally open to him to seek further information or simply just to pick one of the options that is there.

CHAIR—Is the role of the guidelines to develop an outcome? Are they there to help the officers develop an outcome—that is, first of all determine whether an exceptional circumstance should apply in this instance to the application and then come to a conclusion as to what

intervention should be taken by the minister? Why do you then put the options up? Are they part of the guidelines?

Ms Godwin—The guidelines, if you look at them, suggest to officers the factors they might want to take into account if they are going to put options before the minister. In a sense, this has developed over time. The guidelines are just that; they are not meant to determine a particular outcome, they are meant to provide officers with guidance on how to put material before the minister. And if they think it is one that comes within the guidelines, what else do they have to give the minister by way of information? In a sense, it is not sufficient to say it comes within the guidelines. If you think that, then what else do you need to give the minister so that he can look at the case in its totality? That is what the guidelines are intended to do.

CHAIR—That is helpful, thank you. In those cases where the minister has made a determination—that is, where he has signed off and said, 'No, I am not going to exercise my discretion'—we know that some of them come back and end up before him again. How does that actually occur and how often does that occur? How does that system work? Where is the ministerial guideline that pulls them back out of the system again? I am putting words in your mouth, so correct me if I do not quite understand the process. How do they get back before the minister if they have already been signed off, in the sense that he signed them and said no, and they then come back again? Is it that the Ministerial intervention unit looks at them again—

Mr Storer—It goes back through the same process.

CHAIR—and another request comes through that says, 'Can you please look at this again'? Or does the minister then say, 'I signed off on one yesterday, but I thought about it on the plane, and can we have another look at it'? Do you monitor how many of those repeat requests come through—the ones that have been brought back out of the no bin?

Ms Godwin—There is quite a lot wrapped up in—

Senator JOHNSTON—There are a number of questions in that. Firstly, you have got a reconsideration—

CHAIR—I was going to allow them time to—

Senator JOHNSTON—Then you have got a change of circumstances. In order to get the question across we need to dissect what the circumstances are.

Ms Godwin—We will try and tease it out, and if we are not getting to where you want, just interrupt. On the notion that after the minister signed off he might think again: in the end that is a matter for the minister. But I am not personally aware that it would normally happen in that sort of a way. More often, the minister looks at it either on a schedule or in a submission and indicates that he is not interested in considering intervening, and the person or their representative would be advised of that. Sometimes that is the end of the matter. Sometimes that person, the representative or another person may write in and say, 'I think you should look at this case.' The MSI sets out the procedures to be followed if there is a repeat request, and the guidelines make it clear.

The usual distinction that we would be looking for at that point is whether there is new information or information that had not previously been put before the minister—that is, it is not necessarily new to the person but it may well be new in the consideration of the case. So if there is that sort of information then it would be looked at again, and it may at that point be considered to come within the guidelines or it may not. As I said, the MSI goes through the various permutations that might happen in those sorts of circumstances. That process can sometimes go on a number of times, coming either from the person themselves or from different people.

It has certainly been the case in my experience that a community organisation may well write in about somebody who has previously been the subject of a request, not by them but by somebody else, and in putting forward their representations they bring forward new information. That would then, in a sense, as Mr Storer said, sort of loop them back into the process, if I can put it that way. If, however, repeat requests do not provide the basis for examining them again against the guidelines because there is no new information, then they would normally be processed departmentally, and there are standard letters and procedures that cover that.

CHAIR—Are the repeat requests filed or notated separately or are they still all put in the same orange folder or brown folder, as the case may be?

Mr Knobel—In the same folders.

CHAIR—Is the minister made aware that it is a repeat request?

Mr Knobel—There would be some notation in the information that would say it is a repeat request.

Ms Godwin—If it comes back.

CHAIR—Yes. Can the minister then ask for a file to be brought forward again? You have indicated about when a request has been made. Can it occur simply by the minister saying, 'Can a folder be brought back again'?

Ms Godwin—Potentially. For example, if representations are made to him—we have mentioned members of parliament, community organisations—he may well say: 'This has been raised with me. I want you to bring some information forward because it has been put to me in this particular way.'

CHAIR—So someone could meet him at a function and say, 'Look, can you have another look at it?' and the minister then calls for the file.

Ms Godwin—As an example, there are people on the list that we were talking about before lunch who would be often raising matters—torture and trauma foundations, community organisations, individuals, law firms, members of parliament. As far as we can tell from the statistics that we have—and this goes back to our other difficulty: that these things are not necessarily recorded in quite this way and we have to sift through them to work out whether they are repeat requests—the number of repeat requests that go back around is obviously a smaller number than the number that are considered at the first instance, because there is this question of

whether there is new information that becomes relevant in a repeat request in a way that it is not relevant at the first instance.

Senator SANTORO—There are a great number of movements across borders and, in the case of our country, they include illegal entrants and an increasing number of people who are seeking to remain permanently in our country. How important in your view are the minister's intervention powers and the flexibility that is inherent in those powers that we have been discussing this afternoon to the concept of a managed migration system? Do you believe that the concept of Australia's managed migration system would become meaningless without the existence of the intervention powers and the flexibility that we have been discussing? I am trying to get to a fairly fundamental reason for why these powers have come into existence and are being exercised, particularly in the context of the managed migration system that we would all like to think we have.

Ms Godwin—I am not sure whether I want to chance my hand on whether the whole system would be meaningless without it. But I understand that the intent—

Senator SANTORO—It would be a more cumbersome and more difficult system.

Ms Godwin—There are two ways of looking at it, and it also goes to some of the key points that we were trying to make in our submission. When you have a system such as ours which is heavily prescribed, it has significant benefits and it has a downside—and I will come to that. The significant benefits are that it is extremely clear to people on what basis you either do or do not get into the country. It enables the government of the day to very clearly set the basis on which you either do or do not, by way of criteria; and it enables the government of the day—and this system has existed since 1989, so successive governments—to identify the size overall of the program that they think is in the interests of the community. From an individual perspective, it is very clear on what basis you either did or did not get a visa and what it is you have to satisfy in order to get a visa, so there is a considerable degree of transparency.

The one downside, of course, is that in a system that is very heavily prescribed there is no mechanism for dealing with those small number of unusual exceptional circumstances that are either unintended consequences of the regulations or are regarded as either an unexpected or harsh outcome, short of creating another category with a whole range of criteria which may not only pick up the individual exceptional circumstance but start to create a category that other people then seek to try to fit into. One of points we were making in our submission is that that is partly what happened pre-1989 with the old 6A(1)(e) category, which was an attempt to try categorise compassionate—

Senator SANTORO—Which category was that?

Ms Godwin—Section 6A(1)(e) of the act as it existed pre-1989.

Mr Storer—I think it is referred to in chapter 3 of our submission.

Ms Godwin—That was an attempt to codify this concept of discretionary compassionate circumstances. It essentially just blew out and blew out until it became largely meaningless.

Phrases that would raise sympathy in the minds of the Australian community crept in. It lost that exceptional circumstance focus and became a much broader and much less containable concept.

In the absence of that sort of thing, with a heavily prescribed system you could simply say, 'We have a prescribed system, and that is it—there is no safety valve whatsoever,' or you could have the system that we have got now. That is a heavily prescribed system, the concept of which is that the vast majority of people will be managed within that system but there is a very small safety valve to pick up those exceptional circumstances. When this was inserted into the act in 1989, you can see from the parliamentary debates of the day that there was a view that it should be exceptional, that it should be exercised by the minister personally because in a sense it was stepping beyond that prescribed power in the act. The view was that that ought to be exercised by the minister and the normal range of decision making within the act should be exercised normally by delegated officers.

I am going a long way round your question, and I hope I am covering the sorts of things that you wanted me to cover. I think our heavily prescribed system has got considerable merit both in terms of individuals and in terms of the overall management of the migration program. It has that one limitation that it is hard to deal with those exceptional circumstances. Without that capacity to manage the individual exceptional circumstance, I think you would end up with unintended consequences, and that is something—

Senator SANTORO—The system could fall into disrepute.

Ms Godwin—People would say: 'That doesn't seem fair. In that individual circumstance, that doesn't look fair.' So there is that sort of difficulty. If you try to then prescribe into the framework of the legislation—as we did pre-1989—that broader concept of discretion and compassion, then you run the risk, as I say, that it starts to blow out in the way that it did pre-1989. We have got some figures in the submission that show what happened to that.

Senator SANTORO—It is almost like trying to include the rights of every Australian citizen in a bill of rights. Where do you stop?

Ms Godwin—I could not comment, Senator. In the context of the Migration Act, we were trying in the submission to balance up those elements of the system.

Senator JOHNSTON—Doesn't the system now seek to eliminate the sort of irregularity and incongruity thrown up by Teoh's case where the minister was defeated by the domestic application of the international covenant on the rights of the child? If you recall that case—

Ms Godwin—I recall it, yes.

Senator JOHNSTON—it was a very significant watershed that said that the power of the minister to deport a heroin trafficker was defeated because he failed to consider the rights of the child that had been fathered by the person sought to be deported. In line with what you are saying, the rights prior to 1989 were open to abuse unless there was a clearly defined discretionary power to deal with those anomalous cases with some degree of a rational, sensible approach.

Ms Godwin—Certainly, the previous attempt blew out in ways that were not at all expected when that power was created. But, on the subject of Teoh, I am going to defer to my legal colleagues—

Mr Walker—We have spent a lot of time on Teoh.

Ms Godwin—because it is a complex situation.

Mr Walker—I suppose the best way of describing it, Senator, is that the pre-1989 situation was an act which contained very broad discretionary powers and very broad codification and principles, such as those in section 6A(1)(e) that Ms Godwin mentioned. The effect of Teoh's case on those circumstances would be a legitimate expectation on the part of the visa applicant that all Australia's treaty obligations would be taken into account. In Teoh's case, the rights of the child was probably the most relevant treaty, with what was in the best interests of the child being a primary consideration. And that examination would come into that broad framework—that broad discretion.

In the post-1989 statutory framework that we have—and as I think the High Court said in Teoh—where there is broad discretion, there is that legitimate expectation. However, that legitimate expectation can be taken away through the way that your statutes are structured or modified. So, in effect, with highly prescriptive statutory criteria set out, you do not necessarily have the same legitimate expectation. Or there is what I think the government has done in many of the visa classes; it has used its own statutory framework to give effect to what it sees as Australia's international obligations. In that sense, what comes back to be interpreted by the court are the statutory provisions, not international instruments.

Senator JOHNSTON—But there is still scope, through the exercise of that discretion, to accommodate some of the treaties and the humanitarian objectives of those treaties when they were signed.

Mr Walker—That is right.

Senator SANTORO—Ms Godwin, many of the submissions received by the committee have called for the creation of some sort of special humanitarian visa. Would you be able to talk to the committee about whether there has been such a visa class before; and what was the impact on the management of the immigration program? You have touched on this point in various answers, but would you consolidate your thinking in your responses.

Ms Godwin—I will ask my colleagues to comment if they think they need to add to what I say. I think it goes back to the point I was making about the previous section 6A(1)(e) provisions. It started out as a compassionate or humanitarian visa class. All of the information around its creation indicated that it was meant to be used in exceptional circumstances—in cases where there were compelling, compassionate or humanitarian circumstances. The difficulty was that it was hard to prescribe objectively what those circumstances were.

Over time, it started to expand. It partly—very significantly—started to expand as a result of challenges to decisions in courts. Someone would get a decision saying, 'No, that is not a compelling or compassionate circumstance,' go to court, the court would expand it and say, 'Yes,

it is,' and that would then become, in a sense, integrated into the decision or the consideration that case officers had to bring to bear in deciding these cases. That was my reference. In the end, the language had started to move away from 'exceptional, compelling or compassionate' to circumstances that would evoke sympathy in the Australian community. Of course, there are lots and lots of circumstances that would evoke sympathy, but the view of the government was that that was not necessarily the same as exceptional, compassionate, compelling or in the public interest. It is a very broad sort of concept—what would evoke sympathy in the community.

The other sort of thing that started to happen was that the benchmark was not 'Would this person be treated in an unfavourable fashion in their own country if they had to go back?' but 'Would it be unfavourable if they couldn't stay here?' The benchmarks would have shifted not to what would happen to somebody back in their own country but to how they would be treated if they were able to stay here.

Essentially the previous experience was that, despite attempts to prescribe this notion, it is clearly a very hard notion to prescribe. What you are trying to do is encapsulate a whole range of personal circumstances. As I say, over time it blew out to many thousands. I think that, by the time it was closed off, there were something like 8,000 applications on hand. It took us some years to work through that—well past 1989. The difficulty with it concerns how you prescribe it. If you want to have something that is prescribed, how do you prescribe it in a way that does not in effect become something that cannot be contained because it is too broad? Mr Hughes would like to add something.

Mr Hughes—I would just like to supplement that by saying—also looking at the broader picture—that successive governments in Australia have said that the best contribution Australia is capable of making internationally in terms of humanitarian settlement is through the offshore humanitarian program, through which, since the Second World War, Australia has resettled something like 600,000 people in various numbers at various times. At the moment, it is running at about 12,000 people a year. There has always been what some regard as a nexus between our capacity to take people from offshore on humanitarian grounds and how many we necessarily have to let remain in Australia on humanitarian grounds.

Going back to the era that Ms Godwin described, with a fairly open-ended non-refugee category within Australia, the numbers started to increase there, and I think there was a view that that starts to sap the capacity to take people who may well be in a great deal more need in refugee camps and cities around the world and who are regarded as priorities for international resettlement but who cannot get here. There is also a nexus between the extent to which you set up non-refugee humanitarian type categories within Australia and, ultimately, the capacity to resettle people in humanitarian need from overseas. That is another thing that has affected the thinking of successive governments.

Senator SANTORO—Just following up from that era, is it possible for the department to extrapolate—or have you done any work in extrapolating—on the current arrangements to assess what impact such a visa class or new class of visa would have on the outcome of the current migration program? Do you have any views on it, any opinions?

Ms Godwin—It is hard to offer an opinion. I am not trying to be difficult, but it would depend a bit on precisely what you were talking about. It would be largely speculative at this point if we

said, 'If you did X, it would have this impact.' We have not done any numerical analysis that I am aware of as to how it might impact. Generally, without being able to go much beyond what I have said, if you had such a class, it would result in larger numbers of people being visaed, because presumably the objective of people who argue for a visa class of that sort is for it to encompass people who do not currently succeed in getting visas. Clearly there would be a numerical impact, but beyond that I am not sure how else it may impact. However, that is in the humanitarian area. Mr Rizvi may have a comment to make from the migration program perspective.

Mr Rizvi—It is worth thinking about that question that you have asked by comparing it to how other people deal with migration issues—how other countries deal with it—and how it compares to us. I think an objective look at the evidence would show that Australia has been an extraordinarily successful country in terms of the management of its migration arrangements. Why do I say that? I say that firstly in terms of the kinds of impacts that are being achieved through the immigrants that are coming through the programs today. The net economic impact is extraordinarily beneficial. As a result of that extraordinarily beneficial impact, you have, I think, an opportunity to use immigration in a very successful way, particularly given Australia's demographic directions.

Other places are faced with similar demographic challenges to the ones that Australia faces, but the approaches they have taken—and in many senses those approaches involve a degree of the kinds of arrangements that you have asked about—have led to situations where their ability to control and manage migration has been severely undermined. Our submission tries to bring that out to a degree.

If you look at what has happened in the United States, essentially the United States does have a highly prescriptive set of migration rules and regulations, but the United States also has a very large and growing illegal immigrant population and is finding that extraordinarily difficult to manage. For a number of years now, the United States has been talking about a major regularisation of status initiative which could potentially involve up to eight million people. Australia does not face anything like that.

Another comparison is Europe. A number of European countries do have the kinds of categories that you are talking about. What they have found is that people who are refused asylum status in those countries or are refused through this visa class are very rarely removed. The population of failed asylum seekers and people who have failed through this category in Europe is rising very significantly. What consequences does that have? It has very serious consequences for Europe. It has consequences in terms of the public confidence with immigration in Europe. That is of concern to Europe, given that its demography shows a much older population and a declining population. They do need to use immigration for beneficial purposes, but, because of the lack of confidence in their ability to manage it, many European countries are finding it extraordinarily difficult to adopt the kind of beneficial immigration measures that Australia has been able to adopt. That would be put at risk.

Another comparison might be Canada. Canada approaches its immigration requirements and its rules and regulations whereby it actually incorporates discretion into the basic immigration categories. For example, in Canada you can apply as a migrant under the points tested categories and, even if you do not meet the pass mark, it is possible for the immigration decision maker to

give you a visa in any case because of a factor that they think is important to take into account. What that has led to in Canada is a situation where their ability to target immigration to economic benefit is reducing, so you have this contrasting situation—

Senator SANTORO—Is that because once a precedent is set, the floodgates open?

Mr Rizvi—It keeps expanding and after a while your criteria, whilst originally very clear, slowly become sloppy. What that leads to is a number of difficulties. The first one is that the ability to actually enforce a no decision becomes very hard. You start to experience situations where your system is constantly being appealed against to a far greater degree than anything we have experienced in Australia. But, more importantly, what Canada is experiencing is a steady decline in the employment performance of immigrants to Canada.

For the last 20 years the employment performance of immigrants to Canada has been declining and that is why they are faced with making some very major changes to their immigration systems and their selection criteria. By contrast, over the last 10 to 15 years, the employment performance of immigrants to Australia has been steadily improving. That is an important contrast to bear in mind when you are looking at alternative ways of designing immigration systems. We do have an immigration system that is extraordinarily successful and if you were to set about adopting models from elsewhere, you would need to very conscious of the consequences of those models.

Senator SANTORO—Thank you for that broad outline of the rationale behind the availability and the use of discretionary powers. On a specific point, mention was made earlier of the minister reviewing files of cases that he is asked about or that are brought to his attention. I am not sure whether I did not hear or whether I misunderstood. Does the minister get to see the full files or is he provided with, say, a brief summary or a departmental summary? Would you be able to clarify that?

Ms Godwin—I am sorry if we have been lax in our language—you are quite right, Senator. The folders that we are talking about—the orange or the brown ones, and there are various other colours that we will not bore you with—would essentially have in them the correspondence and any briefing material that goes with that. The schedules that we have talked about are simply schedules. They do not come with the files; they are literally a page with a number of entries on them with summary information. If the minister is looking at schedules, that is all that he has and he can, as we have talked about, look at a schedule and say, 'I want more information on this,' in which case a brief would come forward. The other ones are briefs. As I have said, they would have the correspondence and the briefing material but certainly not the totality of the file. This is for a couple of reasons: they are often quite bulky, but the other thing is that they are at various locations around the country and it starts to become quite a significant administrative issue if you were to move the files with each of the briefs.

Senator SANTORO—I am grateful for your clarification. During the last few months the issues relating to processes and the issues relating to connections, at least in my view, have been pretty grossly simplified, to the point where—if I can be blunt—suggestions of favouritism have been made. Are there many examples where the minister has intervened and exercised discretion when representations have not been made?

Ms Godwin—There are two parts to the answer. One is that the power to intervene is open to the minister regardless of whether or not there has been a representation. It is not a requirement that there be a representation in order to provoke the process.

Senator SANTORO—In other words the minister could of his own motion, through general awareness or reviewing the work of the department—despite his very heavy workload and the 27,000 or whatever—

Ms Godwin—Absolutely, and that is certainly consistent with the power that exists. That said, clearly the most common way in which such things happen is that there is a representation. Most commonly that representation is in writing. Occasionally it will be someone speaking to the minister or to senior officers of the department. Cases have been raised with me as a manager in the department and the usual response is, 'Put that in writing. Put something to us so that it can go through the process and the minister can look at it or not.' So it may well be provoked by someone raising it and then being invited to write in—or, as we have described, large volumes of correspondence come in that raise such issues in the first instance.

There may be examples, but I am not aware of them, where nothing has prompted the thing. To give you another example—and I am drawing here from things I am personally aware of—a torture and trauma service may be counselling someone and think, 'There's something about this case that ought to come to the minister's attention.' They may write to the minister or to the department, to the case officer, and that may get the thing rolling. I have had community organisations saying to me as a departmental manager, 'Is there something we can do?' Very occasionally that comes from professionals working with an individual—doctors, counsellors and those sorts of people. So a variety of things might provoke it but usually it would then go into writing and then into the process that we have talked about.

Mr Storer—To supplement something Senator Ludwig raised earlier to do with the minister—the same sort of thing, I think—once he has got a submission and has come up with some other possible solution, if that is the word, to this particular request—

CHAIR—Option, perhaps.

Mr Storer—Option, yes; in this case it might be a solution. Mr Walker and I are reasonably au fait with the Migration Act but we have noticed that the minister knows a lot more than we do. I have to say that, and I think anyone at this table would say that. It is quite possible that he thinks of things because of his experience and his long-term commitment to the act. He spoke in the initial debate when parliament agreed to set up this particular regime. It is quite possible—we have often experienced it—that he will come to us and say, 'Have you thought about this or that,' and we will say, 'No, we haven't; we will do that now,' and go away with egg on our faces.

CHAIR—It seems to me that what you are describing is an extraordinarily arbitrary process if it is up to the whim of the minister to come up with an outcome or option and you then have something like 2,000 cases which become the exception.

Mr Storer—I was not trying to convey whim.

CHAIR—That is the picture that you are painting for me. Maybe that is not what you are trying to tell me, but that is what I am hearing. You say, 'There are 2,000 of them,'—1,995, I think—'and some of them come up because the minister thought of an option,' and that is what their outcome then is.

Mr Storer—No, I was not saying that. I am sorry if I misled you. I do not know how many have come back from these 1,995 that way. I suspect there are extremely few.

CHAIR—Perhaps you could have a look and let us know what the figure is.

Mr Walker—I think what Mr Storer was alluding to was that there are two parts to the process. The first one is the minister assessing whether it is in the public interest to intervene. The second part of the process, which I think Mr Storer was alluding to, is, if he decides it is in the public interest to intervene, what the most appropriate visa to be granted is for that particular person.

CHAIR—But that should also be a transparent process, wouldn't you agree, Mr Walker, because that is the outcome the person gets, in the end, under the program. It should be an accountable and open process and transparent as to how that decision is arrived at. I imagine it means a lot to the particular person what visa they get out of the process, because it can determine a whole range of things as to what their entitlements are—whether it is a temporary protection visa, and so it is a short or an interim process. So which visa they get at the end of the day is quite an important issue: or are you trying to explain to me that it does not matter—that any one of them is okay? I did not think so.

Mr Walker—I am not really making a comment on that, but bear in mind that it is at the end of the process, having been through a fairly prescriptive regime in which there have been two decisions made about whether a person has met the statutory criteria and the assessments that have been made that they do not meet the statutory criteria for the particular visa class that they have applied for. So it is the failsafe at the end; it is not the start of the visa application or assessment process.

CHAIR—No, but it is still part of the whole process. It is still an outcome. It is the prize in the pot at the end of the rainbow, isn't it, because the decision, in this instance, is the option the minister has chosen. So he has determined what is going to be in the pot. I do not know how you can divorce it, quite frankly, or even try to. It is part of the process and it forms part of the system that we are looking at—ministerial discretion—and how we come to that. In the department's submission it says that it is an accountable process with transparency. What we have now heard is that the minister can come up with an option and you can only come up with conjecture as to how the minister might arrive at that position. That is the end point, I would imagine, but we will let that lie unless there is a comment that you want to make.

Ms Godwin—I would like to make a comment, because that is certainly not the point we are trying to make. The point we started with—I thought—was whether it was a recommendation or not. We cannot recommend to the minister and we do not recommend to the minister, because it is his decision. We obviously try to assist the minister with information about the various options that might appear on the face of it to be relevant to the circumstances of the particular case. In a small number of instances, he may well ask for information about whether there are other

options relevant to the particular case or he may suggest other options that he regards as relevant to the particular case. If you look at the table we have provided at attachment 20, the sorts of visa outcomes give an indication to the range of issues that would have been relevant in particular cases. The significant group of them is the 'Spouse, close ties and family' and that is often one of the characteristics that is raised in a number of cases.

I think the point we are trying to make is not that it is an arbitrary system in the way that you are suggesting—or at least you posed the question of whether that could be a perception of it—but to say that, because it is a non-compellable discretion, because our role in it is to provide the minister with information and because in the end it is his decision to make and his alone that, notwithstanding the information put before him, if he also raises other issues for consideration or takes a view beyond that which is in the material put by the department then that is consistent with the nature of the power.

Senator JOHNSTON—There are 60 classes of visa that he can choose from.

Senator WONG—I wanted to clarify something with Mr Rizvi on this topic. Mr Rizvi, you went through quite a lengthy hypothesis as to what might be the negative implications of moving away from a discretionary system to one that had different humanitarian visa classes. Ms Godwin, I note that you declined to do that on the basis that you would not know what the system would look like, and I think that was quite appropriate. I assume, Mr Rizvi, your opinion there is offered with a caveat that how the system operated would obviously depend on how that system were designed and that one cannot simply extrapolate as to what might occur in Australia because there has been a particular experience in Canada.

Mr Rizvi—I am saying that if one is considering different options then it is worth while looking at the experience in other places.

Senator WONG—In relation to the effectiveness or otherwise of section 417 in complying with our humanitarian obligations under non-refugee conventions, we really have no data to demonstrate whether or not it has done so effectively, do we? You do not do an audit of people who have failed under section 417 to obtain ministerial intervention and whether or not there was a reasonable case that they ought to have given the International Convention on Civil and Political Rights, for example, do you? You do not do those sorts of analyses because—as you said, quite rightly—it is a non-compellable, non-reviewable discretion?

Ms Godwin—That is correct.

Senator WONG—Does the department do any analysis at all of the different characteristics of people who succeed under 417 and people who do not to determine if in fact the discretion is actually achieving the outcomes that it is set out to achieve?

Ms Godwin—We simply record the outcome. I am not quite sure what you are getting at. It is not like a visa class—

Senator WONG—I appreciate that.

Ms Godwin—where you would look at success and refusal rates and those sorts of things.

Senator WONG—No, I thought we understood at the outset that there was some agreement as to what the point of 417 was. I am just clarifying that, other than the parliamentary statements, there is no analysis done on the actual effect of positive decisions under 417 and whether or not one could make an inference that the discretion is actually satisfying the policy outcomes that it seeks to achieve.

Ms Godwin—There is no analysis of the type you are talking about.

Senator WONG—I am not suggesting that you would have too, Ms Godwin, I just wanted to clarify that. It is non-reviewable, non-compellable, non-delegable. So I am not suggesting that it is in your brief to do it; I am just making the point that we do not actually know whether or not 417 is actually achieving the purposes that we understand it is supposed to under the current system.

Ms Godwin—That is the point I was wanting to make. I know I have colleagues on either side of me who want to make a comment. For those people who have not otherwise had their particular needs addressed and who might have concerns or issues under those conventions, it is the mechanism within which those are addressed. But when you say that is the policy outcome, as I say, because it is non-delegable and non-compellable, it is a mechanism for achieving that, but that is not its only objective.

Mr Storer—Could I supplement what I believe the policy outcome is: it is the public interest.

Senator WONG—Which includes, by your own guidelines, reference to at least three international instruments.

Mr Storer—But it is the public interest. I just wanted to clarify that.

Senator WONG—What is the public interest, Mr Storer? You do not do an analysis to determine whether or not the visas granted under 417 could reasonably be regarded—

Mr Storer—That is correct. I just wanted to clarify what I understood the policy outcome to be. It is for the public interest that the minister has these particular powers, and he can apply guidelines and other things. The outcome is in the public interest. I just wanted to clarify that.

Senator WONG—I am aware of that. Thank you, Mr Storer. Do you do any analysis, for example, as to whether or not positive decisions actually conformed with the guidelines?

Ms Godwin—When you say 'conform with the guidelines', the guidelines are those guidelines to assist officers in what they might wish to put before the minister. But the guidelines also indicate that they can put other things before the minister, not just those things that are encompassed in the guidelines, if there are particular circumstances that need to be drawn forward.

Senator WONG—And not bound by the guidelines.

Ms Godwin—The minister is not bound by the guidelines, no.

Senator WONG—My point is this: in terms of transparency and probity of the process there is no mechanism whereby the public can say, 'There are 2,000 visas issued under these discretions and there are these principles which are applied to that and in any analysis we could see that there are pretty reasonable grounds to assert unique and exceptional circumstances in relation to all 2,000.' That is not actually done, is it?

Ms Godwin—No, it is not done. Because each case is considered by the minister and the decision is in the end the result of the consideration of all of the factors, positive and negative, balanced up, the outcome of that balancing act is the minister's decision not ours. I think that was a point I was trying to touch on much earlier in the day. On some consideration it may look like the circumstances of a case seem very similar but in the end, as I say, there has been a weighing up of a whole variety of factors, positive and negative and, picking up Mr Storer's point, an assessment in the minister's mind that the public interest would be best served by intervening rather than not intervening. That is such a particular decision in a particular case that the sort of analysis you are talking about implies that you could compare those decisions, and I am not sure that they are comparable in quite the way that your question seems to imply.

Senator WONG—My point is that there is no auditing process in this system, and the only accountability process is the tabling of statements in the parliament. That is unarguable, isn't it?

Ms Godwin—That is the formal accountability process; that is correct.

Senator WONG—Johanna Stratton's thesis refers to two communications to the Human Rights Committee and the Committee Against Torture by failed section 417 applicants that resulted in favourable decisions to the complainants. That thesis is a couple of years old now, I think. Do you track that or do you keep records of that—situations where a failed 417 application has subsequently been the subject of an application to the UN committee?

Ms Godwin—We certainly keep those records, but the numbers are small. When you say 'track it', we have very small numbers that have subsequently gone to UN committees.

Mr Walker—Bear in mind that, basically, if a complaint made to a UN committee is accepted by the committee, the committee does communicate that complaint to the government of the particular country, who then have the opportunity to respond. While those responses are handled in the Attorney-General's Department, any affecting our portfolio do require input from our department. In that sense, we are well aware of them, and we are aware of the outcomes of some of those. In particular, for one of the complaints that went to the Committee Against Torture a further assessment was undertaken. That individual was, in fact, found not to be credible. Once again, you have to bear in mind that the various UN committees' conclusions, while they are persuasive, are not necessarily binding on countries.

Senator WONG—I am aware of that. How many have there been?

Mr Walker—Complaints or decisions?

Senator WONG—Decisions.

Mr Walker—I am not aware of the current number of decisions. I would say it is a very low number; I do not know whether or not it is in double figures yet.

Ms Godwin—We could certainly get that information. We will take it on notice.

Senator WONG—I want to return to the process, so it might be useful if the departmental liaison officers could return to the table. Mr Knobel, earlier you were asked a question by Senator Ludwig regarding the process in the minister's office. You made the point that you have an enormous number of communications coming into the office and also, I assume, an enormous number of phone calls. Do you log phone calls or additional correspondence you receive? Are they logged onto the database which Mr Storer gave evidence about this morning?

Mr Knobel—Correspondence that comes through will be referred to the department to be logged on to that system so that it is tracked. As far as phone calls go, we keep notebooks, or workbooks, to try to keep track of the content and any outcome of phone calls. They are rough working notes—I guess that is the best way to describe them.

Senator WONG—Presumably you would fill them up reasonably quickly, but do you have a book which records all contact by community representatives and parliamentarians?

Mr Knobel—The book is not divided into booklets for various individuals or groups. It is a single notebook that covers all phone calls.

Senator WONG—What happens when you fill the books up?

Mr Knobel—We put them away in a filing cabinet.

Senator WONG—Are you suggesting that any contact with anyone regarding a request for intervention would be recorded in these books?

Mr Knobel—I try to record as much information as I can. There are times when information, for one reason or another, is not recorded. Phone calls occur one after another, and there is not time to write down the details of conversations.

Senator WONG—Is that how you deal with matters too, Mr Christopher?

Mr Christopher—My approach has been slightly different. I have created folders on my desktop, and I tend to record inquiries that are going to go somewhere there. Often we may get a phone call asking, 'Is the minister in Canberra today?' There is a broad range of phone calls. Certainly, if there is any suggestion of intervention, we ask that it be put in writing.

Senator WONG—How do you determine which inquiries are likely to go somewhere?

Mr Christopher—If somebody is inquiring about the status of an application that is being processed overseas, that is not going to be resolved there and then on the phone. Often people ring up to ask for policy or procedural advice—'What sort of visa should I apply for?' We can simply finish those inquiries on the phone then and there.

Senator WONG—Mr Knobel, you indicated that the minister—and presumably he has communicated this to you—has indicated that he is willing to meet with MPs and community leaders. Is there a list—maybe a written one—of community leaders whom you know are people the minister is generally willing to meet?

Mr Knobel—There is no specific list in the office—hanging up, for example. The minister has an address book on the computer system which is updated by his diary secretary, and when someone rings whom I am not aware of I can quickly check to see whether that person is on the minister's address list. It generally gives some background on who the person is and what organisation they are with.

Senator WONG—But there must be some people whom you know the minister would be more likely to agree to meet with or to speak to than others.

Mr Knobel—There are people who call the office more regularly than others. There are people who, in dealing with people in the department or in state offices, may alert us to individuals that they have been having dealings with. Information as to who might be contacting us comes in from a range of sources.

Senator WONG—I appreciate that, Mr Knobel, but I think it was you who said that the minister had indicated that he was willing to meet or speak with 'parliamentarians and community leaders'—that was your phrase. As the person who gets called about some of this stuff, you must be aware of who is on the list of community leaders. Parliamentarians are pretty self-evident, I assume, but who is on the list of community leaders that you know the minister is willing to meet?

Mr Knobel—There is no list of community leaders that the minister is willing to meet. If there are people that I am not aware of, I will perhaps put a note into the minister saying, 'This person has made contact with the office and wishes to raise a case with you.'

Ms Godwin—The other point to make in this context is that many people seek to see the minister, obviously. He has an appointments secretary. It is our experience that, generally speaking, if somebody wants to meet with the minister over and above the process that Mr Knobel is referring to, the appointments secretary would take a list of those people and, in effect, work out whether there is time. He sees a very wide variety of people: PhD students, journalists, members of parliament and departmental officers.

Senator WONG—What precisely is the process you were referring to, Mr Knobel?

Mr Knobel—There is a range of processes. Ms Godwin talked about the formal approach with the diary secretary. There are phone calls from members of parliament seeking an appointment. Community leaders generally go through the diary secretary or put a request in writing to the minister to see him.

Senator WONG—Do some go through you?

Mr Knobel—Often they are incorporated into a letter referring to an individual case. Where there may be reference to the possibility of meeting with the minister or a request for a meeting, I talk to the diary secretary and seek her guidance.

Senator WONG—How often does that happen?

Mr Knobel—There are community leaders who come to visit the minister. It varies, of course. There is a wide range of communities. There are regular requests for meetings with him. I cannot give you an exact number; the diary secretary might be able to.

Senator WONG—No. How often do you, as a result of seeing a letter from a certain community leader on a file, approach the diary secretary suggesting that an appointment should be made? Is it a regular occurrence?

Mr Knobel—No. I do not recall, on the basis of a letter coming to us, approaching the diary secretary—unless there is a specific reference in the letter such as, 'I would like to see the minister to discuss this case.'

Senator WONG—Has that happened on occasion?

Mr Knobel—It happens on occasions, but I think it is fairly well known that the minister is extremely busy and that the departmental liaison officers are available to discuss individual cases and to talk about how the intervention process works.

Senator WONG—In terms of your workloads, Mr Christopher and Mr Knobel, I understand that you deal with a lot of files and a lot of people. Would you personally have spoken to the various MPs and community/legal firms on the two top-10 lists that were tabled this morning?

Mr Knobel—Certainly we would speak with their officers on a fairly regular basis.

Mr Christopher—I concur with that, Senator. We very rarely talk to the members themselves; nine times out of 10 it is their electorate staff.

Senator WONG—What about non-MPs—the second top-10 list? I assume Adrian Joel is a legal firm?

Mr Knobel—Yes. Less so with the legal firms, but some of the other community representatives and some of the agents do speak to us from time to time.

Mr Christopher—In my case, I think I have spoken to Marion Le once—when I brought her up to the office from the entry—and I have spoken to Paris Aristotle once in my six months at the minister's office.

Senator WONG—What about you, Mr Knobel?

Mr Knobel—Do you want me to go through individual ones?

Senator WONG—You have indicated that you have not spoken with the legal firms, so that is the top two.

Mr Knobel—I have spoken to Reverend Murphy several times; I would speak to Marion Le fairly regularly, probably an average of once a fortnight; Mr Kisrwani has rung the office reasonably regularly. He would probably call a couple of times a week about a range of cases. Wimal and Associates are agents; Paris Aristotle has spoken to me probably 10 times in the time I have been in the office. I have not spoken with Father Brennan or Mr Clisby.

Senator WONG—He is a barrister in Adelaide. I am well aware of him.

CHAIR—Is it fair to say that the numbers on the top-10 non-MP list reflects the number of people who would contact you and with whom you would then personally deal with? In other words, they are the top 10 in terms of what the department throws up; are they the people who talk to you most about ministerial discretion?

Mr Knobel—In terms of ministerial discretion?

CHAIR—Yes.

Mr Knobel—No. Marion Le speaks regularly about ministerial discretion—

CHAIR—That is what I mean. The correlation is that Marion Le speaks to you a lot; it is not surprising she is on the list. Karim Kisrwani speaks to you and it is not surprising that he appears on the list. The lawyers do not, you say, because as a rule they do not, and some of the others appear only a couple of times on the list, so it is not surprising you do not talk to them.

Mr Knobel—That is generally the case. There will be representatives from other communities that do ring from time to time seeking advice on the process. This group would probably be the group that would contact us more regularly.

CHAIR—Thank you.

Senator WONG—You also mentioned, Mr Knobel, that on a few occasions that you could recall—maybe only one; I cannot remember your evidence on this—you actually requested that a particular applicant's matter be dealt with by a certain MIU on the basis of who was making representations on that, as opposed to the geographic location of the applicant. How many times has that occurred?

Mr Knobel—Very rarely. Having said that and thinking about it again, we sometimes have a situation where, because of the complexity of names with cases, we just cannot identify who the person is from our departmental systems. The best thing is to get it to the department and hopefully get it to the Ministerial intervention unit that is likely to be responsible or is able to interrogate the systems. Perhaps the best way to do that quickly is based on the geographical area—the location of the person who is representing. It has happened in only a very small number of cases.

Senator WONG—What sort of cases? Was it in respect of any of these particular people?

Mr Knobel—No.

Mr Christopher—I will give you an example. If a member of parliament from Victoria wishes to seek a 351 intervention on behalf of someone in Victoria, that case is handled in the ACT regional office in the ministerial unit. It cuts across the geographical locations.

Senator WONG—That is in relation to all 351s. Aren't they all handled here in Canberra?

Mr Christopher—Yes. What I am saying is that we go to the geographical region because we know that is the intervention centre for processing that particular case. The person may live in Perth, Darwin or anywhere.

Senator WONG—Going back to the process, I am presuming that Ms Le, Mr Kisrwani, Mr Aristotle et cetera are ringing usually in relation to requests which have already been put in writing to you. Is that the case?

Mr Knobel—That is right.

Senator WONG—Does it happen that you receive phone calls from one of the top 10 where there has not been a written request?

Mr Knobel—It does happen on occasions. Our advice is to initiate the process and to put it in writing to the minister.

Senator WONG—Presumably it would happen in relation to matters where you have already referred the matter back to the MIU for assessment.

Mr Knobel—Do you mean where we have an active case and they are seeking an update on the process?

Senator WONG—Yes. Perhaps we need to go back one step. I understood from your evidence earlier that generally a letter comes in to the minister, you simply identify what is being sought, you then refer the matter directly to the MIU or to the department, who logs it on the correspondence database, and the matter then goes to the MIU for assessment against the guidelines. Is that how it works?

Mr Knobel—Yes.

Senator WONG—During that time you would also get occasional phone calls or other letters, presumably, in support of an application. Is that right?

Mr Knobel—Yes.

Senator WONG—When you are rung by somebody in relation to an application that is being considered by the MIU, and a decision has not been made as to whether it falls within the guidelines, do you pass that information on to the MIU?

Mr Knobel—Yes. We stamp it with the relevant location identifier on the letter and get it into the process.

Senator WONG—What about phone calls?

Mr Knobel—If the phone call is seeking some information on where the case is at, we can interrogate the systems and give an idea on how the processing is going. If the phone call relates to additional, information we will ask that it be put in writing so that it can be forwarded to the interventions unit.

Senator WONG—You say you log these phone calls in your notebook and they may generate a further phone call by you to the MIU.

Mr Knobel—We would rarely follow up with a phone call to the MIU on the basis of a phone call from a parliamentarian or a community leader. I guess if the phone call did raise relevant, compelling information containing reasons to look at fast-tracking a case, that may result in a phone call to an interventions unit.

Senator WONG—If there was additional information or new compelling information?

Mr Knobel—Yes.

Senator WONG—Are there occasions where you contact the MIU directly, before the originating correspondence has gone through the departmental processes, and request that a submission be prepared for the minister's office in relation to that application?

Mr Knobel—The only time I can think of that happening would be if the minister had perhaps been approached at a function by a community leader who raised a case with him as being important or having some factor about it that made it important to look at it quickly. In that case, I may anticipate the letter coming through and alert the MIU to the fact that the case would be coming through.

Senator WONG—How does someone raising it with a minister at a function make it important?

Mr Knobel—That is not the reason it is important. It may be that there are factors in the case or in the information that has been passed on to the minister that is felt to be important by the minister.

Senator WONG—Are you saying you would only contact the MIU ahead of the correspondence being forwarded to them through the departmental process in circumstances where the minister has requested that you do that?

Mr Knobel—Yes.

Senator WONG—Is there a general request in relation to any particular groups—for example, the East Timorese? Is there a view that that group should be expedited quickly because of the nature of those applications?

Mr Knobel—Certainly with the East Timorese there are special arrangements in place in our Melbourne office to facilitate the quick processing of those. The format of the briefs is a succinct form, and certainly the minister has asked that they be brought through quickly, but we do not anticipate East Timorese cases. We simply ask for the request to come through in writing, and then they are forwarded on.

Senator WONG—What cases do you anticipate in the manner that we have discussed?

Mr Knobel—I would not anticipate any cases unless they are brought to my attention by the minister.

Proceedings suspended from 3.16 p.m. to 3.31 p.m.

Senator WONG—Mr Knobel, so I understand this, you say that you only contact the MIU ahead of the MIU receiving the correspondence through the normal departmental processes when the minister effectively asks you to do that by bringing a matter to your attention.

Mr Knobel—I can only recall that happening on a very few occasions, and I recall that on those occasions the minister alerted me to the fact that an intervention request would be lodged and that there might be circumstances surrounding it that could warrant consideration.

Senator WONG—Ms Godwin, so I can make sure I understand the process, the MIU will then assess the request against the guidelines and make a judgement about whether the case falls within the guidelines, and if it does a submission is prepared to go back to the minister's office.

Ms Godwin—That is correct.

Senator WONG—Or it makes a decision that the case falls outside the guidelines, so it is placed on the schedule.

Ms Godwin—That is the routine process. Occasionally a case may be sufficiently complex that you would simply go straight to a submission. An officer has that opportunity. The guidelines say that other compelling matters can be drawn to the minister's attention, so it would be possible for an MIU to look at a case and say, 'This one is complex.' Mr Knobel has mentioned detention cases. If it is a complex detention case and there are a variety of different representations, the best way to get all of that information together is in a submission. So there would be occasions when a submission would be the first port of call.

Senator WONG—Presumably that would be on the basis that there is at least some prima facie evidence which suggests that it would fall within the guidelines?

Ms Godwin—My point is that the guidelines also encompass other circumstances. The guidelines indicate the sorts of things that might bring it within the ambit of the guidelines, or other matters that the officer thinks should be drawn to attention. Sometimes the overall complexity of a case would suggest that it should be put into a submission.

Senator WONG—In that submission, is reference made to the guidelines—that is, that these factors may be relevant, picking up the various categories in the guidelines which are listed?

Ms Godwin—Without having submissions in front of me, it is hard to say. I think they very often would refer to the guidelines, but if there are a range of factors they may not necessarily refer to the guidelines. I am not trying to be difficult; I am just saying that it is possible that they do not always refer to the guidelines but I think that usually they would.

Senator WONG—Mr Knobel, do you, as a matter of course, have discussions with the MIU officer who is making the assessment of the case as against the guidelines?

Mr Knobel—No.

Senator WONG—Do you ever contact the MIU regarding matters before the decision has been made as to whether a submission should come or that a case should be on the schedule?

Mr Knobel—There certainly is a lot of contact between the departmental liaison officers and the Ministerial intervention unit, but it is generally about process—where cases may be, how cases are going.

Senator WONG—Is the nature of the contact between you and the various representatives and community leaders that we were discussing generally process oriented, or do they also extend to the substantive merits of the case?

Mr Knobel—I do not get into discussing the merits of cases; it is generally processing issues that I will discuss with them.

Senator WONG—You indicated before the break, for example, that you might speak to Ms Le once a fortnight.

Mr Knobel—Recently, yes.

Senator WONG—Would that generally be process related?

Mr Knobel—Yes.

Senator WONG—Are you saying that you have made a decision not to discuss the merits of the matter?

Mr Knobel—Often the various people who call do want to discuss the merits of the case, but I make it clear to them that I am not a decision maker. I can talk about the process, but if there is information that they want to provide in relation to the consideration of the case then they should put it in writing and I can assure them that it is streamlined through. But I do not get involved in discussing the merits.

Senator WONG—Does the same apply to Mr Kisrwani, whom you said you spoke to around twice a week?

Mr Knobel—Yes.

Senator WONG—Do those phone calls on occasion result in you making a telephone call to the MIU?

Mr Knobel—They may. I cannot recall offhand any particular instances where that has happened, but I could not rule it out as having taken place.

Senator WONG—But, generally, if there was additional information you would ask that person to put it in writing?

Mr Knobel—Yes. I point out that it is important that it is put in writing so that it is documentary evidence that can be considered as part of the consideration.

Senator WONG—If you did that do you then call the MIU and say, 'Look, something is coming in writing in relation to this case,' and alert them to it?

Mr Knobel—Generally not. We try to facilitate it quickly through the normal departmental courier processes.

Senator WONG—The submissions then come to the minister's office in the orange or the brown files, or whatever the colours are, and presumably a schedule also then goes to the minister's office. Is that right? How do the scheduled cases work?

Mr Christopher—The scheduled cases come as schedules, in their own individual folders. The submission is in its own folder as well. There is a specific folder for each.

Senator WONG—Have there been any occasions where either of you have had a scheduled case about which you have gone back to the department, presumably the MIU, and said, 'We're going to want a submission on this'?

Mr Christopher—Not in my case.

Mr Knobel—No, not in my case.

Senator WONG—There have been no occasions on which that has occurred?

Mr Knobel—That the DLOs have initiated that? Not in my experience.

Senator WONG—At the request of the minister?

Mr Knobel—The minister will from time to time ask for a brief on a schedule.

Senator WONG—How often does that happen?

Mr Knobel—Very rarely. I cannot quantify it, but it does not happen very often.

Senator WONG—Did you want to say something, Ms Godwin?

Ms Godwin—Because the actual schedules and so forth are managed in the department it is probably something that is more a matter for us. I do not have that information. It would mean we would have to check the individual schedules.

Senator WONG—You do not record scheduled cases for which the minister has requested a full submission?

Ms Godwin—No, because it just then becomes part of the process and a submission is prepared. All of that material would be on the individual case file. There may well be an annotation on the schedule but we do not keep a record of that. It is just ongoing processing of a request.

Senator WONG—So it is not possible for you to give us information as to X number of scheduled cases in the year of which the minister requested a full submission, in relation to why?

Ms Godwin—Do you mean after it had originally appeared on a schedule?

Senator WONG—Yes.

Ms Godwin—I honestly do not know the answer. Whether we would be able to do that or whether it would require literally physically going back and checking the schedules, I do not know.

Senator WONG—Mr Storer looks like he is ruminating. Perhaps you could take that on notice.

Ms Godwin—We could certainly take it on notice.

CHAIR—There is another issue that I would like you to take on notice. When we started with appendix 2, I think there were a few things that you might have gone back to have a look at. I was interested, in terms of the MSI 225, in a snapshot or a bit of history, either in strike-out or delete, as may be necessary, to show how it has developed, changed or been altered. Although there are now a couple of versions that have been around, at least from my perspective, and maybe from that of other members of the committee, it is difficult to work out how it has changed in the last couple of years, what has been added and what has been deleted. There seems to have been a significant jump to the new version that is now out. It is far more detailed than the previous MSI 225, as I understand it. I am happy for you to take it on notice and see what you can do to assist the committee. We are particularly looking at whether the circumstances have changed or been enlarged, or how it has been altered or changed over the last couple of years.

Ms Godwin—It would be helpful if we could take it on notice. There may well be a fair bit of work in marking one up backwards, if I can put it that way. Certainly we should be able to identify where to look for the key changes.

CHAIR—You do not necessarily need to mark it up, if that is not the easiest way, as long as it is in a format that allows me to identify the changes.

Ms Godwin—Yes, something that points out what the particular changes might have been.

CHAIR—Thank you.

Mr Johnston—I think the main change in relation to the MSI was the inclusion of section 501J, which only came into operation in October 2001. Most of the changes were textual and simply brought the MSI up to date.

CHAIR—That is helpful; thank you.

Senator WONG—Ms Godwin, I turn now to circumstances where the minister initially declines to consider intervening and then seeks that the matter be referred back to him for consideration. Presumably that is something that is recorded and you are able to extract it from your departmental records.

Ms Godwin—At the risk of seeming difficult, and I apologise if I do, we simply deal with them as requests. If you look at an individual case, you can track back to see whether it was the subject of an earlier request. That is a process which we are attempting to do, but we do not actually have a record which says, 'This is the first, second or third.' You have to back-track through the case.

Senator WONG—I am not asking about first, second or third; I am asking if your records show the number of cases where there was a decision by the minister to decline to consider intervening, presumably because the case was on the schedule or it may even be a submission that he declined to consider intervening on. Or would they have to be scheduled cases for that to be the case?

Ms Godwin—No, he may well get a submission and—

Senator WONG—Decline to consider?

Ms Godwin—Yes.

Senator WONG—And then has subsequently requested that the matter be referred to him for consideration?

Ms Godwin—I am sorry, I am in some difficulty about what you are trying to get at. When you say, 'He's asked for it to be referred back to him,' my point is that, if it has been concluded in some way—whatever that way is: he has not considered or has not intervened or whatever—and it subsequently comes up again, it would be simply dealt with as another request.

Senator WONG—I understood that, Ms Godwin. Perhaps I am not asking the question clearly. Do your records enable you to tell the committee on how many occasions the minister has requested that a matter be re-referred back to him after he has declined to consider it?

Ms Godwin—I do not think it would appear in that way in the records.

Senator WONG—On 16 June 2003, the minister wrote to Ms Gillard, who was the then shadow immigration minister, in response to a question on 5 June. I do not know whether you have a copy of this.

Ms Godwin—I do not.

Senator WONG—He wrote:

> Preliminary analysis of the department's electronic records since July 2000 shows there are seven instances where I have initially declined to consider intervening which were subsequently referred back to me for consideration.

So presumably your records do allow you to extract that information?

Ms Godwin—That says they were referred back to him, not where he has asked for it. Essentially that is saying that there is a repeat process. That is my point: there are certainly numbers of cases where there is a repeat process and, by working backwards through a case, we can find those.

Senator WONG—Presumably you must have done that, because the letter then goes on to clarify what happened to them.

Ms Godwin—We have some of that information. My point this morning was that we are trying to make sure that we have a complete set of that information. I think the minister has said on a number of occasions that the information is preliminarily based on the information available at the time. We are in the process of trying to make sure it is complete et cetera. Yes, we have some of that information. Yes, we are continuing to work through the information.

Senator WONG—I have some questions associated with the information that is contained in this correspondence and I am happy to defer those to a later occasion.

CHAIR—If you would not mind, we might leave it at that point. We need to provide the other senators with an opportunity to ask questions before four o'clock. If there were further questions, Senator Wong can consider putting them on notice to you. Clearly there will be another opportunity for Senator Wong to ask you further questions. I defer to Senator Santoro.

Senator SANTORO—I would like to ask a few questions of Mr Knobel and Mr Christopher. It would presumably be within the job description of a DLO that liaison with the Ministerial intervention unit would be part of the job?

Mr Knobel—Yes.

Senator SANTORO—That is, whether it is within the job description formally or informally. In your opinion would I be right in suggesting that there is nothing that could be described as awkward or unorthodox in your contact with the MIU?

Mr Knobel—No.

Mr Christopher—I fully agree with you.

Senator SANTORO—It is part of the normal job that you are expected to perform in the minister's office?

Mr Christopher—Yes, it is.

Ms Godwin—To reinforce the point you are making, the role of the liaison officers is mentioned in the MSIs so it is clearly envisaged as a normal part of the process.

Senator SANTORO—Would we be able to have a copy of that document—

Mr Storer—I think you will find them in the attachment—

Senator SANTORO—I forgot my comprehensive papers and notes when I left home last night in a bit of a hurry. If someone asked you about progress of a case—somebody rings up and you are being questioned about it, whether it is one of the top 10 or somebody who may not be on the list—would it be right to state that contacting the MIU is the best thing to do if you are trying to ascertain in order to provide reasonable and timely feedback to somebody who may be anxious, distressed or concerned about progress? Is the MIU the reasonable first port of call?

Mr Christopher—Sometimes we would simply look up the case on the system. Often we can tell that may be—

Senator SANTORO—But if you had to go beyond that?

Mr Christopher—We would certainly go to the MIU or in some cases I have—and I cannot speak for Mr Knobel—referred the person directly to the MIU.

Senator SANTORO—But certainly there is nothing that a person could raise an eyebrow about if you made contact. It would not matter whether it was Mr Kisrwani or Ms Le or anybody else on that list.

Mr Christopher—I do not believe so.

Senator SANTORO—So is it reasonable then to assume that a DLO would be the person in the minister's office to make contact with the MIU if one of those people made contact? Is there anybody else in the minister's office that would normally undertake that task?

Mr Knobel—No. It is an expected part of the role as departmental officers. We are departmental officers not ministerial staff.

Senator SANTORO—I appreciate that. I have employed DLOs myself in the past. I want to make perfectly clear and put on the record just what part of the job description of a DLO it is and how they should or could be responding to queries from people who have an interest in a case. Within the submissions and also during debate mention has been made of Bilal Ahad's case. In most of the submissions they point out the danger of returning failed asylum seekers to their country of origin and there has been quite a bit of controversy about that. Would you be able to enlighten the committee about this man and what his ultimate fate was and how he suffered that fate?

Mr Illingworth—When we hear these sorts of allegations made from time to time we take them very seriously. Obviously the mere fact that a person spent some time in Australia does not

necessarily mean that Australia somehow becomes responsible for ensuring that the person leads a trouble-free life for the rest of their time. The person in question was found not to be owed protection. That decision was confirmed, he was removed, and died of natural causes some time later according to the information which we have obtained in the investigations in the country to which he returned.

Senator SANTORO—And you regard the information to be reliable?

Mr Illingworth—I regard it to be the only information that we have been able to ascertain which would cast any light on this person's fate. It was obtained by Australian officials making inquiries in the country to which he was returned, ascertaining that that was the recorded cause of death and that there were no indications of any reporting of suspicious elements relating to that death to the police or any investigations initiated that we can identify.

Senator SANTORO—The feedback that you are giving to the committee is considerably different from some of the more sensational statements that had been made about that case, unfortunate as that case is.

Mr Illingworth—Yes, that is right. It is not cheery news in any event; it is always something that is very serious. But that is right: it is quite different from the sorts of accounts that are presented by some people as factual.

Senator SANTORO—I raise the issue at this point because, undoubtedly, if the behaviour is consistent, certain witnesses may in fact raise it during further hearings of this committee. I just wanted to have very clearly the departmental view of that particular case. I want to turn briefly to the issue of repeat applications. Can you explain why there are much more restrictions on the rights of failed applicants who have subsequently made several repeat requests for ministerial intervention—for example, why they cannot access work rights, Medicare and social security? What was the experience when these rights were widely available to applicants?

Mr Illingworth—The particular features of the intervention power and its non-compellable nature were, it seems, crafted to prevent people who had no real claim to stay in Australia nonetheless using an opportunity for open-ended requests to just prolong their stay and frustrate removal attempts basically indefinitely. This was a phenomenon we had extensive experience with in the normal visa processes during the early 1990s until there were bars introduced in the legislation that prevented serial repeat applications for visas. Essentially, the prospect remains for individuals to make as many requests as they like for intervention. So that is one element of the non-compellable nature of the power that is, I suppose, a critical element in preventing the misuse of that. It does not generate a right of the individual to receive a response or to be able to await a response.

Bearing that in mind, there was concern about the attractiveness of using repeat intervention requests to obtain, for example, work rights and prolonged stay as a pull factor into engaging in serial repeat requests. It is not something which creates a right for an individual—like an application for a visa would. It does not generate a right for the individual to expect an answer or to compel the minister to give an answer, let alone to intervene in their case. There are very narrow provisions of work rights and similar entitlements and extension of lawful stay. We aim to complete the automatic assessments that are conducted when a case is returned from the

Refugee Review Tribunal within the 28 days that the person would be normally lawful after the Refugee Review Tribunal decision. In general, that process is completed.

Where the minister actually indicates that he is willing to consider a request—consider using his power—it is possible to grant a bridging visa to prolong lawful stay. But the current bridging visa arrangements essentially do not provide an incentive for people to try to misuse the process merely to prolong lawful stay, and they also make it clear that the minister and the government have a capacity to say, 'I've looked at this case enough; I am not going to look at the same stuff being recycled time and time again. This person has no claim to stay, and I am satisfied that this person can be removed.' So the withholding of a bridging visa in those circumstance facilitates that process.

CHAIR—I have one matter that arises out of that, Mr Illingworth. I was wondering whether with respect to the information you provided to Senator Santoro there was a case file or a document detailing the investigation that was done by your department that might provide the information to the committee in a more fulsome way. Perhaps you could take that on notice.

Mr Illingworth—We could take that on notice and provide it.

CHAIR—We have come to the point where we can thank you for the evidence that you have provided to the committee today. We have asked you to take some questions on notice. If possible, could they be dealt with prior to our next hearing, which is in Sydney on 22 September. If not, then you can let the secretariat know what is not able to be dealt with by then. There also could be some questions that the committee might have over the next couple of days that we might put to you on notice as well that may have a slightly longer timetable, depending on how long it takes us to get them to you. Thank you very much.

[4.01 p.m.]

STRATTON, Ms Johanna, (Private capacity)

CHAIR—I welcome Ms Johanna Stratton, who is joining us today by telephone link from Tokyo. I need to draw your attention to the fact that evidence given to the committee is protected by parliamentary privilege. This means that witnesses are given broad protection from actions arising from what they say and that the Senate has the power to protect them from any action which disadvantages them on account of the evidence given before the committee. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers to conduct its hearings in public. However, if there are any matters which you wish to discuss with the committee in private we will consider your request.

I invite you to make an opening statement. I understand that there are some technical issues in terms of your distance that we will have to deal with. Would you like to make a short opening statement or are you happy to take questions? What would you like to do?

Ms Stratton—I will just make some key points, if that is fine with you.

CHAIR—Yes, please go ahead.

Ms Stratton—Following the four months of research that I did last year from July through to the end of October on the exercise of section 417 of the Migration Act, I believe strongly that the existing system of ministerial discretion with regard to the minister's public interest power under section 417 does require improvement in the areas of transparency, accountability and compliance with international obligations.

In terms of what is good practice from a largely administrative law point of view, I would like to emphasise a number of points. According to the research I undertook, there does seem to be a lack of information relating to the exercise of the section 417 public interest power. As a legitimate avenue for a person who may engage Australia's international humanitarian obligations to stay in Australia, even if they have not been given refugee status at the Refugee Review Tribunal, this option is exceptionally important.

It is of concern especially that there is a lack of publicly available information, especially in regards to statistical data. It is either not widely available or it does not exist, meaning that it may have not been collected by DIMIA, according to the communications I had with DIMIA. My research suggest also that refugee advocates in this area are not well informed as to an understanding of the discretion and how it operates as well as the procedural matter about how to submit requests.

In terms of the applicants, it also seems as though there is a lack of information and also a lack of access to an understanding of the process of seeking information relating to ministerial discretion. A couple of examples here might be the lack of statistics relating to country of origin information, the number of applicants in detention as compared to those within the community, and how many cases requesting ministerial intervention under section 417 are made each year.

This kind of, in my view, fairly basic statistical information is not made publicly available and this suggests to me a lack of transparency. It also suggests that there is little chance of understanding exactly how the ministerial discretion works from a reasoning process point of view.

The recommendations I would make in regard to transparency would be, as I noted in the conclusion of my paper, to produce some form of information sheet in various languages to explain the provisions of section 417 and the ministerial guidelines more clearly, as well as to publish statistical information in a publicly accessible document such as in the annual report or on the Internet.

The second point I would like to make also relates to administrative law and that is basically best practice in regard to the concepts of rule of law and accountable government. In regard to lack of accountability, the observations that I made, and perhaps the most salient one I would like to propose, is that it is questionable to me as to whether the current minister is meeting the requirements of the legislative duties found in section 417(4)(c) to provide reasons for believing the decision to be in the public interest. This to me, as I have stated, seems to be the sole mechanism of accountability.

It is a fact that if you read all the statements between November 1998 and August 2002, which I have done, you will find a formulaic answer being followed, and this paragraph certainly does not contain reasons for why the discretion is being exercised in the public interest. Furthermore, we understand, as I have elucidated in my paper, that there are extremely restricted areas of review for this discretion and there is also no effective regulation to ensure that the minister is complying properly with this legal duty to disclose substantive reasoning. This kind of reasoning correlates to the point I made about excessive autonomy. I will conclude there because I think it is important that we move on to questions.

CHAIR—Thank you, Ms Stratton.

Senator WONG—Thank you for your submission, I thought it was a very useful research piece on the operation of section 417. I have many questions but, given the time frame, I will try to focus them. I go first to the issue you raised in your opening statement, which is consistent with your thesis, and that is that the parliamentary statements are effectively the only method of accountability under this current system in respect of ministerial discretion. You made the point that you have analysed all the statements from November 1998 to 2002—is that right?

Ms Stratton—That is correct.

Senator WONG—Are you saying that they tend to be rather formulaic and refer generally to the public interest and not to the reasons upon which the opinion maker has formed the view that it is in the public interest to grant the visa?

Ms Stratton—That is right. I believe there is a lack of substantive reasoning given.

Senator WONG—Did you do any analysis pre-1998?

Ms Stratton—Yes, I did. My research consisted of obtaining all the ministerial discretion statements relating to section 417 from the period September 1994 to August 2002. There were several hundred statements that I read and collated.

Senator WONG—So you have read all the statements tabled between September 1994 and 2002.

Ms Stratton—There were statements prior to September 1994.

Senator WONG—Are you suggesting that since November 1998 there has been a change in the statements?

Ms Stratton—Yes, that is right.

Senator WONG—Can you clarify that?

Ms Stratton—I have stated that in the first two years of office, Minister Ruddock used a more descriptive style to what he has adopted since November 1998. I cannot read you an example now because I do not have that before me, but I believe that it was analogous to the style that Minister Bolkus used during his term. So in that sense it gives more of an insight into the personal situation and the facts of the successful applicants.

Senator WONG—In your thesis you assert that there have been occasions on which the minister has sought full submission of cases which were otherwise on the schedule—that is, assessed them as being outside the ministerial guidelines. What was the basis of your assertion there? Was that based on an interview with DIMIA or someone else?

Ms Stratton—I will just have to take a minute to find that piece of research.

Senator WONG—I am happy if you want to provide that on notice. You make reference to it in the thesis. Perhaps if you want—

Ms Stratton—Footnote 58 relates to a live interview I did with three DIMIA officials on 15 October in the Belconnen offices. I have that on tape, but unfortunately the tape recording of that interview is in Canberra.

Senator WONG—Did they indicate any guidelines or processes associated with the minister seeking full submission of scheduled cases? Are there any processes or guidelines that indicate when he does that?

Ms Stratton—No, it was just mentioned. There was no kind of descriptive explanation as to what kind of circumstances that happens in. To me it indicated that he has a very strong discretion and, therefore, even in cases where there has been no ministerial submission made he has the ability to go beyond the advice provided to him by DIMIA officials and access other requests.

Senator WONG—You also assert in chapter 3 that certain advocates are able to bypass the MIU stage and access the minister to discuss section 417 cases, often with favourable results. What is the basis for that assertion?

Ms Stratton—I am not sure if your footnotes have been rectified, but if you see footnote 74—or it might be 75, if it has not been amended; I apologise for that—you will see that I conducted what I am calling field interviews with over 25 refugee advocates in Australia. That information came to me either by written correspondence in an email or during a phone interview or an interview in person with one of those people.

Senator WONG—You also talk in your submission about a conflict between the process that is envisaged by the guidelines of matters being referred by the RRT and the procedural instructions given to RRT members regarding humanitarian referral. You suggest that this means that the system of referrals is—I think you use the term—unreliable and inadequate. Can you explain that a little?

Ms Stratton—As I understand the situation, I mentioned that there seems to be conflicting authority or at least uncertainty for Refugee Review Tribunal members as to how to address humanitarian considerations which they may flag during the assessment of applicants. Footnote 62 shows that in the RRT members guide there are directions for RRT members to include humanitarian considerations inside the decision.

This seems to be in some conflict with what the minister has said. For example, in a speech that he gave in 1999, he advised tribunal members against recording humanitarian referrals, as it was deemed to be an inappropriate forum or an inappropriate context in which to raise those issues. So from an official point of view it does seem as though there is no consensus on how to handle these kinds of important humanitarian considerations.

Senator WONG—One final question: you comment in your thesis on a number of occasions on the trend towards family category visas and the nature of the changes to the categories of the visas that have been granted under Minister Ruddock as opposed to previous ministers. You make a statement in your conclusion that this 'seems to signal that political considerations are weighing heavily on ministerial reasoning'. What is the basis of that statement?

Ms Stratton—I made that remark because of the research that I did into the types of visa that have been issued. When you analyse the visa types, I do believe that they are of some probative value in indicating the circumstances of the applicant. For example, when an applicant has family links to Australia, they appear to be in a better position to obtain a visa, compared to a person who does not have those links. Can you just give me a moment? I am just trying to find my place. I do give a word of caution in the thesis in that—sorry, just a minute.

Senator WONG—It is all right. I know it is probably some time since you wrote it, so you could hardly be expected to have it in your head.

Ms Stratton—I did back in November last year, that is for sure! Okay. It seems to me that, in addition to the possibility of political bias, there are other factors which will influence a minister simply because he is a government official, and I have stated those various points in chapter 3 of my thesis. The issue of political bias, for example, is something that I did not delve deeply into,

but I did remark that there is other documentation—or other speculation, if you like—regarding the minister and his association with people of certain countries of origin. I stated that that kind of information has been documented elsewhere. It was necessary to adopt some degree of conjecture, basically, given the fact that I directly asked the department of immigration to comment on this issue of political bias and the question was not met with any sort of response.

More importantly, some kind of logical analysis, which can be made by looking at the trend in not only temporary and permanent types of visa but also what those specific types of visa, may indicate—and we cannot use mandatory language, of course; it is what it 'may' indicate—appears to suggest that the minister is perhaps taking into account things other than humanitarian considerations. Whether or not that is being given priority in this assessment of the reasons why that applicant should be staying in Australia is also questionable. It is significant to me that perhaps what is transcending that consideration are familial attachments to Australia. I think I will stop there.

Senator SANTORO—Ms Stratton, thank you, for making yourself available to the committee under your current circumstances.

Ms Stratton—You are welcome. I apologise that I cannot be there in person.

Senator SANTORO—What is the time in Tokyo at the moment?

Ms Stratton—It is 3.25.

Senator SANTORO—In the afternoon?

Ms Stratton—That is right. There is just one hour difference.

Senator SANTORO—That is not too bad. I have a couple of questions. I want to initially refer to the tragic case of Bilal Ahad that you mentioned in your report on page 24. In your submission you mentioned that the 18-year-old was shot dead 20 days after being deported to Pakistan.

Ms Stratton—That is right.

Senator SANTORO—Just a little while ago this afternoon, I asked the department whether that was, in fact, their understanding. They informed the committee that their feedback or their information gathered through conventional agencies indicated that he had died of natural causes. Do you have any reason to change your view on what happened? Of course, one way or another it is tragic that Mr Ahad is no longer alive. Have you received any additional information to suggest that what you thought is now not correct?

Ms Stratton—I think it is more a point of contention. The evidence on which I made that statement was based on two sources, one of those being a discussion with the journalist Cynthia Banham, who wrote that article publicising that that was in fact the situation on 9 October.

Senator SANTORO—Where was that journalist based?

Ms Stratton—No, not where she was based but how I based that information was on not only reading that article but also a discussion with that journalist regarding her sources.

Senator SANTORO—Have you received further information in relation to that case since you drew that conclusion?

Ms Stratton—No, I have not received any further information.

Senator SANTORO—Thank you for that. I am going to paraphrase you rather than quote you absolutely accurately. You mentioned in your opening statement that you thought something along the lines that the information and assistance for people seeking ministerial discretion and intervention is not very good. Do you acknowledge the increasingly important role of what have been described today as prominent legal firms, agents and individuals in helping people who do have language and cultural barriers? We were informed by the department about the type of assistance that is available at the moment through government, and not least through the many members of parliament—and we have got a list of only the top 10 federal members of parliament who work very diligently for people who are seeking that sort of assistance—and many state members and other people in elected positions. Do you acknowledge that the assistance available to people seeking ministerial discretion and ministerial review of their case is fairly high these days?

Ms Stratton—I cannot comment on the facts or situation past November 2002. That statement was based on over 25 field interviews. I say over 25, because I used information from the 25 refugee advocates but, in fact, it was from at least 40 refugees. I passed them a survey in which I asked: how do rejected refugee applicants know to approach you for assistance with a section 417 request? The sorts of answers that I was given indicated that these were generally people in communities. That leaves open the question of how rejected refugee applicants in detention are able to access the information that the 417 avenue exists and also questions the procedural fairness of assisting them to utilise that option, in that there are significant barriers, including language and cultural barriers. For example, if you have the ministerial guidelines but you do not have an interpreting service available, then I, at least, would not consider there is a high level of assistance with this process which is supposedly available to all.

Senator SANTORO—Thank you for your answers. Time will spare you any further questions from me. I will hand over to my senatorial colleague Gary Humphries.

Senator HUMPHRIES—Ms Stratton, you make some fairly serious allegations in your submission, which attracts parliamentary privilege, and I am concerned about the extent to which those allegations are actually supported by any direct evidence. For example, you say:

... the current Minister—

you emphasise the current minister—

may be evading his legislative duty under s417(4)(c) to provide *reasons for believing* the decision to be in the public interest.

This morning the Department of Immigration and Multicultural and Indigenous Affairs gave evidence to the committee that suggests there is no substantive difference in the style or content of statements tabled under section 417 in the parliament over the period that section 417 has been in force. Can you provide any actual evidence to the committee that there has been some decline in the extent of the minister's adherence to his legislative duty over that time?

Ms Stratton—If you refer to section 417(4)(c), it states that the minister is to provide reasons for believing the minister's decision to be in the public interest. If you analyse the paragraph which is supposed to provide the minister's reasons for believing the decision to be in the public interest, I think it is reasonable to comment that that paragraph is insufficient. To the reasonable person, it does not provide any substantive reasons. It does provide the sentence: 'I think it would be in the public interest having regard to the applicant's particular circumstances and personal characteristics.'

Senator HUMPHRIES—Let me interpose, Ms Stratton. The point I am making is that you emphasise in that paragraph that it is the current minister who is evading his legislative duty. You imply, not just there but at other points in this submission, that this minister has, by contrast with his predecessors, either fallen down in his duty or politicised the decision-making process under sections 351 or 417.

Ms Stratton—I do not think it is fair to say that I have made the direct comment that he has politicised the decision. That is not what I have stated.

Senator HUMPHRIES—I will quote what you have said in a moment. But in your comments on lack of accountability in chapter 3 of your submission you say:

... the current Minister may be evading his legislative duty ...

Given that the department has given us evidence today that the content and form of statements have been substantially the same over the life of section 417, is it a fair comment to say—

Ms Stratton—I would not agree with—

Senator HUMPHRIES—I would like to finish the question. You quite fairly say that in your opinion there is no adequate compliance with 417. But, given the consistency of format, would you then say that previous ministers have also evaded their legislative duty under section 417?

Ms Stratton—I apologise; that is not the interpretation that should be given to what I have written. What I have written is that in comparison with Minister Ruddock's predecessor, former Minister Bolkus, and in comparison with the period of time from November 1998 and the two years prior in which Minister Ruddock made statements, there is a definite change in the reasons for the minister's decisions and the articulation of those reasons. If you read each tabled statement you will clearly see that the statements former Minister Bolkus and the early statements that Minister Ruddock made contain more detail and are different in terms of content and form to those that were made from the period November 1998 onwards.

CHAIR—One of the difficulties we now have is that we are due to complete this hearing at 4.30 p.m. If there are any further questions that you want to put to Ms Stratton I am sure she will

be able to take them on notice. I thank you, Ms Stratton, for the evidence that you have presented to the committee today. I understand that you have constraints in terms of your time. If Senator Humphries has another matter for you he might be able to contact you. I think we have your email address, and we can see where we go from there. I thank you for the time today that you have made available to the committee. Senator Humphries or Senator Santoro, through the committee, may formulate a question on notice that we can email to you. At the moment you have no questions on notice but you may in fact get one or two.

Ms Stratton—I understand.

CHAIR—Thank you. I thank Hansard, the secretariat and the senators here today for their time.

Committee adjourned at 4.33 p.m.