



Inquiry into allegations concerning the inappropriate exercise of ministerial powers, with respect to the visa status of au pairs, and related matters

Responses to Questions on Notice.

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QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/001) – 25 Intervention cases

Asked:

Senator WATT: Okay. Let's focus on these 25. Can you confirm the dates of these 25 interventions?

Mr Pezzullo: Not each of the 25, no.

Senator WATT: You'd be able to take that on notice, though, and come back to us?

Mr Pezzullo: Yes.

Senator WATT: They all have to be tabled in parliament, don't they?

Mr Pezzullo: That's right.

Senator WATT: Do you know the first time Minister Dutton intervened to grant someone a tourist visa?

Mr Pezzullo: Ms Golightly?

Ms Golightly: No, I'll take that notice.

Mr Pezzullo: It would be a matter of public record, because the statements are tabled. But neither of us know offhand, no.

Senator WATT: Would I be right in saying that the very first time Minister Dutton used his ministerial intervention powers to grant someone a tourist visa was on 17 June 2015?

Mr Pezzullo: You're possibly correct. He was sworn in as immigration minister in December of 2014. You might well be right. It's a matter of public record. You just have to check the public record, because he's got to table a statement on each and every occasion when he does it.

Senator WATT: We have done a bit of research ourselves, and it appears to us that the very first time Minister Dutton intervened to use his ministerial intervention powers to grant a tourist visa was on 17 June 2015, which just happens to be the date of what you've referred to as the 'Brisbane incident'.

Mr Pezzullo: 'Case'.

Senator WATT: The 'Brisbane case', of an au pair arriving in Brisbane seeking ministerial intervention. That was the first time that the minister ever exercised this power to grant a tourist visa.

Mr Pezzullo: That might well be the case. It's just a matter of checking the record.

Senator WATT: Would you be able to get someone to do that while we're here today? I wouldn't have thought that'd be very difficult.

Mr Pezzullo: Ms Golightly, how well placed are we to do that?

Ms Golightly: We've got people on stand-by, so we'll go and check.

CHAIR: I'm just seeking a point of clarification: it's 25 since what date? We've had previous reports that it's 14.

Mr Pezzullo: Over his term as minister.

CHAIR: Thank you.

Mr Pezzullo: Inclusive of both being the immigration minister and subsequently being the home affairs minister, but also sworn as the immigration minister.

Answer:

Minister Dutton first granted a Visitor visa using his s195A ministerial intervention power on 17 June 2015.

The evidence given to the inquiry on 5 September 2018 stated there were 25 Visitor visas granted by Minister Dutton. While the Department's tracking system indicated that submissions relating to these 25 visa grants were referred to Minister Dutton, on checking the individual submissions, it was found that one had been allocated to, and signed by, the then Assistant Minister for Multicultural Affairs.

Between 23 December 2014 and 31 August 2018, Minister Dutton granted 24 Visitor (subclass 600) visas using his section 195A intervention power. Grants were made on the following dates (noting that some dates feature multiple grants):

| Date |
|-------------------|
| 17 June 2015 |
| 15 September 2015 |
| 6 October 2015 |
| 1 November 2015 |
| 23 August 2016 |
| 7 September 2016 |
| 7 October 2016 |
| 8 February 2017 |
| 11 May 2017 |
| 21 September 2017 |
| 22 November 2017 |
| 15 February 2018 |
| 18 April 2018 |
| 10 May 2018 |
| 24 May 2018 |

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/002) – 25 intervention cases - breakdown

Asked:

Senator KITCHING: Could I get a breakdown of those 25 cases by subclass?

Ms Golightly: Yes. I'd have to take that on notice.

Senator KITCHING: Thank you.

Senator WATT: The reason we're keen to get that is that, obviously, these two cases—the Brisbane case and the Adelaide case—and perhaps more that we don't yet know about involve people coming here or being granted a subclass 600 visa, which is a type of tourist visa, and our understanding is that the number is even lower than Minister Dutton has intervened to grant, and that is that, by at least 30 June 2018, there were only 14 subclass 600 visas granted by Minister Dutton. Can you check that?

Mr Pezzullo: It's a function of checking the statements that have been tabled plus—to Senator Kitching's point—any statements that are yet to be tabled within the stipulated time period.

Senator WATT: For all the talk we've seen over recent days about thousands of cases where Minister Dutton has compassionately, generously, intervened to assist people, sometimes at the request of Labor MPs and senators, it could be that it's as few as 14 times that he's intervened to grant someone this type of visa, the first being the Brisbane case, when an au pair turns up at the airport and gets the minister to intervene to let her stay?

Mr Pezzullo: It's a matter of checking the record.

Senator WATT: Okay, and you're going to do your best to come back to us about that today?

Mr Pezzullo: Yes.

Answer:

The evidence given to the inquiry on 5 September 2018 stated there were 25 Visitor visas granted by Minister Dutton. While the Department's tracking system indicated that submissions relating to these 25 visa grants were referred to Minister Dutton, on checking the individual submissions, it was found that one had been allocated to, and signed by, the then Assistant Minister for Multicultural Affairs.

Between 23 December 2014 and 31 August 2018, Minister Dutton granted 24 Visitor visas (subclass 600) using his section 195A intervention power.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/003) – Intervention cases - previous visa cancellations

Asked:

Senator WATT: I think we've been able to establish that there wasn't any compliance work undertaken. Now, just going back to these 14 interventions, that we know of, where the minister has approved the granting of a visa despite evidence that someone intended to breach it: I think when I was last asking questions you agreed to check whether any of the other 14 involved au pairs or any other description similar to that.

Mr Pezzullo: Well, I agreed to look at the circumstances.

Senator WATT: What we know is that by its very nature, under section 195A, every one of those 14 interventions has occurred for someone who's in detention.

Mr Pezzullo: Yes, by definition, that has to—

Senator WATT: Yes, because they have to. We don't know how many of them occurred involving someone who was in an airport?

Mr Pezzullo: Typically they would be at an airport.

Senator WATT: 'Typically'—but it could be taken on notice, to establish that?

Mr Pezzullo: Yes.

Senator WATT: Do you know how many of those 14 involved people whose visas had been cancelled, as these two had had their visas cancelled?

Mr Pezzullo: We'll have to take that on notice, but typically the visa either has been cancelled or is in the process of being cancelled. The person has to be on a removal pathway, because otherwise—

Senator WATT: Sure. I'm just going back to your opening statement, which talked about the fact that sometimes, or typically—whatever the word was—these involved people who were at an airport, had their visas cancelled. I'd be interested to know, for these 14, how many actually did involve that?

Ms Golightly: They could be in detention because they're IMAs. We'd have to check each case.

Mr Pezzullo: That's true.

Answer:

Between 23 December 2014 and 31 August 2018, Minister Dutton granted 24 Visitor (subclass 600) visas using his section 195A intervention power. Of these 24 grants:

- a. Three involved persons who had visas cancelled upon arrival at the airport
 - i. These include the two non-citizens discussed at the hearing (Brisbane and Adelaide cases) who had their visas cancelled.
 - ii. The other had a visa cancelled and sought protection at the airport on arrival.

- b. 20 persons were overstayers in the community and were granted Visitor (subclass 600) visas to enable them to lodge substantive visa applications onshore to resolve their immigration status
- c. One in the community was granted a Visitor (subclass 600) visa to give them lawful status, while their substantive visa application was being assessed.

Based on the information available, there were two of the 24 Visitor visa (subclass 600) grants where there were indications that the visa holders may have been engaged in work related activity as an au pair (being the Brisbane and Adelaide cases).

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/004) – Intervention cases - average turnaround

Asked:

Senator WATT: Just to wrap up this section, what is the average turnaround time for a request for ministerial intervention? Of those 14 cases, what was the average?

Mr Pezzullo: We could establish that mathematically—unless Ms Dunn knows?

Ms Dunn: No, we don't have that information before us.

Senator WATT: Could you also come back to us on notice as to the fastest and longest turnaround time. And, without going into the content of the emails—

Mr Pezzullo: Can we define terms, Senator? When you say 'turnaround time': from the moment that the department either escalates the matter under the guidelines or is requested to escalate the matter—

Senator WATT: Let's go with both.

Mr Pezzullo: All right; we'll do both. Until the point at which the minister signs the submission, at which point the visa is granted—shall we define that as the—

Senator WATT: Sure.

Answer:

In relation to the 24 Visitor visa (subclass 600) cases, based on the time a submission was requested by the Minister's Office, or from the time the Department provides a submission to the Minister in cases where the Department has initiated the submission under the relevant guidelines, to the time of visa grant:

- The shortest turnaround time was 2 hours and 40 minutes.
- The longest turnaround time was 5 months.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/005) – Intervention cases - submissions within an hour

Asked:

Senator WATT: Sure. I can make my question really simple. Senator O'Sullivan is very eager to get some questions in. All I want to know is: are there any other incidents, of the 14 where Minister Dutton has personally intervened to grant someone a subclass 600 tourist visa, where the minister requested a submission from the department enabling him to approve that intervention within an hour of the department relaying facts to the minister? That's what happened here. The department relayed facts to the minister, via his chief of staff, and, within an hour, Minister Dutton has requested a submission enabling him to approve that. I want to know: are there other instances where someone got that level of service on a Sunday afternoon?

Mr Pezzullo: Setting aside references to emails—we've talked about that—as part of the comeback to this committee, we've already taken on notice to look at those equivalent cases, be it the 25 or the 14, and we'll go through the visa classes, Senator Kitching, to make sure that we're on completely common ground. It might be different variances of oranges and mandarins, I suppose. But, whether it's 14 or 25, we'll go through the circumstances of the submission, whether it was escalated by the department under the guidelines or otherwise, and I'll take on notice the question of the time period. You've already asked Ms Dunn about the turnaround times.

Answer:

Departmental systems do not record the relevant data required to respond to this question.

Systems do, however, allow the Department to identify the time between a submission being requested by the Minister and the visa grant. In cases where the submission is initiated by the Department under the relevant guidelines, the systems allow the Department to identify the time between the submission being provided to the Minister and the visa grant.

Of the 24 Visitor visas (subclass 600) granted by Minister Dutton, the shortest time period between these two points in time was 2 hours and 40 minutes.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/006) – Interventions cases - last five years

Asked:

Senator McKIM: Good morning, Mr Pezzullo and your officers. I'm aware that questions similar to my first tranche have been asked already this morning, but I don't believe the specific questions that I'm going to put to you have been asked. If you believe they have, please say so. I wanted to start by asking how many ministerial interventions relating to visas have occurred—and perhaps we could go on a year-by-year basis back five years—which involved people who claimed that they intended to stay in Australia as tourists?

Mr Pezzullo: We've taken that question materially on notice, but I'll just see if Ms Golightly has anything that can assist. It is not quite the question asked by Senator Watt, but it's very similar.

Senator McKIM: That's my understanding.

Ms Golightly: No, Senator McKim, I would have to take that on notice because it involves, if I've understood your question correctly, going through each of their claims and I don't have all of that here for all of those cases.

Senator McKIM: So you're happy to take that on notice, Mr Pezzullo?

Mr Pezzullo: Yes.

Answer:

Because of the large number of submissions that need to be reviewed and the manual nature of checks, the Department is unable to provide five years of data.

Of the 24 Visitor visas (subclass 600) granted by Minister Dutton under section 195A since December 2014, two were granted to persons wishing to remain in Australia for tourism purposes. Both were granted in 2015.

The remaining 22 people were granted Visitor visas in order to make them lawful while they applied for another type of visa, as they had indicated at the time of the intervention that they wished to remain in Australia for purposes other than tourism (for example, people who had overstayed their visa and wished to remain in Australia). The Visitor Visa is granted in these circumstances as an interim visa, due to its temporary nature and that it does not generally attract work rights or allow access to social security and health benefits.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/007) – Recommendations not to intervene

Asked:

Senator McKIM: To apply a tourist visa—absolutely. Does the department ever recommend that the minister agree not to intervene?

Mr Pezzullo: I'll check that as a matter of fact. Intrinsic to the very nature of intervention is that the minister has already indicated a disposition to intervene, or we're recommending an intervention because the matter falls within the guidelines.

Ms Dunn?

Ms Dunn: I'd have to look at the wording. Certainly, there are submissions where the minister declines to intervene, but I'd have to have a look at the wording.

Mr Pezzullo: In terms of our—

Senator McKIM: I'm asking about the department's advice to the minister.

Ms Dunn: Yes. I'll have to check.

Mr Pezzullo: Intrinsic to the power which is captured in 195A, non-compellable. So, in a sense, it's immaterial.

Senator McKIM: No, this is about your advice to the minister.

Mr Pezzullo: That's right.

Senator McKIM: I accept you're not in a position to compel in this context. But—

Mr Pezzullo: What flows from that is that it's immaterial what our view is about intervening or not intervening, because it's a personal discretion which is noncompellable.

Senator McKIM: With respect, that's a judgement the committee will be able make a determination on.

Mr Pezzullo: Indeed.

Senator McKIM: I'm specifically asking—and I think that Ms Golightly or someone else might have agreed to take it on notice—

Ms Golightly: We'll take it on notice because we need look at the submissions.

Senator McKIM: has the department ever advised the minister not to intervene? If that is the case and that recommendation has been made, tell us how many instances and whatever details you are able to provide around those instances.

Mr Pezzullo: We'll take it on notice. Intrinsic to the power is such that I don't think that we ever would be in a position to so advise, but if we find a case we'll let you know.

Senator McKIM: Just so I understand, Mr Pezzullo, it's happened once—and presumably more than once—that the department has recommended that the minister agree to intervene.

Mr Pezzullo: Yes, to grant a particular a type of visa.

Senator McKIM: To grant a particular type of visa, yes. But you're saying that you think it unlikely that the department's ever recommended that the minister agree not to intervene?

Mr Pezzullo: We put the option to him, because, as you can see on the very face of the submission—which I suspect you have in front of you—there are two options stipulated: you either intervene or decline to intervene.

Senator McKIM: I do understand that, and clearly in this case the minister has circled 'intervene' and signed on 17 June 2015. But you're not really giving him the option, Mr Pezzullo; you're actually making a specific recommendation, in this case, that the minister agree to intervene. You'd agree with that, wouldn't you?

Mr Pezzullo: Yes.

Senator McKIM: My question then remains, and I think you've agreed to take that on notice, which is fine.

Mr Pezzullo: We will check this on notice. It would be open to me as secretary to advise the minister, having considered a matter within the stipulated guidelines. I've talked about the guidelines as to our interpretation of what the minister wishes to have placed before him. By definition, we never would put up a submission saying, 'Hey, we thought about putting this up to you, but it didn't quite meet the guidelines, so we're going to advise you anyway.' In other words, there would not be a submission put up in those cases.

Senator McKIM: All right, you can check that on notice, Mr Pezzullo.

Mr Pezzullo: Yes.

Answer:

Between 23 December 2014 and 31 August 2018, approximately 1,300 section 195A submissions were referred to Minister Dutton. The Department cannot provide the information within the time available, due to the need to manually check a large number of submissions.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/008) – Ministerial intervention - brief request stats

Asked:

Senator McKIM: Could I ask you, if it hasn't been asked already, to have a look at those 25 cases and provide advice back to the committee around how many of those cases involved a request from the minister's office to the department for a brief compared to briefs being volunteered.

Mr Pezzullo: If memory serves, I think that was essentially the question that Senator Kitching asked, so we'll wrap that into the same response on notice.

Answer:

- 1) The evidence given to the inquiry on 5 September 2018 stated there were 25 Visitor visas granted by Minister Dutton. While the Department's tracking system indicated that submissions relating to these 25 visa grants were referred to Minister Dutton, on checking the individual submissions, it was found that one had been allocated to, and signed by, the Assistant Minister for Multicultural Affairs.
- 2) Between 23 December 2014 and 31 August 2018, 18 submissions were referred to Minister Dutton where he intervened under section 195A and granted Visitor visas (subclass 600) (24 visas in total). Of these:
 - a. 12 submissions, covering 17 persons, were requested by Minister Dutton's office; and
 - b. Six submissions, covering 7 persons, were initiated by the Department.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/009) – Conflict of interest

Asked:

Senator McKIM: Thanks. I want to ask how the department deals with conflict of interest issues around officers at the frontline making decisions on the ground in real time on visas. Firstly, do you have a document that you provide your officers that outlines how they should deal with conflicts of interest, for example, when they might know the person who's attempting to enter Australia?

Mr Pezzullo: We have a general integrity policy which stipulates across all matters, whether it's procurement, probity, issues around procurement or decision-making of any character. Ms Noble heads the relevant integrity function, and she can speak to the details. We have general documentation that speaks to integrity, application of values, APS Code of Conduct and so on and so forth. Whether that has then been distilled into frontline guidance—which I think is the burden of your question—of how to apply our integrity regime, which also deals with things like drugs, alcohol, non-acceptance of gifts and the like, to officers who work in, say, an airport environment about how they perform their duties is perhaps more a matter for the commissioner or assistant commissioner. Perhaps, Ms Noble, could you respond on the general documentation around integrity?

Ms Noble: I'm not sure I can add anything to what the secretary said. There are practices in place that generally ask our officers to make declarations about any kind of conflict of interest, irrespective of the function that they perform within the department or ABF. But there are, I understand, more detailed operational procedures that apply to people either at the border or visa decision makers particularly pertaining to a conflict of interest in relation to the person applying for a visa or seeking entry.

Senator McKIM: Thanks, Ms Noble. I might ask Commissioner Outram if he has anything to add.

Mr Outram: We have a lot of practice instructions and training. And, of course, officers making decisions that affect an individual who is known to them—a family member, a friend or someone else—would clearly engage that issue of conflict of interest. So we deal with that through our training, through our practice, through the integrity regime, through our practice instructions and through our standard operating procedures. There is a specific instruction that says, 'There was a conflict of interest in this scenario.' I don't believe there would be, but certainly that sort of advice, those sorts of requirements, are explicitly known within our organisation.

Senator McKIM: What exactly are practice instructions? Are they written documents that are circulated to officers?

Mr Outram: Yes. For example, there are lots of practice instructions around detention operations and around visa cancellations at airports, which is the case we're talking about here.

Senator McKIM: Could I ask you to take on notice whether any of those things that you've mentioned, from practice instructions right through to the instruments that Mr Pezzullo and Ms Noble have referred to, explicitly address the issue of an officer knowing somebody who is the subject of a decision that that officer may make.

Mr Outram: Yes.

Mr Pezzullo: I can state to you with absolute certainty—and we'll give you the documents on notice—that there's a legally enforceable instrument that I sign as secretary called 'declarable circumstances', from memory. That deals with not just visas; it's about everything—whether you've got a conflict around a procurement, visa decision-making and so on and so forth.

Senator McKIM: If you're able to provide that, that'd be appreciated.

Mr Outram: We will.

Mr Pezzullo: Then from that would flow subordinate documents, some of which might be in the nature of these local practices. Command locally might say, 'Look, there's all this paperwork from headquarters,' and distil it right down for the officer and say: 'Here are the things that you have to observe in terms of everything from integrity, drug testing and so on and so forth, and here's a link to the declarable circumstances instrument. Make sure you comply because it's got the force of law.'

"Senator McKIM: I understand and accept that you've taken that question on notice and you'll provide the documentation to the committee. Are you able to advise the committee whether or not any of that documentation includes consideration of an event where an officer knows somebody that may be engaging that officer's decision-making powers? For example, if you've got an officer on the front line and their mother arrived, attempting to enter Australia, and the officer felt that his or her decision-making powers were about to be engaged, I'm sure that you would agree that the officer should not make a decision about his or her mother.

Mr Outram: I agree.

Senator McKIM: So what I'm asking is about that context of an officer knowing somebody that is about to engage their decision-making powers and whether that specific circumstance is addressed in any of those documents and whether you're able to advise the committee now.

Mr Outram: I'll take on notice if it's that specific."

Answer:

On 1 July 2015, the then Department of Immigration and Border Protection implemented an Integrity Framework. The Integrity Framework is comprised of a number of policies designed to protect the Department from infiltration, corruption and maintain a professional workforce. One of these policies relates to '*Conflict of Interest*'. Conflict of interests must be declared and appropriately managed.

The standing up of the Department of Home Affairs occurred on 20 December 2017. The Secretary of Home Affairs determined that the same Integrity Framework implemented on 1 July 2015 continues to apply to all employees of the Department and the Australian Border Force. On 25 April 2018 the First Assistant Secretary, Integrity Security and Assurance Division agreed that the current framework would continue to apply until 30 September 2018 when a review would be completed.

The Conflict of Interest policy is available on the Department's website and also internally available on its BorderNet intranet. Attached is a copy of the Conflict of Interest policy as related to the timeframe.

In addition, a Procedural Instruction 'Travellers known to Australian Border Force officers in airports and seaports' is in place to provide procedures for Australian Border Force officers at airports and seaports who have contact and/or interactions with travellers known to them while on duty, including a direction that travelers who are known to ABF officers, including acquaintances, associates, family, friends and work colleagues, those travelers must be directed to present to an alternative ABF officer to whom they are not known for processing and assessment and the subsequent reporting requirements.

The APS Code of Conduct also requires employees to take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their employment. All SES employees of the Department and the Australian Border Force are subject to an annual written declaration for themselves and their immediate family's financial and other material personal interests.



Conflict of interest

Instruction and Guideline

| | |
|-----------------|---|
| Published date: | |
| Availability: | Internal and external |
| Purpose: | To provide guidance in identifying and managing conflicts of interest in the workplace. |
| Owner: | First Assistant Secretary Integrity, Security and Assurance Division |
| Category: | Corporate |
| Sub-category: | Leadership and Workforce |
| Contact: | Director Arête Integrity and Professional Standards Branch |
| File No | |

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Summary of main points

This Instruction and Guideline outlines:

- declaring and recording real, potential and perceived conflicts of interest
- managing conflicts of interest.

This Instruction and Guideline applies to:

- Immigration and Border Protection (IBP) workers who are:
 - ongoing and non-ongoing Australian Public Service (APS) employees in the Department of Home Affairs (the Department)
 - secondees whose services are made available to the Department (including an officer or employee of the APS, a Commonwealth, State or Territory agency or authority, or a foreign government or authority, or a public international organisation)
 - contractors and consultants working 'in-house' in the Department (i.e. physically located in premises that are owned, managed, controlled, leased, contracted by or operated by the Department) under a contract for services, other than locally engaged staff at overseas posts ('Internal contractors / consultants')
 - all other contractors and consultants working for the Department ('*External contractors / consultants*') who require non-public access to Departmental assets .
- The Secretary of the Department and the Australian Border Force Commissioner who, for the purpose of this Instruction and Guideline, are included in references to IBP workers.

¹ Immigration and Border Force workers are defined in section 4 of the *Australian Border Force Act 2015* and the Secretary Determination on IBP workers.

² 'Non-public access' means ongoing or unrestricted access to Departmental Assets which are not available to members of the public

³ Departmental assets' means information and resources including, but not limited to, information and technology systems (ICT systems), information, plant and equipment, vessels, aircraft and / or premises which are owned, managed, controlled, leased, contracted by or operated by the Department.

Introduction

The Department operates in a position of trust within the border environment. In return, the community, the Australian Government and our business partners expect a strong system of integrity, a workplace culture resistant to corruption and professional standards of the highest order.

The APS Code of Conduct in section 13 of the *Public Service Act 1999* requires that an APS employee must take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with the employee's APS employment. Similar obligations are imposed on officials by the *Public Governance, Performance and Accountability Act 2013*, the Commonwealth Procurement Rules, and Commonwealth Grant Rules and Guidelines.

For APS employees and other government officials or public office holders, a conflict of interest arises when an individual has private interests which improperly influence, or may be perceived to influence, the performance of their official duty to serve the public interest. As well as constituting a breach of the Code of Conduct, section 142.2 of the *Criminal Code Act 1995* makes it an offence for a Commonwealth public official to exercise influence, engage in conduct or use any information obtained in their capacity as a Commonwealth public official with the intention to gain a benefit for themselves or another person, or to cause a detriment to another person.

For contractors and consultants, a conflict of interest arises where there is any matter, circumstance, interest or activity affecting them (including their personnel) which may, or may appear to, impair their ability to provide the services to the agency diligently and independently. A definition of conflict of interest is generally included in contracts, which contractors and consultants need to be aware of. A situation that looks like a conflict of interest may be enough to undermine the confidence of the Australian Government and the public, even if there is no actual conflict or the conflict has been resolved. Conflicts can and do occur in the normal course of duties or performance of services. They may be innocent or accidental, and steps must be taken to manage them. Identifying and declaring a conflict of interest in and of itself does not indicate wrongdoing or misconduct. To the contrary, a culture of strong conflict of interest reporting indicates a healthy ethical culture which recognises that the public interest can overlap with an individual's private and personal interests. This Instruction and Guideline provides a framework for declaring and managing conflicts of interest.

1. Policy statement

IBP workers must declare all real, potential or perceived conflicts of interest and must comply with management strategies to mitigate the risks posed by real or potential conflicts of interest. All conflicts of interest must be resolved in the public interest.

Existing arrangements for locally engaged staff at overseas posts will remain in place until advised otherwise.

Conflict of interest

There are three types of conflicts of interest:

1. 'Real' or 'actual'—for APS employees, government officials and other public office holders, this means a direct conflict between an individual's current duties and responsibilities, and existing private interests. For contractors and consultants, this term means any matter, circumstance, interest or activity affecting them (including their personnel) which impairs their ability to provide the services to the agency diligently and independently.
2. 'Potential'—for APS employees, government officials and other public office holders this means if an individual has private interests that could conflict with their official duties in the future. For contractors and consultants, this term means any matter, circumstance, interest, or activity affecting them (including their personnel) which may impair their ability to provide the services to the agency diligently and independently.
3. 'Perceived' (or "apparent")—for APS employees, government officials and other public office holders this means if it could be perceived, or appears, that an individual's private interests could improperly influence the performance of their duties (whether or not this is the case). For contractors and consultants, this term means any matter, circumstance, interest, or activity affecting them (including their personnel) which could be perceived or appear to impair their ability to provide the services to the agency diligently and independently.

Conflicts of interest may be either pecuniary (where there is the potential to benefit financially) or non-pecuniary (involving influence or relationships).

The Department has a broad range of responsibilities and there are many different circumstances that could give rise to a real, potential or perceived conflict of interest. The list below provides examples of circumstances that may give rise to a conflict of interest. This is not a definitive list and it is not assumed that these circumstances will give rise to a conflict of interest. These examples are included so that IBP workers consider a broad range of circumstances when assessing their own personal circumstances. A conflict of interest could possibly arise where an IBP worker has:

- interests in a family or other private business
- a secondary employment commitment that is in conflict with the mission of the Department
- responsibilities as a visa or citizenship decision maker and has received an application from someone they know
- affiliations with for-profit and not-for-profit organisations, sporting bodies, social or cultural groups, clubs and associations
- affiliations with political or professional organisations (e.g. that conflict with an IBP worker's departmental duties), noting that individuals are free to become members of and hold office in any political party, and are not required to declare trade union membership
- affiliations with lobbyists, migration agents, customs brokers or importers/exporters that are not as a result of, or necessary for, the IBP worker's employment in, or engagement with, the Department
- nominated or stood for public office
- significant financial and economic interests in an entity that has dealings with the Department, such as assets or debts
- commitments to professional, community, ethnic, family or religious groups that might conflict with the individual's professional role
- accepted gifts, benefits or hospitality from private businesses, potential contractors, including a lobbyist, migration agent or customs broker

- family or other relationships with clients, contractors or other staff working in the Department, or a related organisation
- been appointed to an employment selection or tender evaluation panel and has a close friendship or social association with an applicant
- serious personal relationships in the workplace (e.g. a romantic or domestic relationship)
- future employment prospects or plans (that is, post-separation employment).

Identifying a conflict of interest

IBP workers should regularly assess their personal circumstances to identify whether any matter may give rise to a real or perceived conflict of interest. Personal circumstances should be assessed in relation to both the individual's work role and the mission of the Department.

In circumstances where a conflict arises on a one-off basis, for example, being a decision maker for a citizenship application and having a close relationship with an applicant, the matter should be dealt with by the relevant work area. Where these conflicts of interest are dealt with at the time they arise, there is no requirement to declare and record the conflict as outlined in the next section.

Where an individual is unsure whether or not there is a conflict of interest, the circumstances should be discussed with a supervisor or second line manager. Contractors and consultants must notify the relevant contact officer or contract manager in the Department, in accordance with their contractual obligations.

For APS employees, where further guidance is required, the Integrity and Professional Standards (I&PS) Branch can provide assistance.

For conflicts of interest relating to procurement processes, contractors and consultants, the Procurement and Contracts Branch must be consulted as soon as possible as conflicts can have a significant impact on procurements (i.e. the process must be terminated and re-commenced). Legal Division can also provide advice about conflicts relating to procurements, contractors and consultants, as these conflicts can involve potentially significant legal, procurement and probity risks.

2. Declaring and recording a conflict of interest

APS employees

For departmental employees, whether or not you have a conflict of interest, a Conflict of Interest Declaration must be made annually. There is a facility for the declaration to be made in the mandatory Our Professional Standards eLearning course. The purpose of an annual declaration is to ensure that individuals are considering, on a regular basis, whether or not their circumstances give rise to a conflict of interest. If at any other time a conflict of interest is identified, a new Conflict of Interest Declaration form must be completed.

Where there is no conflict of interest, employees must declare they have no conflicts of interest. Where an employee or secondee is unsure whether or not a conflict exists, they should discuss this with their supervisor or second line manager. If a decision is then made that there is no conflict, the decision and the reasons for it must be recorded on the Conflict of Interest Declaration form and a copy emailed to I&PS Branch. The email should also be copied to the individuals who have signed the form.

Where a conflict of interest has been identified and a management plan is required, the employee or secondee must:

- discuss the circumstances of the conflict of interest with their supervisor and/or second line manager
- come to agreement on an appropriate management plan (where required, I&PS Branch can assist in determining an appropriate management plan)
- following agreement, the declaration of the conflict of interest and the management plan must be recorded on a Conflict of Interest Declaration form and signed by the employee or secondee, the supervisor and the second line manager and a copy emailed to I&PS Branch.

Where an existing conflict of interest remains at the next annual declaration period, and no changes to the individual's work area have occurred, the individual should discuss the existing management plan with their supervisor, to consider whether any changes are required. This conversation should be noted on a new Conflict of Interest Declaration form and emailed to I&PS Branch.

Where an existing conflict of interest changes, or a new conflict of interest is identified, the employee must discuss the conflict with their supervisor or second line manager. A new Conflict of Interest Declaration form must be completed and a copy sent to I&PS Branch.

Where an employee with a declared conflict of interest moves to a different position within the Department, the employee must advise the new supervisor of the existing conflict of interest and provide the new supervisor with a copy of the management plan.

Similarly, prior to accepting a new position, employees must discuss with their new supervisor whether the new position creates any real, potential or perceived conflicts of interest.

If an individual is not comfortable discussing their circumstances with their supervisor, second line manager or Senior Executive Service (SES) officer, they should speak with I&PS Branch.

Contractors

Where procurement processes, contractors, and consultants are concerned:

- Declarations of a conflict of interest are required at the beginning of, and during, the procurement process as a probity control. The declarations must be provided in accordance with relevant procurement and probity plans.
- Requirements in relation to reporting and managing a conflict of interest will be set out in the contract.
- A conflict management plan for contractors and consultants should be developed by the relevant contract manager, procurement officer and/or probity advisor as appropriate.
- Further advice about conflict of interest issues can be obtained from the Department's Legal Division and the Procurement and Contracts Branch.

3. Strategies to manage a conflict of interest

Declare: On an annual basis, departmental employees and secondees must make a declaration as to whether or not their personal circumstances give rise to a real, potential or perceived conflict of interest. In making an annual declaration, employees have the opportunity to review their personal circumstances against their professional duties and assess whether any conflicts of interest exist or are perceived to exist. A declaration

of a conflict of interest must also be made at any other time a conflict of interest is identified. This allows for action to be taken to remove or minimise any conflicts.

For contractors and consultants, conflicts must be declared as required by their contracts.

The following strategies to manage a conflict of interest may also be considered, depending on the circumstances and, where relevant, the contract. Conflicts involving contractors and consultants should be referred as soon as possible to the Procurement and Contracts Branch and Legal Division for advice as to appropriate management strategies.

Separate: Where an IBP worker can be effectively separated from parts of an activity or process, this may be sufficient to manage the conflict.

Oversight: Where it is not feasible or desirable to resolve the conflict by separating the IBP worker from an activity or process, it may be appropriate for an independent person to oversee all or part of a matter. This approach may be useful where the expertise required is not easily replaceable (e.g. in remote locations).

Remove: Where the conflict of interest presents a high risk to the IBP worker or the Department, it may be appropriate for the individual to be removed from any involvement in the particular matter or transferred to another role. Where removal to another role is the only means of resolving the conflict of interest, the IBP worker must be consulted and advice from Legal Division sought.

Relinquish: Where other options are not workable or suitable, an IBP worker may choose to relinquish the private interest. An IBP worker should not be asked to consider relinquishing a significant private interest where the effects of the conflict of interest are not considered to be significant.

Refer: Where a conflict of interest management plan cannot be agreed between the supervisor and the IBP worker, the matter should be referred to I&PS Branch for review.

Other reporting obligations

In addition to the Conflict of Interest Declaration, SES officers must comply with requirements of the APS Commission for the annual disclosure of private interests.

The requirement for employees to complete a Conflict of Interest Declaration form annually does not exempt participants in a tender process (such as members of a Tender Evaluation Committee) or a staff selection panel from completing any declarations or complying with other requirements about conflicts associated with those processes as part of any specific probity arrangements.

Contractors and consultants must comply with requirements about conflicts of interest set out in their contracts.

4. Privacy and record keeping

Information provided in relation to a Conflict of Interest Declaration form must be maintained in accordance with the *Privacy Act 1988* and the *Archives Act 1983*.

Information provided in relation to a Conflict of Interest Declaration form will be used for the purpose of determining whether a conflict of interest arises. IBP workers are permitted to access and correct personal information that is held by the Department in connection with a Conflict of Interest Declaration form pursuant to the Privacy Policy of the Department, as applicable.

5. What happens if this Instruction and Guideline is not followed?

Departmental employees are reminded that Instructions and Guidelines have the effect of being directions of the Secretary under the *Public Service Act 1999*. Departmental employees must therefore comply with the requirements of this Instruction and Guideline. A failure, neglect or refusal to adhere to the Instruction and Guideline may give rise to a breach of the Code of Conduct in the *Public Service Act 1999*, the duties of officials under the *Public Governance, Performance and Accountability Act 2013*, an offence under the *Criminal Code Act 1995*, and may result in disciplinary or other appropriate action being taken commensurate with the circumstances and the seriousness of the occurrence.

For contractors and consultants, this Instruction and Guideline must be complied with. Failure to comply may constitute a breach of the contract and/or a direction under the *Australian Border Force Act 2015*.

6. Related policies

- Declarable Circumstances Instruction and Guideline
- Outside Employment and Voluntary Activities Instruction and Guideline

Legislation

- *Public Service Act 1999*
- *Public Service Regulations 1999*
- *Public Governance, Performance and Accountability Act 2013, Public Governance, Performance and Accountability Rule 2014, Commonwealth Procurement Rules and Commonwealth Grant Rules and Guidelines*
- *Archives Act 1983*
- *Privacy Act 1988*
- Professional Standards Secretary Direction

7. Consultation

Internal consultation

The following internal stakeholders have been consulted in the development of this Instruction and Guideline:

- Integrity, Security and Assurance Division
- Legal Division
- Communication and Media Branch
- Procurement and Contracts Branch
- all staff through Department-wide consultation.

External consultation

The following external stakeholders have been consulted in the development of this Instruction and Guideline:

- staff representatives through the National Staff Consultative Forum
- Community and Public Sector Union.

8. Endorsement

| | | | |
|-------------|---|--------|--|
| Endorsed on | 29 June 2015 | Signed | |
| By | Kaylene Zakharoff Assistant Secretary Integrity and Professional Standards Branch | | |

9. Approval

| | | | |
|------------------|---|-------------|-------------|
| Approved on | 29 June 2015 | Signed | |
| By | Jan Dorrington First Assistant Secretary Integrity, Security and Assurance Division | | |
| Period of Effect | 3 years from 1 July 2015 | Review Date | 1 July 2016 |

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(JEMP/011) – Brisbane and Adelaide cases - direct contact from the Ministers office and the MI Team

Asked:

Senator KITCHING: Was this an instance—and I would hope that maybe, during the break, either Ms Golightly or Ms Dunn has been able to locate the files of the matters this committee is inquiring into—where the DLO was tasked, or did anyone contact the ministerial intervention section directly from the minister's office?

Mr Pezzullo: I think we know, with certainty, that the DLO initiated the tasking.

Senator KITCHING: It was definitely the DLO?

Mr Pezzullo: Yes.

Senator KITCHING: And you didn't have any contact with the minister's office about this matter—about the Brisbane case?

Ms Dunn: Not that I'm aware of.

Senator KITCHING: I'm asking you directly. So you would have direct knowledge—

Ms Dunn: Personally? No, I was not aware.

Senator KITCHING: Was anyone in your team?

Ms Dunn: Not that I'm aware of.

Senator KITCHING: Would you be able to find out?

Ms Dunn: Certainly.

Senator KITCHING: Thank you.

Senator WATT: While we're on that point, what about in relation to the Adelaide case?

Ms Dunn: Was there any direct contact with me about the Adelaide case?

Senator WATT: You or your team—from anyone in the minister's office, other than the DLO.

Ms Dunn: From the departmental liaison officer.

Senator WATT: Okay. That's the only person?

Ms Dunn: Yes.

Senator WATT: Moving on to the second case, the French—

Mr Pezzullo: We will check the records in both cases to make absolutely sure that that's the case. But, I have to say, it's completely typical and not in any way atypical to have the DLO managing traffic from what is often, shorthandedly, either called 'the Office' or the MO, which is the other term used. It's always taken to be a direction from the minister, because, whether it's the most junior adviser, the most senior adviser, or the chief of staff, in the end, under the relevant doctrines that apply, we're all working for 'the minister' in that circumstance.

Answer:

In relation to the two cases, there was no other contact from the Minister's Office with Community Protection Division, other than through the Departmental Liaison Officer.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(JEMP/012) – Adelaide case - direct contact from the Ministers office and the ABF

Asked:

Did anyone from the minister's office, other than the DLO, make contact with ABF officers at the airport in this case?

Mr Pezzullo: This is the same question that we took on notice with the Brisbane case. We'll check. My understanding from reading of the documents is that it all came through the DLO but, again, we'll check.

Senator WATT: Is that right, Mr Murray?

Mr Murray: That's my understanding.

Mr Pezzullo: We'll check to be absolutely clear.

Answer:

Regarding the Adelaide case, the Australian Border Force has no record of any contact from the Minister's Office other than through the Departmental Liaison Officer.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/013) – Additional costs incurred

Asked:

Senator WATT: I noticed in this case that the minister was advised that there may be some additional costs to the department if the intervention occurred and this person was allowed to stay in the country. From reading between the lines of the submission, it seems that maybe an airfare was booked. Because, ordinarily, what would happen is that this person comes in—

Mr Pezzullo: I'm a public official: I don't read between the lines; I just read the lines.

Senator WATT: Ordinarily, had the intervention not occurred, she would have been deported.

Mr Murray: Senator, I can help you there. In that case, the visa had been cancelled and was then subject of removal. As part of the migration provisions, we'd already served notice on the airline. They have 72 hours to effect the removal.

Mr Pezzullo: That's reflected at paragraph 16 of the released submission.

Senator WATT: I'm interested to know: did the department, ABF or any entity of the government incur any costs as a result of the fact that she didn't end up being deported?

Mr Murray: I don't believe so, no.

Mr Outram: We'll take that on notice.

Senator WATT: It was flagged that that might occur.

Mr Outram: We'll take that on notice. As I said, there are 4,500 cases where we cancel visas at the border and it's—I want to impress upon you the degree of churn here. This is a high-volume, high-paced operation at the border and, with those sorts of turnarounds, we try to do them on the day sometimes even where people don't even go into detention centres. So I will come back to you as to whether there was an actual cost incurred with regard to the airfares.

Answer:

No additional cost on these matters were incurred.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/014) – Secretary's direction

Asked:

Senator KITCHING: Could I just do a bit of omnibus work before I go to a particular matter. Are the administrative guidelines public?

Mr Pezzullo: They are published in summary form, if I recall rightly, and they're made available to our officers through an internal database. But, Ms Golightly?

Ms Golightly: That's correct. There is a summary on our website, and they're also available to people like migration agents.

CHAIR: If you could make those available to the committee.

Mr Pezzullo: We will table those.

Senator KITCHING: The general integrity document—is that a public document? I think you called it a statement of general integrity maybe—something like that.

Mr Pezzullo: There is a secretary's direction—No. 1, I think it is, from memory—related to declarable circumstances. I think I might have made that available in different proceedings, but we'll take that on notice—subject to releasability, of course, we'll release it.

Answer:

The Ministerial Intervention guidelines that were in existence in 2015 are attached. These guidelines have been updated twice since, in 2016, and the updated versions are attached.

On 29 June 2015 a Secretary's Direction for "Professional Standards" was signed. Attached is a copy of this Direction. Conflict of interest is addressed at paragraph seven in Attachment 1 to the Direction.

See also IEMP/008, 'Conflict of interest'.

Current Guidelines on Minister's detention intervention power – section 195A of the Migration Act 1958

1. Purpose of these Guidelines

1.1 The purpose of these Guidelines is to:

- explain the circumstances in which I may wish to consider exercising my public interest power under s195A of the Migration Act 1958 (the Act) to grant a visa to a person in immigration detention under s189 of the Act
- inform officers of the Department of Immigration and Citizenship (DIAC) when to refer a case to me so that I can decide whether to consider exercising this power in the public interest.

2. The power available under legislation

2.1 Power to grant a person in immigration detention a visa

2.1.1 If I consider it is in the public interest to do so under s195A of the Act, I have the power to grant a visa of a particular class to a person who is in immigration detention under s189 of the Act, whether or not the person has applied for the visa.

2.1.2 I may grant a substantive visa or a bridging visa, including a Removal Pending Bridging Visa if the person is in immigration detention, has no right to remain in Australia but removal is not reasonably practicable in the foreseeable future. In exercising this power, I am not bound by Subdivision AA, AC or AF of Division 3 of the Act or by the regulations (s195A(3)).

2.2 Detention intervention power

2.2.1 In these Guidelines my power to grant a person in immigration detention a visa under s195A of the Act will be referred to as my detention intervention power.

2.2.2 These Guidelines do not address my power under s197AB of the Act, to make a residence determination.

2.3 Power is non-compellable

2.3.1 This power is non-compellable: that is, the power is available to me but I am not required to exercise this power or to consider whether to exercise the power (s195A(4)).

2.4 Interaction between my detention intervention power and other powers

2.4.1 If a visa, including a bridging visa, can be granted to a person under general powers, this is to be preferred over referral to me for consideration of my detention intervention power.

2.4.2 My detention intervention power under s195A is distinct from my ministerial intervention powers under sections 351, 391, 417, 454, and 501J of the Act. The referral of a case under my detention intervention power under s195A should not prejudice referral of a case under my other ministerial intervention powers.

2.4.3 A person with a residence determination under s197AB can still be referred for my consideration under my detention intervention power under s195A on a case-by-case basis.

2.5 Referral to the Parliamentary Secretary

2.5.1 In some instances, cases that meet the criteria in these guidelines for referral to the Minister may be referred to the Parliamentary Secretary for consideration. As a portfolio minister, the Parliamentary Secretary may exercise the Minister's public interest powers under the Act.

3. Flexibility in dealing with persons in detention

3.1 Public interest

3.1.1 The public interest is served through ensuring that no person is held in immigration detention for longer than is necessary. It is intended that my detention intervention power will be used when it is not in the public interest to hold a person in immigration detention. Using my intervention power, I may decide to grant a visa to a person in immigration detention if no other intervention power is available.

3.1.2 Access to these arrangements will depend on the particular circumstances of each case, including but not limited to concerns about continued detention but also taking into consideration removal prospects, the level of cooperation with immigration and removal processes, any character concerns, the likelihood of compliance with visa conditions and the length of detention.

3.1.3 Referral of a case to me does not mean that I will necessarily consider the exercise of or use my detention intervention power to grant a visa.

4. Detention intervention power

4.1 Referral of cases

4.1.1 Cases are to be referred to me for consideration of my detention intervention power where a person is in immigration detention under s189 of the Act and meets one or more of the criteria below:

- The person has individual needs that cannot be properly cared for in a secured immigration detention facility, as confirmed by an appropriately qualified professional treating the person or a person otherwise appointed by the Department

- There are strong compassionate circumstances such that a failure to recognise them would result in irreparable harm and continuing hardship to an Australian citizen or an Australian family unit (where at least one member of the family is an Australian citizen or permanent resident)
- The person has no outstanding primary or merits review processes in relation to their claims to remain in Australia but removal is not reasonably practicable for reasons that may include, but is not limited to, cases where:
 - the person's identity or nationality has not been positively established
 - the person's country of origin refuses to recognise the person as a national
 - the person's country of origin refuses to accept their return or to issue a travel document to facilitate their return
 - it is not possible to return the person to their country of origin because of ongoing conflict and/or policy regarding involuntary removals.
 - There are unique and exceptional circumstances which justify the consideration of the use my public interest powers and there is no other intervention power available to grant a visa to the person.
 - The person presents well-founded non-refoulement claims under the Convention relating to the Status of Refugees 1951, as amended by the Protocol relating to the Status of Refugees 1967 (Refugees Convention) or under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR) or the Convention on the Rights of the Child (CROC) as stipulated in paragraph 36(2) of the Act but has had a Protection visa (PV) application refused. The refusal may be affirmed by a tribunal or the person may not have sought merits review. This would include persons who raise character issues which are likely to result in their exclusion or refusal of any further PV application lodged as a result of intervention under section 48B. These would be cases where the person:
 - is excluded from the grant of a PV under Article 1F or 32 or 33(2) of the Refugees Convention, or is ineligible for the grant of a Protection visa under paragraph 36(2C)(a) or 36(2C)(b) of the Act;
 - has had their PV cancelled or refused under section 501; and
 - has had a PV refusal decision affirmed by the RRT after having another substantive visa cancelled under section 501 (section 417).

4.1.2 Ministerial Intervention or judicial review processes do not, in of themselves, warrant referral of a case for my consideration because removal is not reasonably practicable.

5. Relevant information

5.1 Information to be referred to me

5.1.1 When referring cases to me, the Department should bring to my attention any information that they consider may be relevant to my consideration. This may include, but is not limited to:

- the circumstances relating to the initial arrival and detention
- an outline of any visa applications and Ministerial Intervention requests
- the status of the case where a case is the subject of merits review or is in the process of being litigated
- details of known family members, their age, dependency on family members or others in the Australian community
- the likelihood of cooperation with any conditions and requirements of a visa
- the degree to which the person and members of their family have co-operated and are likely to remain cooperative with the Department in relation to processing and/or removal arrangements
- any special requirements or management or health issues (eg, physical or psychological disabilities, medical conditions)
- the prospects of effecting removal of the person from Australia
- where applicable, the care arrangements put in place for those persons who have been placed in alternative detention arrangements
- whether the presence in the Australian community of the person or a member of their family would pose a threat to an individual in Australia, to Australian society or security, or may prejudice Australia's international relations
- whether there are character concerns in relation to the person or a member of their family, particularly in relation to criminal conduct, information regarding any offence or fraud involving the migration legislation is relevant and should be specifically brought to my attention
- the existence of non-refoulement claims and whether these have been assessed by the Department
- any reports provided to the Commonwealth Ombudsman under s486N of the Act and any recommendations provided to me by the Commonwealth Ombudsman under s486O of the Act.

6. Application of these guidelines

6.1 Minister's instruction

6.1.1 The procedures set out below are to be followed in order to ensure the efficient administration of my detention intervention power.

6.2 Action to be taken where persons are in immigration detention

6.2.1 A person's circumstances are to be assessed on an ongoing basis in accordance with case management principles and review practices adopted by the Department. If it is determined as part of this ongoing review of the person's circumstances that the case falls within the ambit of these Guidelines, the case must be brought to my attention in a submission so that I may consider exercising my detention intervention power.

6.3 Requests for the exercise of my detention intervention power

6.3.1 Requests that I consider exercising my detention intervention power may only be made and referred by my Department as set out above.

6.3.2 This means that, as this detention intervention power is non-compellable, I will not consider exercising it when requested directly by people in immigration detention or by other individuals (typically a person's agent or advocates).

6.3.3 Clients can request intervention under any other intervention power.

6.4 Subsequent requests for the exercise of my detention intervention power

6.4.1 If I have previously considered the exercise of my detention intervention power, either under s195A of the Act or another intervention power within the last two months (whether in a schedule or as a submission) in respect of that person, an officer of my Department is to assess the request, and:

- for such cases falling within the ambit of these Guidelines and where new information is available or circumstances have changed, bring the case to my attention in a submission so that I may consider exercising my power
- for such cases falling within the ambit of these Guidelines where no new information is available and the case been brought to my attention in the last two months, I do not wish to reconsider exercising my power
- for such cases remaining outside the ambit of these Guidelines (including cases where the request does not contain additional information or the additional information provided, in combination with the information known previously, does not bring the case within the ambit of these Guidelines), I do not wish to consider exercising my power.

6.5 Method of submission

6.5.1 Cases will normally be referred to me on a two-stage submission basis. The first submission will provide sufficient details of the client's circumstances and options for a visa grant to allow me to consider if I am of a mind to intervene in a case. If I am of a mind to consider intervening, a second submission will be brought before me which may provide information on any character and/or security assessments I have requested and an update of the person's case.

6.5.2 Cases may be referred to me as one-stage submissions on a case by case basis taking into account the personal circumstances of the person and only after appropriate checks have been completed.

6.5.3 The officer preparing a submission under s195A must check whether there is any parallel preparation of a submission in progress using my other intervention powers. In such instances consideration should be given to a joint submission.

7. Outcome of minister's consideration

7.1.1 If I choose to consider a case under my detention intervention power, I may choose to grant or not to grant a visa.

7.1.2 A person whose case is brought to my attention is to be advised of the outcome of my consideration in writing, only if I decide to exercise my detention intervention power.

8. No limitation to minister's power

8.1.1 I am able to consider a case whether or not it has been brought to my attention under these Guidelines. When I consider it appropriate, I will seek further information.

9. Removal policy

9.1.1 S198 of the Act requires the removal of unlawful non-citizens who are applying for a visa as soon as reasonably practicable (whether or not they are in immigration detention).

9.1.2 A request for me to consider the use of my detention intervention power under s195A of the Act is not an application for a visa and, as such, has no effect on the removal provisions.

9.1.3 If a departmental assessment indicates that a submission with a visa which does not provide the client with a substantive visa outcome be prepared, this submission does not have to be considered by me prior to removal of the person.

9.1.4 If a departmental assessment indicates that a submission with a substantive visa option be prepared, the case should be presented to me prior to removal of the person.

Chris Bowen
Minister for Immigration and Citizenship
24 March 2012

Proposed Guidelines on Minister's detention intervention power – section 195A of the Migration Act 1958

1. Purpose of these guidelines

The purpose of these guidelines is to:

- Explain the circumstances in which I may wish to consider exercising my power under s195A of the *Migration Act 1958* (the Act) to grant a visa to a person in immigration detention under s189 of the Act.
- Explain when officers of the Department of Immigration and Border Protection (the Department) should refer a case to me so I can consider exercising my power under s195A of the Act.

In these guidelines, my power to grant a person in immigration detention a visa under s195A of the Act will be referred to as my detention intervention power.

2. My detention intervention power

If I consider it is in the public interest to do so under section 195A of the Act, I have the power to grant a visa of a particular class to a person who is in immigration detention under section 189 of the Act, whether or not the person has applied for the visa.

I may grant a substantive visa or a bridging visa (including a Removal Pending Bridging visa, if the person is in immigration detention, has no right to remain in Australia but removal is not reasonably practicable in the foreseeable future). In exercising my detention intervention power, I am not bound by Subdivision AA, AC or AF of Division 3 of the Act or by the regulations (section 195A(3)).

My detention intervention power is personal and non-compellable. This means that although the power is available to me under the Act, I am under no legal obligation to exercise or consider exercising that power in a particular case.

My detention intervention power is distinct from my Ministerial intervention powers under sections 351, 391, 417, 454 and 501J of the Act. The referral of a case under my detention intervention power should not prejudice referral of a case under any of my other Ministerial intervention powers.

If a visa, including a bridging visa, can be granted to a person through normal visa application processes or the use of my other Ministerial intervention powers, this is to be preferred over referral to me for consideration of my detention intervention power.

Where appropriate, cases that meet the criteria in these guidelines may be referred to the Assistant Minister.

3. Guidelines for referral of cases

Cases may be referred to me for consideration of my detention intervention power where a person is in immigration detention under section 189 of the Act and meets one or more of the criteria below:

- the person has individual needs that cannot be properly cared for in a secured immigration detention facility, as confirmed by an appropriately qualified professional treating the person or a person otherwise appointed by the Department.
- there are strong compassionate circumstances such that a failure to recognise them would result in irreparable harm and continuing hardship to an Australian citizen or an Australian family unit (where at least one member of the family is an Australian citizen or permanent resident), or there is an impact on the best interests of a child in Australia.
- the person has no outstanding primary or merits review processes in relation to their claims to remain in Australia but removal is not reasonably practicable for reasons that may include, but are not limited to, cases where:
 - the person's identity or nationality has not been positively established despite the person's cooperation in trying to establish identity and/or nationality;
 - the person's country of origin refuses to recognise the person as a national;
 - the person's country of origin refuses to accept their return or to issue a travel document to facilitate their return;
 - it is not possible to return the person to their country of origin because of ongoing conflict and/or policy regarding involuntary removals.
- there are other compelling or compassionate circumstances which justify the consideration of the use of my public interest powers and there is no other intervention power available to grant a visa to the person.

When assessing cases that may be referred to me for consideration of my detention intervention power, I expect the Department to balance the above considerations against any adverse information about the person arising, for example, from:

- whether the person poses a risk to another individual or group within Australia, including risks of a health or security nature.
- whether the person has a criminal history, both in Australia or offshore, including criminal charges and convictions.
- the person's behaviour in immigration detention and/or the community.
- where the person is the subject of a criminal or national security related allegation, I expect the Department will undertake appropriate enquiries in relation to that allegation, before referring the case to me for consideration.

4. Cases that should not be brought to my attention

I would generally not expect to have the following types of cases referred to me for my consideration of my detention intervention power:

- people in relation to whom ASIO has issued an assessment that “ASIO assesses [the person] to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*”.
- people whose visa has been refused or cancelled under section 501 of the Act.
- transitory persons, as defined under section 5(1) of the Act, who have been brought to Australia for temporary processes, including but not limited to medical treatment, legal proceedings or transit through Australia to a third country.
- people with no outstanding immigration matters who are not cooperating with efforts to effect their departure from Australia.
- people whom I have previously considered under any of my Ministerial intervention powers, or have previously been found not to meet any of my Ministerial intervention guidelines, and who have had no significant changes to their circumstances.
- any other cohorts of people as directed by me.

5. Information to be presented to me

When referring cases to me, the Department should bring to my attention any information that they consider may be relevant to my consideration. This may include, but is not limited to:

- the person’s immigration history, any ongoing processes and the Department’s efforts to resolve the person’s immigration status.
- details of known family members, their age, dependency on family members or others in the Australian community, in particular, if any children in Australia are involved in or impacted by the case.
- information about a person’s history of compliance, and likelihood of future compliance, with Australian laws including:
 - any offence or fraud against the migration or citizenship legislation;
 - any failure to comply with the conditions of their visa;
 - their history of cooperation and engagement with the Department to resolve their immigration status, particularly in relation to identity and travel documents.
- any significant health issues, including special requirements or management in relation to such health issues.
- whether there are character concerns in relation to the person, particularly concerns related to criminal conduct.
- whether the presence in the Australian community of the person or a member of their family would pose a threat to an individual in Australia, to Australian society or security, or may prejudice Australia’s international relations.
- any reports provided to the Commonwealth Ombudsman under section 486N of the Act and any recommendations provided to me by the Commonwealth Ombudsman under section 486O of the Act.

Requests for the exercise of my detention intervention power

Requests that I consider exercising my detention intervention power may only be made and referred by the Department. Any requests must first be assessed by the Department against these guidelines and should only be referred to me if the case is assessed as having met these guidelines.

This means that, as this power is non-compellable, I will not consider exercising it when requested directly by individuals or their representatives.

If I have previously considered the exercise of my detention intervention power within the last three months in respect of that person, an officer of the Department is to assess the new request, and:

- only refer cases to me to consider that meet these guidelines and where new information is available or circumstances have changed.

6. Outcome of my consideration

If I choose to consider a case under my detention intervention power, I may ask for health, character or other assessments to be carried out, for an Assurance of Support to be arranged, or for further information to be provided before I determine whether I wish to exercise my detention intervention power to grant or not to grant a visa.

A person whose case is brought to my attention is to be advised of the outcome of my consideration in writing only if I decide to exercise my detention intervention power.

7. I am not bound by these guidelines

I am able to consider a case whether or not it has been brought to my attention under these guidelines. When I consider it appropriate, I will seek further information.

8. Removal Policy

Section 198 of the Act imposes an obligation on my department to remove a person who is liable for removal as soon as reasonably practicable, even where the person has requested that I consider exercising my detention intervention power.

A request for me to consider the use of my detention intervention power is not an application for a visa and, as such, has no effect on the department's removal obligations.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

29/01/2016

Guidelines on Minister's detention intervention power – section 195A of the Migration Act 1958

1. Purpose of these guidelines

The purpose of these guidelines is to:

- Explain the circumstances in which I may wish to consider exercising my power under s195A of the *Migration Act 1958* (the Act) to grant a visa to a person in immigration detention under s189 of the Act.
- Explain when officers of the Department of Immigration and Border Protection (the Department) should refer a case to me so I can consider exercising my power under s195A of the Act.

In these guidelines, my power to grant a person in immigration detention a visa under s195A of the Act will be referred to as my detention intervention power.

2. My detention intervention power

If I consider it is in the public interest to do so under section 195A of the Act, I have the power to grant a visa of a particular class to a person who is in immigration detention under section 189 of the Act, whether or not the person has applied for the visa.

I may grant a substantive visa or a bridging visa (including a Removal Pending Bridging visa, if the person is in immigration detention, has no right to remain in Australia but removal is not reasonably practicable in the foreseeable future). In exercising my detention intervention power, I am not bound by Subdivision AA, AC or AF of Division 3 of the Act or by the regulations (section 195A(3)).

My detention intervention power is personal and non-compellable. This means that although the power is available to me under the Act, I am under no legal obligation to exercise or consider exercising that power in a particular case.

My detention intervention power is distinct from my Ministerial intervention powers under sections 351, 391, 417, 454 and 501J of the Act. The referral of a case under my detention intervention power should not prejudice referral of a case under any of my other Ministerial intervention powers.

If a visa, including a bridging visa, can be granted to a person through normal visa application processes or the use of my other Ministerial intervention powers, this is to be preferred over referral to me for consideration of my detention intervention power.

Where appropriate, cases that meet the criteria in these guidelines may be referred to the Assistant Minister.

3. Guidelines for referral of cases

Cases may be referred to me for consideration of my detention intervention power where a person is in immigration detention under section 189 of the Act and meets one or more of the criteria below:

- the person has individual needs that cannot be properly cared for in a secured immigration detention facility, as confirmed by an appropriately qualified professional treating the person or a person otherwise appointed by the Department.
- there are strong compassionate circumstances such that a failure to recognise them would result in irreparable harm and continuing hardship to an Australian citizen or an Australian family unit (where at least one member of the family is an Australian citizen or permanent resident), or there is an impact on the best interests of a child in Australia.
- the person has no outstanding primary or merits review processes in relation to their claims to remain in Australia but removal is not reasonably practicable for reasons that may include, but are not limited to, cases where:
 - the person's identity or nationality has not been positively established despite the person's cooperation in trying to establish identity and/or nationality;
 - the person's country of origin refuses to recognise the person as a national;
 - the person's country of origin refuses to accept their return or to issue a travel document to facilitate their return;
 - it is not possible to return the person to their country of origin because of ongoing conflict and/or policy regarding involuntary removals.
- there are other compelling or compassionate circumstances which justify the consideration of the use of my public interest powers and there is no other intervention power available to grant a visa to the person.

When assessing cases that may be referred to me for consideration of my detention intervention power, I expect the Department to balance the above considerations against any adverse information about the person arising, for example, from:

- whether the person poses a risk to another individual or group within Australia, including risks of a health or security nature.
- whether the person has a criminal history, both in Australia or offshore, including criminal charges and convictions.
- the person's behaviour in immigration detention and/or the community.
- where the person is the subject of a criminal or national security related allegation, I expect the Department will undertake appropriate enquiries in relation to that allegation, before referring the case to me for consideration.

4. Cases that should not be brought to my attention

I would generally not expect to have the following types of cases referred to me for my consideration of my detention intervention power:

- people in relation to whom ASIO has issued an assessment that “ASIO assesses [the person] to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*”.
- people whose visa has been refused or cancelled under section 501 of the Act.
- transitory persons, as defined under section 5(1) of the Act, who have been brought to Australia for temporary processes, including but not limited to medical treatment, legal proceedings or transit through Australia to a third country.
- people with no outstanding immigration matters who are not cooperating with efforts to effect their departure from Australia.
- people whom I have previously considered under any of my Ministerial intervention powers, or have previously been found not to meet any of my Ministerial intervention guidelines, and who have had no significant changes to their circumstances.
- people who wish to change or have changed their Temporary Protection visa application to a Safe Haven Enterprise visa, or vice versa.
- any other cohorts of people as directed by me.

5. Information to be presented to me

When referring cases to me, the Department should bring to my attention any information that they consider may be relevant to my consideration. This may include, but is not limited to:

- the person’s immigration history, any ongoing processes and the Department’s efforts to resolve the person’s immigration status.
- details of known family members, their age, dependency on family members or others in the Australian community, in particular, if any children in Australia are involved in or impacted by the case.
- information about a person’s history of compliance, and likelihood of future compliance, with Australian laws including:
 - any offence or fraud against the migration or citizenship legislation;
 - any failure to comply with the conditions of their visa;
 - their history of cooperation and engagement with the Department to resolve their immigration status, particularly in relation to identity and travel documents.
- any significant health issues, including special requirements or management in relation to such health issues.
- whether there are character concerns in relation to the person, particularly concerns related to criminal conduct.
- whether the presence in the Australian community of the person or a member of their family would pose a threat to an individual in Australia, to Australian society or security, or may prejudice Australia’s international relations.
- whether the person is available for removal from Australia and, if they are not available for removal, why this is the case.

- an assessment of a person's risk to the community.
- any reports provided to the Commonwealth Ombudsman under section 486N of the Act and any recommendations provided to me by the Commonwealth Ombudsman under section 486O of the Act.

Requests for the exercise of my detention intervention power

Requests that I consider exercising my detention intervention power may only be made and referred by the Department. Any requests must first be assessed by the Department against these guidelines and should only be referred to me if the case is assessed as having met these guidelines.

This means that, as this power is non-compellable, I will not consider exercising it when requested directly by individuals or their representatives.

If I have previously considered the exercise of my detention intervention power within the last three months in respect of that person, an officer of the Department is to assess the new request, and:

- only refer cases to me to consider that meet these guidelines and where new information is available or circumstances have changed.

6. Outcome of my consideration

If I choose to consider a case under my detention intervention power, I may ask for health, character or other assessments to be carried out, for an Assurance of Support to be arranged, or for further information to be provided before I determine whether I wish to exercise my detention intervention power to grant or not to grant a visa.

A person whose case is brought to my attention is to be advised of the outcome of my consideration in writing only if I decide to exercise my detention intervention power.

7. I am not bound by these guidelines

I am able to consider a case whether or not it has been brought to my attention under these guidelines. When I consider it appropriate, I will seek further information.

8. Removal Policy

Section 198 of the Act imposes an obligation on my department to remove a person who is liable for removal as soon as reasonably practicable, even where the person has requested that I consider exercising my detention intervention power.

A request for me to consider the use of my detention intervention power is not an application for a visa and, as such, has no effect on the department's removal obligations.



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection
20/11/2016



Australian Government
Department of Immigration
and Border Protection

Professional Standards

SUBSECTION 55(1) OF THE *AUSTRALIAN BORDER FORCE ACT 2015*

I, MICHAEL PEZZULLO, Secretary of the Department of Immigration and Border Protection, under subsection 55(1) of the *Australian Border Force Act 2015* give the following Directions:

1 Purpose of this Direction:

The Department of Immigration and Border Protection (DIBP) operates in a complex and dynamic law and national security enforcement environment. To perform effectively in this environment, it is critical that the Department secures and maintains the confidence of government, industry, the law enforcement community (both domestic and international) and the wider community. Central to this goal are the professionalism and integrity of staff, contractors, consultants and secondees and the ability of the Department, at an organisational level, to prevent and counter internal corruption and misconduct.

This Direction requires Immigration and Border Protection workers (IBP workers) who are not employed under the *Public Service Act 1999*, to conduct themselves in accordance with Professional Standards consistent with those required of Departmental employees and other Australian Public Service (APS) employees under the Australian Public Service Values, Employment Principles and Code of Conduct set out in sections 10, 10A and 13 of the *Public Service Act 1999*. These legally enforceable Professional Standards are consistent with the expectations of the Department, the Government and the wider community.

2 Application and Citation

IBP worker is defined in subsection 4(1) of the *Australian Border Force Act 2015*. This Direction applies to IBP workers not employed under the *Public Service Act 1999* and may be cited as the *Professional Standards Secretary Direction*.

3 Direction

- 3.1. IBP workers not employed under the *Public Service Act 1999* must comply with the Professional Standards requirements set out in Attachment 1.

4 Effect of non-compliance

- 4.1. Failure to comply with this Direction by an IBP worker who is not employed under the *Public Service Act 1999* may result in action being taken in accordance with the terms and conditions under which that worker is providing services or labour to DIBP, or under section 57 *Australian Border Force Act 2015*.

5 Date of effect

- 5.1. This Direction commences on 1 July 2015.



Michael Pezzullo

Secretary

29 June 2015

ATTACHMENT 1

DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION CONTRACTORS, CONSULTANTS AND SECONDEES NOT EMPLOYED UNDER THE *PUBLIC SERVICE ACT 1999*

An IBP worker, who is a contractor, consultant or secondee who is not employed under the *Public Service Act 1999*, in connection with any work conducted for, or services provided to, the Department of Immigration and Border Protection:

- (1) must behave honestly and with integrity
- (2) must act with care and diligence
- (3) must treat everyone with respect and courtesy, and without harassment
- (4) must comply with all applicable Australian laws
- (5) must comply with any lawful and reasonable direction given by someone in the Department of Immigration and Border Protection who has authority to give the direction
- (6) must maintain appropriate confidentiality about dealings that the IBP worker has with any Minister or Minister's member of staff
- (7) must take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest
- (8) must use Commonwealth resources in a proper manner and for a proper purpose
- (9) must not provide false or misleading information in response to a request for information that is made for official purposes
- (10) must not improperly use inside information or their duties, status, power or authority to:
 - (a) gain, or seek to gain, a personal benefit or an advantage for themselves or for any other person, or
 - (b) cause, or seek to cause, detriment to the Department of Immigration and Border Protection, the Commonwealth or any other person
- (11) must at all times behave in a way that upholds the integrity and good reputation of the Department of Immigration and Border Protection and is consistent with the Australian Public Service Values (*committed to service, ethical, respectful, accountable and impartial*) and Employment Principles (*a safe and rewarding workplace that is free from discrimination, patronage and favouritism, where communication, consultation, cooperation and input on matters that affect the workplace are valued*)
- (12) when performing services for the Department of Immigration and Border Protection overseas, must at all times behave in a way that upholds the good reputation of Australia

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(JEMP/015) – Briefings provided to the A/g Minister for Home Affairs or new Prime Minister

Asked:

Senator KITCHING: Were there any written briefs provided?

Mr Pezzullo: Ms Noble can assist me. I think in the time available, and it's now a matter of public record—a day or two later, he and Senator Fifield announced the decision around 5G. It probably was the case that—I'd have to check my records on that.

Senator KITCHING: I think that was a Thursday.

Mr Pezzullo: I think it might have been a Thursday. I think that probably took up most of our time. I mean, he was still the Treasurer. He still had lots of work to do, so I was very selective in my impositions upon him.

Senator KITCHING: If you can't answer now, could you take on notice: did he receive any written briefs?

Mr Pezzullo: Ms Noble might know.

Ms Noble: Well, he did receive a package of written information. I'm pretty confident that none of it covered the matter before this committee today. I can double-check and come back to you.

Mr Pezzullo: We'll come back to you.

Senator KITCHING: Thank you. Has the now Prime Minister asked for any briefings on these matters since then?

Mr Pezzullo: Of whom?

Senator KITCHING: From the department.

Mr Pezzullo: Not as Prime Minister. He would interact with the Department of the Prime Minister and Cabinet.

Senator KITCHING: And you haven't—

Mr Pezzullo: I have no knowledge of what they've briefed him on. I presume Dr Parkinson's giving him a general incoming prime ministerial brief. The Prime Minister's clearly made some comments publicly about this matter, but I presume he has an ability to garner his own information on these matters. In terms of whether the department has provided to the Prime Minister of Australia a brief on these matters, the answer is no.

Senator KITCHING: It's hard, because he did have various roles in quick succession. On any occasion did you brief the member for Cook about either of these cases of ministerial intervention?

Mr Pezzullo: When he was the Treasurer? At what point?

Senator KITCHING: Let's take it from when he was acting minister for immigration and home affairs. When he took on those roles when Mr Dutton resigned.

Mr Pezzullo: I see. I'm very confident, but I will check my records to be absolutely correct to this committee, that between the Tuesday afternoon when he was

assigned our portfolio until he was sworn in as Prime Minister on the evening of the Friday, as I recall it—we'll check our records, but it's my assumption here at the table that, no, we didn't cover these matters. There were many other things in the Home Affairs portfolio that I needed to speak to him about. We will check.

Answer:

The Department did not brief the Member for Cook on the Brisbane or Adelaide cases in his capacity as acting Minister for Home Affairs nor as Prime Minister.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/016) – Conflict of interest - definition of "know"

Asked:

Senator McKIM: When I asked about how the department manages conflicts of interest, you referred to a number of documents, instruments and also to training. It may have been Commissioner Outram who referred to training, but collectively you referred to that. Just to be clear, what I'm specifically interested in is whether—I used the example of someone's mum arriving. That was by means of trying to illustrate my point. I just want to be clear with what I'm asking: does the department provide any specific guidelines with regard to managing conflicts of interest where the departmental officer knows somebody or had known that person in the past—that person being someone who may be about to engage the decision-making processes.

Mr Pezzullo: Yes. That would be captured under the legally binding instruction that pertains to declarable circumstances.

Senator McKIM: Okay. You may want to take this on notice—it would be reasonable if you did—whether those documents define the word 'know'. For example, you and I know each other, Mr Pezzullo. Probably neither of us would describe the other as our best mate, but we know each other."

Mr Pezzullo: I'd like to think we have collegial relations.

Senator McKIM: Do those documents define 'know' as in whether you might have known someone in the past, but haven't had an engagement with them for a while, would that then trigger the guidelines? Are you able to offer any guidance now, or would you like to take that on notice?

Senator O'SULLIVAN: Twenty years, in fact.

Senator McKIM: Twenty years, Senator O'Sullivan?

Senator O'SULLIVAN: Twenty years.

Senator McKIM: Did you know him?

Senator O'SULLIVAN: No, I didn't know him.

Senator McKIM: Okay, just checking.

Mr Pezzullo: It goes to the question that Ms Noble took on notice. Guidelines and instruments tend to have explanatory material either embedded in them or attached to them. We'll have a look at the documents and, as part of the notice process, produce them.

Answer:

See answer to IEMP/009.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/017) – Brisbane - representation to Ministers Office

Senator McKim Asked:

Senator McKim: I appreciate that, but my question is with regard to the specific case and whether, in that case, the DLO had that knowledge.

Senator McKim: I understand that, thank you. So in the Brisbane case, has the department been through all of the DLO's emails to try to ascertain whether the DLO knew who had initially raised this matter with the minister's office?

Answer:

Yes.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(JEMP/018) – June 2015 Ministerial Acting Arrangements -

Asked:

CHAIR: Can I ask a clarifying question as chair: Mr Pezzullo, who was the acting minister once Minister Dutton left the country? I just don't really understand the need for urgency—

Mr Pezzullo: At the time, in 2015—

CHAIR: At the time of these cases.

Mr Pezzullo: I don't know.

CHAIR: Could you take that on notice, please.

Mr Pezzullo: Yes.

CHAIR: Thank you.

Mr Outram: It's also not clear that he was leaving the country. We'd need to verify that, too.

Answer:

The Hon Michael Keene MP acted for Minister Dutton from 8pm on 1 November until 7am on 6 November 2015.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(JEMP/019) – Departmental Media Preparation and Briefing

Asked:

Please detail the dates on which the Department made contact with the Minister's media staff, or other ministerial advisers, about either of the au pair cases.

Please detail if and when the Department provided in-person media briefings with the Minister's media staff, or other ministerial advisers. If so, please detail if these requests came at the request of the Minister's office or if they were organised proactively by the Department.

Please detail if and when the Department provide a verbal media briefings with the Minister's media staff, or other ministerial advisers.
If so, please detail if these requests came at the request of the Minister's office or if they were organised proactively by the Department.

Please detail if a media briefing document was produced by the Department.
If so, please provide a copy.

Answer:

The Department made contact with the Minister's Office in order to refer media enquiries regarding the two au pair matters on four occasions - 27 August 2018, 29 August 2018, 30 August 2018 and 9 September 2018.

The Department has not provided formal verbal or in-person media briefings to the Minister's Office. The department does not keep records of issues that may be covered in incidental conversations.

The Department provided talking points on Ministerial Intervention via email to the Minister's Office on 27 March 2018 – a copy is at Attachment A.

Other engagement with the Ministers Office in referenced in BE18/100 (taken at the Budget Estimates Hearing held 21-24 May 2018).



Australian Government

Department of Home Affairs

TALKING POINTS

| | | | |
|-----------------------|----------------------------------|------------------|--|
| Subject | Au pair Ministerial Intervention | | |
| Date | 27 March 2018 | | |
| Type | Agency | | |
| Media Officer: | | Media Ph: | |

ISSUE

These talking points have been prepared due to media coverage on 26 March 2018 on the Ministerial Intervention case of an au pair.

TALKING POINTS UNCLASSIFIED

- The Minister for Home Affairs has made public statements regarding this matter.
- The Minister considered the two cases in question and decided to intervene to grant visas.
- Decisions to intervene are made on a case by case basis, based on the public interest.
- Due to privacy, the Department does not comment on individual cases.
- Ministerial Intervention is not an extension of the visa process. A person is able to request intervention, however the Minister cannot be compelled to exercise his powers and he is not required to explain his decisions on any case. What is or is not in the public interest is entirely a matter for the Minister considering each case on its own merits.

BACKGROUND (*not* for public release)

Media reporting

Lisa Martin, Australian Associated Press (AAP), 'Peter Dutton intervenes to grant foreign au pair a visa using his ministerial powers,' 26 March 2018, [VIEW ONLINE](#).

Minister for Home Affairs statement, 'Statement on AAP article,' 26 March 2018

I refer to a report published in various media outlets today, authored by Australian Associated Press.

Through her questions to my office and her published article Ms Martin seeks to suggest that decisions I have made as Minister have been to my personal or my family's benefit (in particular in relation to employment of an au pair).

I categorically reject those inferences.

FOR OFFICIAL USE ONLY



Australian Government

Department of Home Affairs

Ms Martin was provided with direct responses to that effect in September 2016, but she continues to publish material which suggests otherwise or contains inferences of impropriety. For the wider record, I do not personally know the individuals concerned nor does my wife. They have never been associated with us in any way. We have never employed an au pair.

In my capacity as a Minister I have never acted outside the Ministerial Code of Conduct.

In my capacity as Minister I have intervened on hundreds of cases to either grant or cancel visas. I take this responsibility extremely seriously. I am particularly proud of my record of cancelling the visas of criminal motorcycle gang members, serious criminals and child sex offenders.

Should Australian Associated Press or Ms Martin wish to allege I have used my ministerial office for personal gain then they should do so and face the consequences rather than seeking to peddle inferences which are untrue.

-ENDS-

CLEARANCE:

| Drafted by | Title | Time/Date drafted |
|-------------------|---|--------------------------|
| | Director, Complex Case Resolution Section | 27 March 2018 |

| Cleared by | Title | Time/Date sent | Time/Date cleared |
|-------------------|---|-----------------------|--------------------------|
| | A/g Assistant Secretary, Status Resolution Branch | 27 March 2018 | 27 March 2018 |
| | A/g Director Media Operations | 27 March 2018 | 27 March 2018 |

| MO noted | Sent to MO | Noted by MO |
|-----------------|-------------------|--------------------|
| | | |

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(JEMP/021) – Briefing to PM Morrison -

Asked:

1. Has the Department briefed the Member for Cook on either of the cases of ministerial intervention either during his tenure as the Acting Minister of Home Affairs or since becoming the Prime Minister? If so, on which date(s)? Was this meeting at the request of the Member for Cook or was the briefing suggested by the Department?
2. Would it be common practice for the Department to brief an Acting Minister or a Prime Minister on a case such as this?
3. Has Mr Morrison – in his role as the Acting Minister for Home Affairs or in his role as Prime Minister – provided direction to the Department in relation to these cases of ministerial intervention?
4. Has the now-Prime Minister asked for further briefings on the particular cases of ministerial interventions?
5. Has the Department of Prime Minister and Cabinet requested details of either of the cases of ministerial intervention from the Department of Home Affairs?

Answer:

1. The Department did not brief the Member for Cook in his capacity as acting Minister for Home Affairs nor as Prime Minister on the Brisbane or Adelaide cases.
2. No.
3. No.
4. No.
5. Yes, the Department of Prime Minister and Cabinet on 4 September 2018 requested talking points and background information on the cases of ministerial intervention and the number of times the Minister used his ministerial powers to grant visitor (subclass 600) visas.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/022) – DLO emails

Asked:

Please provide all information and departmental records – including emails – from the Department Liaison Officer in relation to the Brisbane case as stored under the Archives act

Please provide all information and departmental records – including emails – from the Department Liaison Officer in relation to the Adelaide case as stored under the Archives act

Answer:

The Department is working to facilitate this request, giving due regard to privacy of individuals referenced in the email.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/023) – Ministerial Intervention cases - employees of MPs or Senators

Asked:

Senator WATT: Sure. I'd also be interested to know whether any of these 14 involved people who were friends, relatives, employees or prospective employees of members of parliament or senators.

Mr Pezzullo: I'm not prepared to take that on notice.

Senator WATT: Why not?

Mr Pezzullo: Well, there's no way that I could establish that without engaging in highly intrusive checking.

Senator WATT: Can I make a suggestion about how you might find that out? And the reason I'm asking is that there has been some speculation on social media that there has been another au pair case involving an MP. That may or may not be true, and we'd be interested to find out whether that is true.

Mr Pezzullo: I'm just not clear how I'd have any way of knowing.

Senator WATT: I would have thought that if you go back and have a look at your own department's briefs that went to the minister that outlined the circumstances of these cases then, just as in these cases there was a bit of factual evidence about who these people were, who they were going to work for and that kind of thing, those briefs might indicate whether the people involved are connected to members of parliament. The answer might be no, but I think we'd like to know.

Mr Pezzullo: Well, I'll take it on notice to the extent that our files might have any kind of indication of that nature. But I just want to stress again that the approach that's made to the minister is a matter for the citizen or the person—they could be a permanent resident—making the application; it's for the minister to consider whether it's in the public interest that he or she then acts on that request. We then get asked to provide a submission. It's not because we're intimate with or knowledgeable about who is triggering the intervention or who is concerned about the removal of the said person or who is making representations on their behalf. If we started to manage that we'd be, in a sense, almost managing the relationship between members of parliament and ministers.

Senator WATT: Sure. Could you just find out? Go back and have a look at the departmental briefs and see whether—

Mr Pezzullo: Well, as I said, I'm not prepared to take on notice the question of whether there are connections to members of parliament. If, in reviewing the cases, something of that character comes to my attention, I'll give consideration to how I best acquit the request that you've made.

Answer:

See the evidence provided by the Secretary at the hearing on 05 September 2018.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 September 2018

HOME AFFAIRS PORTFOLIO

(IEMP/024) – Significant Investor Visa and the Premium Investor Visa programs

Asked:

To the Department of Home Affairs:

1. Was the Department ever aware that Mr Russell Keag was the applicant for ministerial intervention on behalf of Ms Michela Marchisio?
2. If so, when did the Department become aware?
3. Was this information ever communicated to the Minister or his office by the Department?

Answer:

1. Yes
2. On 17 June 2015
3. No