

Chapter 2

Key issues

2.1 The intention of this inquiry is not to find fault with the actions or intended actions of the two individuals in the Brisbane case and Adelaide case. However, to properly understand the actions and decisions of the Hon Peter Dutton MP, Minister for Home Affairs, it is important that the committee set out the sequence of events. This chapter will also outline the key issues and conclude by providing the committee's view and recommendations.

Number of Ministerial interventions

2.2 The department noted that during the period in which Minister Dutton was the Minister for Immigration and Border Protection—from 23 December 2014 to 31 August 2018—he intervened under section 195A of the Act and granted 4129 visas.¹ At the hearing, the department noted that of the 4129 visas granted, only 25 tourist visas were granted by the minister using his intervention powers under section 195A.²

2.3 In answers to questions on notice the department clarified that Minister Dutton had in fact intervened under section 195A in 18 instances, to grant 24 tourist visas.³ The department acknowledged that one of the 25 tourist visas was in fact granted by the Assistant Minister for Multicultural Affairs, which accounted for the difference.⁴

2.4 Following the receipt of the department's answers to the questions on notice, the Chair sought clarity on the figures provided by the department due to an apparent significant discrepancy between the department's responses and the information held by the Parliamentary Table Office. In response, the department clarified that between 23 December 2014 and 31 August 2018, Minister Dutton 'intervened under section 195A to grant a Visitor visa (subclass 600) in 21 cases involving 31 people, not 18 cases involving 24 people as previously advised.⁵ In subsequent correspondence from the department, it confirmed that it was able to locate a further tourist visa that was granted by Minister Dutton using his intervention powers under section 195A of the

1 Mr Michael Pezzullo, Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 2.

2 Mr Michael Pezzullo, Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 5.

3 Mr Michael Pezzullo, Secretary, Department of Home Affairs, answers to questions on notice, 5 September 2018, (received 11 September 2018), p. 12.

4 Mr Michael Pezzullo, Secretary, Department of Home Affairs, answers to questions on notice, 5 September 2018, (received 11 September 2018), p. 3

5 Mr Michael Pezzullo, Secretary, Department of Home Affairs, Correspondence from Mr Pezzullo, (received 13 September 2018), p. 1.

Act.⁶ According to this most recent correspondence from the department, between 23 December 2014 and 31 August 2018, Minister Dutton intervened under section 195A to grant a Visitor visa (subclass 600) on 22 occasions involving 32 people.

2.5 The committee notes its concern with the information provided by the department which has been corrected on multiple occasions. The department has not provided a break-down of the 22 intervention cases, but did provide further information on the 18 intervention cases involving 24 visitor visas being granted.

- a. Three involved persons who had their visa cancelled upon arrival at the airport:
 - i. These included 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).⁷

2.6 Therefore, according to departmental records, the only two cases where the minister intervened in relation to matters involving individuals who were suspected of planning to work as au pairs in Australia, and where a subclass 600 visa was issued, were the Brisbane and Adelaide cases.

2.7 The department noted that in respect of the 18 interventions involving 24 visitor visas:

- 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.⁸

2.8 The committee notes that, based on the above information, twice as many ministerial intervention cases were initiated at the behest of the Minister or his office, than by the department. Of the 18 intervention cases, the department advised that the

6 Mr Michael Pezzullo, Secretary, Department of Home Affairs, Correspondence from Mr Pezzullo, (received 14 September 2018), p. 1.

7 Mr Michael Pezzullo, Secretary, Department of Home Affairs, answers to questions on notice, 5 September 2018, (received 11 September 2018), pp. 5–6.

8 Mr Michael Pezzullo, Secretary, Department of Home Affairs, answers to questions on notice, 5 September 2018, (received 11 September 2018), p. 12

shortest turnaround time—from the time the department provided a submission to the minister's office, to the time of the visa grant—was 2 hours and 40 minutes.⁹ The longest turnaround time was five months.¹⁰ Additionally, the information provided by the department shows that Minister Dutton first used his ministerial intervention powers under section 195A of the Act to grant a visitor visa (subclass 600) in relation to the Brisbane case, on 17 June 2015.¹¹

2.9 The committee reiterates that the break-down of the above figures relates to information provided by the department concerning 18 intervention cases involving 24 visitor visas being granted and the department has not provided a break-down of the 22 intervention cases relating to 32 visitor visas being granted.

Process for requesting ministerial intervention

2.10 At the hearing the department explained that a 'visa may be considered for cancellation at the border where information before a decision-maker indicates that grounds may exist for considering cancellation.'¹² The department noted that a person who has had their visa cancelled at the border, and who is in immigration detention, can request that the Minister intervene.¹³ The department went on to explain its administrative process for managing and referring cases for potential ministerial intervention:

Cases may be referred to the minister following an assessment by the department that the case meets the aforementioned guidelines. Anyone can contact the minister's office directly, and the minister may request that the case be referred to them for consideration, irrespective of whether an assessment has been made against the aforementioned guidelines.

The department will then support the minister's consideration for requests for intervention by providing intervention submissions. These provide the minister with information on an applicant's biodata, immigration history and any relevant health, identity, character and associated removal issues. Intervention submissions to the minister also set out relevant circumstances and information to support his or her consideration. The minister may review a range of factors and evidence in deciding whether to intervene.

9 Mr Michael Pezzullo, Secretary, Department of Home Affairs, answers to questions on notice, 5 September 2018, (received 11 September 2018), p. 7.

10 Mr Michael Pezzullo, Secretary, Department of Home Affairs, answers to questions on notice, 5 September 2018, (received 11 September 2018), p. 7.

11 Mr Michael Pezzullo, Secretary, Department of Home Affairs, answers to questions on notice, 5 September 2018, (received 11 September 2018), p. 3.

12 Mr Michael Pezzullo, Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 3.

13 Mr Michael Pezzullo, Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 3.

This decision to then intervene and grant a visa is entirely at the minister's discretion.¹⁴

2.11 The committee notes that the Guidelines state that requests for ministerial intervention:

..may only be made and referred by the Department. Any requests must be first assessed by the Department against these guidelines and should only be referred to [the Minister] if the case is assessed as having met these guidelines. That means that, as this power is non-compellable, *[the Minister] will not consider exercising it when requested directly by individuals or their representatives.*¹⁵ [Emphasis added]

2.12 However, the committee acknowledges that the Minister is not bound by the Guidelines.

The Brisbane case

2.13 In the Brisbane case, the submission prepared by the department noted that '[y]our office has requested that [redacted] case be referred to you for consideration under section 195A of the Act.' Minister Dutton signed the decision to intervene in the Brisbane case on 17 June 2015. The Minister's Statement to Parliament confirmed that Minister Dutton decided to exercise his powers under section 195A of the Act, stating that 'as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for a period of three months.'¹⁶

The Adelaide case

2.14 The submission prepared by the department in the Adelaide case also noted that the submission was referred for Minister Dutton, as requested by his office.¹⁷ The departmental submission also stated:

...there are clear indications that [redacted] is intending to work in Australia and thus, the grant of a Visitor visa is of *high risk*. [Emphasis added.]

... The [Australian Border Force] also notes that [redacted] has been counselled previously with respect to work restrictions, when suspicions with respect to her intentions were aroused on her previous arrival. On

14 Mr Michael Pezzullo, Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 3.

15 Department of Home Affairs, *Procedures Advice Manual 3: Act - Compliance and Case Resolution - Case resolution - Minister's powers - Minister's detention intervention power*, accessed via LEGENDcom (accessed on 11 September 2018).

16 Legal and Constitutional Affairs Legislation Committee, *Budget Estimates 2018-19*, Senator Murray Watt, Two submissions for decision released under FOI, (tabled 3 August 2018).

17 Legal and Constitutional Affairs Legislation Committee, *Budget Estimates 2018-19*, Senator Murray Watt, Two submissions for decision released under FOI, (tabled 3 August 2018).

31OCT2015 she also advised [Australian Border Force] officers of her intention to work during her intended stay in Australia on this occasion.¹⁸

2.15 The tabled document shows that the decision instrument was signed by Minister Dutton on 1 November 2015 and states that the Minister has determined that it is 'in the public interest' to grant this person a visitor visa for three months.¹⁹ The statement to Parliament confirms that Minister Dutton decided to exercise his powers under section 195A of the Act and provides the reason—'as a discretionary and humanitarian act to an individual with ongoing needs, it is in the interests of Australia as a humane and generous society to grant this person a Visitor visa (subclass 600) for a period of three months.'²⁰

Evidence from hearing

2.16 While it is open to people to request that the Minister use his ministerial intervention powers, the departmental submissions clearly state that they were produced at the request of Minister Dutton's office. At the hearing, the department conceded that 'implicit in that tasking is the idea that the minister is minded to intervene.'²¹

2.17 The department confirmed that in both cases, and to the best of their knowledge, the women concerned did not breach their visa conditions following ministerial intervention, and left Australia within the three month time period.²² However, the department also noted that where a visa has been granted for a short period of time, such as these cases, the department would not normally undertake compliance activity.²³ The department confirmed that compliance activity was not undertaken in either case, and that the department did not receive any reports of the two people breaching their visa conditions.²⁴ It should also be noted that the ABF's original decision to cancel the visas of the two women on arrival was based on the investigation and assessment that the two were not genuine in their claims for visitor visas.

18 Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2018-19, Senator Murray Watt, Two submissions for decision released under FOI, (tabled 3 August 2018).

19 Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2018-19, Senator Murray Watt, Two submissions for decision released under FOI, (tabled 3 August 2018).

20 Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2018-19, Senator Murray Watt, Two submissions for decision released under FOI, (tabled 3 August 2018).

21 Mr Michael Pezzullo, Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 41.

22 Ms Malisa Golightly, Deputy Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 8.

23 Ms Malisa Golightly, Deputy Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 8.

24 Ms Malisa Golightly, Deputy Secretary, Department of Home Affairs, *Proof Committee Hansard*, 5 September 2018, p. 8.

2.18 The Committee has seen this evidence but has not publicly disclosed it as to not reveal the methods of investigation undertaken by the ABF.

Relationship between Minister Dutton and individuals seeking intervention

2.19 At the centre of both cases is the question of Minister Dutton's relationship to the individuals concerned and their potential employers. Minister Dutton has himself moved to reassure the Parliament that he has no personal relationship with the individuals who were granted visitor visas. However, the committee notes that in both the Brisbane and Adelaide cases, there was a connection between Minister Dutton's office and the alleged intended employers of the au pairs. This points to a purposeful misleading of parliament by Minister Dutton, which is a serious matter.

Brisbane case

2.20 On 27 March 2018, Mr Adam Bandt MP asked Minister Dutton whether he could 'categorically rule out any personal connection or any other relationship between you and the intended employer of either of the au pairs?'²⁵ In response, Minister Dutton did categorically rule out any personal relation or other relationship, stating:

The answer is yes. I haven't received any personal benefit. I don't know these people. They haven't worked for me. They haven't worked for my wife. I repeated all of that yesterday, and I repeat it again today.²⁶

2.21 On 30 August 2018, it was reported that Australian Border Force officials formed the view that the woman in the Brisbane case planned to work as a babysitter for the family of a Queensland police officer.²⁷ Reports indicated that the Queensland police officer worked in the Queensland Police Service at the same time as Minister Dutton— including being photographed together during their time of service.²⁸

2.22 Despite categorically ruling out any personal connection or any other relationship between himself and the intended employer of either of the au pairs, on 11 September 2018, Minister Dutton confirmed that he worked with 'that individual' in 1998–99, but that he had not spoken to him in 20 years.

I tabled that email yesterday because it indicated that, as I've said all along, there is not one statement that I've made that the Labor Party can point to

25 Mr Adam Bandt MP, *House of Representative Hansard*, 27 March 2018, p. 2878.

26 The Hon. Peter Dutton MP, Minister for Home Affairs, *House of Representatives Hansard*, 27 March 2018, p. 2878.

27 Ms Lisa Martin, 'Revealed: Peter Dutton intervened in Italian au pair visa case for former police colleague', *The Guardian*, 30 August 2018, <https://www.theguardian.com/australia-news/2018/aug/30/dutton-intervened-au-pair-visa-case-former-police-colleague> (accessed 11 September 2018).

28 Ms Lisa Martin, 'Revealed: Peter Dutton intervened in Italian au pair visa case for former police colleague', *The Guardian*, 30 August 2018, <https://www.theguardian.com/australia-news/2018/aug/30/dutton-intervened-au-pair-visa-case-former-police-colleague> (accessed 11 September 2018).

that is factually incorrect. That's the reality. I worked with that individual in 1998-99. I haven't spoken to him in 20 years. There were 5,500 police in the Queensland Police Force when I left in July of '99. He doesn't have my personal mobile number. He doesn't have my personal email address. He sent an email to my generic, publicly available email account. My staffer came to me and said, 'I have this email.' My response was: 'Who? Who is that?' That was my response to it.²⁹

2.23 The document tabled in the House of Representatives on 10 September 2018 confirmed that an email was sent to Minister Dutton on Wednesday, 17 June 2015 at 4.02 pm by the police officer in question. The email stated:

Peter

Long-time between calls.

I need advice on a matter that has occurred today. An Italian student...is being held after her visa has been cancelled. She was due to stay with my family. There has been a mixup in the visa details. She is currently being held in the detention centre.

Give me a call please if possible for advice re this matter.

2.24 The Minister's version of events is in contrast with the Prime Minister's understanding of the events. On 2 September 2018, the Prime Minister stated during a news interview the request came through 'the switchboard' and would have been in a name other than that of the Queensland police officer Minister Dutton had previously worked with. The Prime Minister stated:

How many people here worked with people twenty years ago? And also on top of that if someone makes an application not even in the name of the person you worked with twenty years ago and actually does it through basically the switchboard, I mean, that's what doesn't pass the pub test.³⁰

2.25 Given this contradiction, it is not clear to the Committee whether the Prime Minister was not across the facts, deliberately misrepresented the facts, or was provided with a false account from Minister Dutton of the facts. Regardless, the impression is left that the Government has deliberately tried to obfuscate the circumstances around the intervention decision to avoid proper scrutiny and potential criticism.

2.26 As stated above, Minister Dutton decided to intervene in this case on the same day—17 June 2015—which was a Parliamentary sitting day. While the exact time Minister Dutton decided to intervene in this case is not clear, the intervention decision would have had to be made within eight hours for the decision to be made on the same day.

29 The Hon. Peter Dutton MP, Minister for Home Affairs, *Proof House of Representatives Hansard*, 11 September 2018, p. 27.

30 The Hon. Scott Morrison MP, Prime Minister, Transcript of doorstep interview: Sydney, 2 September 2018.

2.27 The committee notes that it received information from the former Commissioner of the Australian Border Force, Mr Roman Quaedvlieg, concerning a phone call from Minister Dutton's former chief of staff, Mr Craig Maclachlan, requesting the Minister's intervention for 'the boss's mate in Brisbane'.³¹ The veracity of Mr Quaedvlieg's claims was refuted by Minister Dutton who noted that Mr Craig Maclachlan did not work for him until 7 October 2015, some months after the Brisbane case.³²

2.28 The committee notes that on 7 September 2018 it wrote to the department and Mr Quaedvlieg seeking their comments. In response, Mr Quaedvlieg advised the committee that he may have been 'honestly mistaken in anchoring that conversation to a date in June 2015'.³³ But Mr Quaedvlieg maintained that he had a conversation with Mr Craig Maclachlan about the detention of an au pair in Brisbane, occurring between October 2015 and December 2016.³⁴ In a letter dated 13 September 2018, the department confirmed that they were not able to find 'any evidence of another case between October 2015 and the end of 2016 involving a young female from a Western or Southern European country who had been detained at Brisbane airport due to evidence of an intention to work as an 'au pair'.³⁵

2.29 In lieu of further evidence, the Committee is unable to assure itself as to whether or not an additional intervention occurred in line with the clarifying evidence from Mr Quaedvlieg. This request for ministerial intervention may not have resulted in an intervention being finalised or could have resulted in a visa of a different subclass being granted.

2.30 The inconsistencies presented in the Department's evidence, multiple clarifications to errors or inconsistencies in that evidence and the Department's own admission that it was required to search through deficient legacy systems, including paper-based records, leaves the Committee in significant doubt as to whether all relevant ministerial interventions have been captured by this inquiry. The Committee remains unconvinced that the Department has been able to rule out that another intervention may exist that might align with the former Commissioner's stated recollection.

2.31 The committee invited Minister Dutton to appear at the committee's hearing but notes that Minister Dutton or his office did not provide a response to the committee's invitation and subsequent follow ups. The committee expresses its disappointment that Minister Dutton declined to engage with the committee to provide clarity on this matter.

31 Mr Roman Quaedvlieg, additional documents, 5 September 2018, p. 2.

32 The Hon. Peter Dutton MP, Minister for Home Affairs, 'Statement on fabricated evidence to Senate Inquiry', *Media release*, 6 September 2018.

33 Mr Roman Quaedvlieg, additional documents, 7 September 2018, p. 1.

34 Mr Roman Quaedvlieg, additional documents, 7 September 2018, p. 2.

35 Mr Michael Pezzullo, Secretary, Department of Home Affairs, Correspondence from Mr Pezzullo, (received 13 September 2018), p. 1.

Adelaide case

2.32 On 28 August 2018, it was reported that Minister Dutton intervened after his Chief of Staff, Mr Craig Maclachlan, was contacted by the AFL's Chief Executive Officer, Mr Gillon McLachlan.³⁶

2.33 At the hearing, the committee heard from Mr Gillon McLachlan and Ms Jude Donnelly, Head of Government and Stakeholder Relations for the AFL, who had contacted Mr Craig Maclachlan at Mr Gillon McLachlan's request. Mr Gillon McLachlan described his relationship with Minister Dutton as 'a normal relationship that I would have with a minister on either side of politics', and that he had 'probably met Mr Dutton half a dozen times.'³⁷ Ms Donnelly noted that she used to be a 'former political staffer' and met Mr Craig Maclachlan on possibly two occasions, but that they had never worked in the same office.³⁸

2.34 Mr Gillon McLachlan gave evidence that on Sunday, 1 November 2015 he received a phone call from his cousin asking whether Mr Gillon McLachlan knew someone who could help him on a visa issue:

My recollection is that on a Sunday in November I got a call from my second cousin Callum MacLachlan, who was agitated and concerned. He said to me that he had been trying to get hold of the relevant office, but because it was Sunday he wasn't able to get hold of anyone. He wanted to make a representation, because he felt there'd been a mistake on a visa issue of someone who had previously worked for him, who had become a friend of the family. He wanted to make a representation because he felt there'd been an error. He'd been ringing or trying to get hold of the office and had not been able to do so, and asked did I have any way of helping? My response was I thought that I had a work colleague and a friend who could help him get in contact, and I thought the best way to do that was for him to send me an email, which I then could get forwarded.³⁹

2.35 Mr Gillon McLachlan stated that following the phone call, he contacted Ms Donnelly, explained the conversation with his cousin, and asked Ms Donnelly to contact Minister's Dutton's office.⁴⁰ Ms Donnelly stated that she contacted Minister Dutton's then chief of staff, Mr Craig Maclachlan, and forwarded the email to Mr Craig Maclachlan.⁴¹

36 Ms Lisa Martin, 'Peter Dutton intervened in au pair visa case for AFL boss Gillon McLachlan's relative', *The Guardian*, 28 August 2018, <https://www.theguardian.com/australia-news/2018/aug/28/peter-dutton-intervened-in-third-au-pair-visa-case-for-afl-bosss-relatives> (accessed 11 September 2018).

37 Mr Gillon McLachlan, *Proof Committee Hansard*, 5 September 2018, p. 54.

38 Ms Jude Donnelly, *Proof Committee Hansard*, 5 September 2018, p. 55.

39 Mr Gillon McLachlan, *Proof Committee Hansard*, 5 September 2018, p. 57.

40 Mr Gillon McLachlan, *Proof Committee Hansard*, 5 September 2018, pp. 57–58.

41 Ms Jude Donnelly, *Proof Committee Hansard*, 5 September 2018, p. 58.

2.36 Mr Gillon McLachlan stated his connection with Minister Dutton's office is one of the reasons as to why he facilitated the request:

He [Callum MacLachlan] was trying to get hold of Minister Dutton's office to make a representation, and my suggestion was to put his representation in an email and I would help facilitate getting that to his office—and that's what happened... I imagine that he [Callum MacLachlan] had an instinct that I would potentially have some contact that could help him get in touch with the office.⁴²

2.37 Confidential documents provided to the committee confirm that Ms Donnelly forwarded Mr Gillon McLachlan's email to Mr Craig Maclachlan on Sunday, 1 November 2015.⁴³ The email trail also shows that the department reiterated that the individual had previously been counselled about her work rights on a tourist visa and that the department had evidence that she intended to work during her stay on this occasion.⁴⁴

2.38 The same email trail shows that the Minister's Chief of Staff Craig Maclachlan was emailed by Ms Donnelly at 11.41am on Sunday, 1 November 2015 and the ministerial intervention was signed by the Minister no later than 8.20 pm Brisbane time the same day; 9.20 pm Canberra time. The Minister was departing Australia from Brisbane airport at 8.45 pm Brisbane time (9.45 pm Canberra time).

2.39 Answers to Questions on Notice show that the Hon Michael Keenan MP was acting for Minister Dutton from 8 pm on 1 November 2015.⁴⁵ Despite this, Minister Dutton signed the Ministerial intervention no later than 8.20pm Brisbane time the same day (9.20 pm Canberra time). There is no process or logical reason why Minister Keenan could not have authorised the intervention, if he was so minded, in his acting capacity. The rush to have Minister Dutton intervene prior to his departure further reinforces perceptions that the decision was based more on personal contacts, rather than on good immigration outcomes, or actual benefit to the Australian community.

2.40 Mr Gillon McLachlan provided evidence that apart from Adelaide case, there was one other occasion where he asked Ms Donnelly to inquire about the status of someone who had applied for a visa:

I was contacted by someone who was awaiting a business visa, a friend of a friend, who was wanting to come into the country and waiting for the visa

42 Mr Gillon McLachlan, *Proof Committee Hansard*, 5 September 2018, p. 39.

43 Ms Lisa Martin, 'Leaked emails reveal Peter Dutton overruled advice and granted au pair visa', *The Guardian*, 30 August 2018, <https://www.theguardian.com/australia-news/2018/aug/30/leaked-emails-confirm-peter-dutton-afl-boss-gillon-mclachlan-visa-au-pair> (accessed 11 September 2018).

44 Ms Lisa Martin, 'Leaked emails reveal Peter Dutton overruled advice and granted au pair visa', *The Guardian*, 30 August 2018, <https://www.theguardian.com/australia-news/2018/aug/30/leaked-emails-confirm-peter-dutton-afl-boss-gillon-mclachlan-visa-au-pair> (accessed 11 September 2018).

45 Mr Michael Pezzullo, Secretary, Department of Home Affairs, answers to questions on notice, 5 September 2018, (received 11 September 2018), p. 53.

to be processed. They had language issues. I asked Ms Donnelly to ask whether the visa had been approved or not. So I asked her to find out the status of the application.⁴⁶

2.41 Mr Gillon McLachlan noted that he believed this occurred in March 2014 when the Hon Scott Morrison MP was the Minister for Immigration and the Hon Tony Abbott MP was the Prime Minister.⁴⁷ Ms Donnelly confirmed that she called an adviser in Prime Minister Abbott's office to inquire about the status of this person's visa and that she 'heard back some time later that it had already been processed.'⁴⁸

2.42 The committee notes that this account, as relayed by Mr Gillon McLachlan, would appear to demonstrate a common practice where people with a connection to the minister's office are in a position to seek a ministerial intervention in relation to their family, friends and acquaintances. Most ordinary Australians, of course, do not enjoy such easy access to the Minister or his office. This raises obvious issues in relation to the fairness and equity surrounding the exercise of the Minister's intervention power.

Were the ministerial interventions based on 'public interest'?

2.43 As discussed earlier in this report, section 195A grants the Minister the power to intervene in cases where there is a 'public interest'.

2.44 Minister Dutton has sought to defend his interventions on the basis that they were 'discretionary and humanitarian acts', and that the decisions to grant visas in both the Brisbane case and the Adelaide case were made in the 'interests of Australia as a humane and generous society'.⁴⁹

2.45 However, the committee received evidence from a number of migration agents and lawyers suggesting that cases of obvious merit are given little consideration. These witnesses suggested that, in their experience, ministerial interventions were extremely difficult to obtain. This was contrasted with the two cases under consideration by the committee, which appear to have received preferential treatment when compared to the experiences described by migration lawyers and agents who participated in the inquiry.

2.46 One example provided by Ms Eve Watts of Inclusive Migration Australia, described a case of a Romanian visa holder living and working in Port Hedland, Western Australia:

46 Mr Gillon McLachlan, *Proof Committee Hansard*, 5 September 2018, p. 55.

47 Mr Gillon McLachlan, *Proof Committee Hansard*, 5 September 2018, pp. 55–56.

48 Ms Jude Donnelly, *Proof Committee Hansard*, 5 September 2018, p. 56.

49 Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2018-19, Senator Murray Watt, Two submissions for decision released under FOI, (tabled 3 August 2018); Andrew Probyn, Andrew Greene and Eliza Borrello, *ABC News*, 'Peter Dutton released au pair from immigration detention after lobbying from AFL boss Gillon McLachlan', 2 September 2018, <http://www.abc.net.au/news/2018-08-28/dutton-released-au-pair-after-lobbying-from-afl-boss-mclachlan/10172788> (accessed 12 September 2018).

She's a remarkable woman and has found herself in this position as she was a dependant on a 457 visa to an abusive partner. She's since made a further partner visa application with her current partner of over three years. But, as she didn't hold a substantive visa at the time of the application, she's been deemed ineligible. Therefore, the minister has been asked to intervene to enable her legitimate partner visa application to be valid. This woman has worked for the department of families. State and federal governments have spent significant money in employing and training her, and we have presented statutory declarations from Indigenous leaders in the community and local, state and federal members of parliament outlining the contribution, love and commitment she has given to the region and its people. Yet the minister has also deemed that she's not worthy of his consideration.⁵⁰

2.47 Ms Sarah Dale, Principal Solicitor, Refugee Advice and Casework Service, also provided the committee with examples of her experiences in attempting to seek ministerial intervention on behalf of her clients, particularly noting that the decision not to intervene appeared to be contrary to the Guidelines:

Recently, we've seen a Tamil father who, under the guidelines, warranted ministerial intervention and who, under the guidelines, ought not to be removed from Australia. But, indeed, he was separated from his wife and child. RACS, too, has made applications for consideration for people who have been found to have a prima facie case warranting Australia's examination of protection obligations and who were unable to apply for protection before an arbitrary deadline was set for them to do so. We wrote, we evidenced and we made our requests, which met the guidelines for referral to the minister, and we were told again that they wouldn't even reach his desk.⁵¹

2.48 A number of witnesses noted that the Guidelines were often not followed in relation to cases that appear to warrant ministerial intervention, which created uncertainty and frustration.⁵² For example, Ms Dale stated:

We do have very clear guidelines on when the minister should intervene and for what kinds of cases intervention should occur. I referred to in my opening statement, and I'll refer to it again, the removal of the Tamil father within the past two months. The guidelines were very clear that intervention was warranted. The guidelines were very clear that he should not be removed given he has a child here in Australia with protection obligations. So, indeed, it is alarming for us that guidelines aren't being followed, particularly in that case and, further, that we don't get reasons. We don't get justification as to when and why things are referred to the minister or not. As I stated before, we've assisted a number of people who missed the

50 Ms Eve Watts, Senior Migration Consultation, Inclusive Migration Australia, *Proof Committee Hansard*, 3 September 2018, p. 46.

51 Ms Sarah Dale, Principal Solicitor, Refugee Advice and Casework Service, *Proof Committee Hansard*, 3 September 2018, p. 45.

52 Ms Helen Duncan, *Submission 1*, pp. 1–2.

arbitrary deadline to make an application for protection visas. They missed that deadline, and we've written to the minister asking for his ministerial intervention unit to consider referring it to the minister to allow them to make that application. Again, as I stated, we are told, 'It doesn't meet the guidelines,' but we're not told how or why. So the ability for us to assess the ministerial intervention process is difficult without that transparency.⁵³

2.49 Witnesses highlighted the length of time required to formulate and submit applications for ministerial intervention on behalf of clients, often requiring large amounts of supporting documentation. One witness noted that she had never prepared a ministerial intervention application 'that hasn't had anything less than at least 20 [statutory declarations] attached to it from relevant community members and that hasn't moved through the guidelines in great detail to demonstrate how people have met them'.⁵⁴ Witnesses put it to the committee that many applications which had been prepared in accordance with the Guidelines had not been successful, and they had been advised as such with only a short statement that the Guidelines had not been satisfied.⁵⁵

2.50 Questions were raised by witnesses about whether the Guidelines were being appropriately used in assessing applications for ministerial intervention. Ms Helen Duncan expressed the view that the intervention powers should be used in a way that ensures that they are 'robust and applied with integrity'.⁵⁶ She submitted that the Guidelines were in place to assist in assessing applications for ministerial intervention but that this did not appear to be occurring.⁵⁷ Ms Duncan further noted in her submission that she was unable to identify how the Guidelines would have been satisfied in relation to the au pair cases.

2.51 Witnesses questioned whether the Guidelines or the public interest test had been applied in the case of the two au pair decisions being considered by the committee.⁵⁸ When the committee queried whether the public interest test appeared to be made out in the ministerial intervention cases of the au pairs, many of the migration agents and lawyers expressed scepticism that there was any public interest in granting visas:

From what I have seen [in the media], I would find it very difficult to find any public interest in granting [the au pairs] a visa, whereas I know with the cases that I've presented, similar to what my colleagues have also presented, it's people who have made significant contributions to the Australian

53 Ms Sarah Dale, Principal Solicitor, Refugee Advice and Casework Service, *Proof Committee Hansard*, 3 September 2018, p. 49.

54 Ms Eve Watts, Senior Migration Consultation, Inclusive Migration Australia, *Proof Committee Hansard*, 3 September 2018, p. 47.

55 Ms Sarah Dale, Principal Solicitor, Refugee Advice and Casework Service, *Proof Committee Hansard*, 3 September 2018, p. 49. See also *Committee Hansard*, 3 September 2018, p. 46.

56 Ms Helen Duncan, *Submission 1*, p. 2.

57 Ms Helen Duncan, *Submission 1*, p. 2.

58 Ms Helen Duncan, *Submission 1*, p. 2.

community and have the support of large sectors of the public rather than just an individual person wanting that person to stay.⁵⁹

2.52 The duration of time between the Minister's consideration of the two au pair cases and the Minister's exercise of his intervention power was also commented upon by witnesses as a departure from usual practice. Migration agents and lawyers told the committee that the decision to intervene within a matter of hours was highly unusual, and had never heard in their experience of a previous instance where a similar situation had occurred.⁶⁰ Ms Dale stated:

That certainly hasn't been our experience, even for really administrative processes such as a bridging visa, when someone's unlawful in the community and just needs the administrative function of having that visa renewed. Often people are left in the community for weeks unlawfully because the minister is not accessible.⁶¹

2.53 The duration of time in detention was similarly marked out as a point of contrast with the usual experience of applicants seeking ministerial intervention. Ms Dale informed the committee that many applicants in detention await a response from the department for 'months on end'.⁶²

2.54 It was also noted by witnesses that it was unusual to grant visas under section 195A to persons on tourist visas in particular, and that it was 'difficult to say that, for someone on a tourist visa, it's in the interests of the Australian community that that person enters Australia'.⁶³

Access to the Minister an unfair advantage?

2.55 The committee received evidence that some migration agents and lawyers were of the view that certain people may be able to obtain successful outcomes due to a close connection with the Minister. Ms Helen Duncan, a Registered Migration Agent, stated in her submission that:

...in my experience I believe that it is often a case of who the applicant knows that decides the outcome, rather than the merits of the application. This appears to be the case with the au pairs who were granted visitor visas despite an assessment by the immigration official at the airport, that they intended to work in breach of the conditions on their visa.⁶⁴

59 Ms Helen Duncan, private capacity, *Proof Committee Hansard*, 3 September 2018, pp. 46-47.

60 Ms Eve Watts, Senior Migration Consultation, Inclusive Migration Australia, *Proof Committee Hansard*, 3 September 2018, p. 47.

61 Ms Sarah Dale, Principal Solicitor, Refugee Advice and Casework Service, *Proof Committee Hansard*, 3 September 2018, p. 47.

62 Ms Sarah Dale, Principal Solicitor, Refugee Advice and Casework Service, *Proof Committee Hansard*, 3 September 2018, p. 48.

63 Ms Helen Duncan, private capacity, *Proof Committee Hansard*, 3 September 2018, p. 47.

64 Ms Helen Duncan, *Submission 1*, p. 1.

2.56 Ms Duncan further noted that the ability for those with close connections to the Minister to receive more favourable outcomes 'is unfair and means that what I consider to be genuine cases are not considered'.⁶⁵ The facts surrounding both the Brisbane case and the Adelaide case appear to confirm this view.

2.57 The migration agents and lawyers also submitted to the committee that they had difficulty in accessing information or contact details in relation to ministerial interventions. Many of the witnesses stated that they did not have telephone numbers to access the relevant part of the department for information regarding interventions, and had been advised that all correspondence must be directed via email and often took many days to receive a response.⁶⁶ Witnesses stated they never were able to obtain ministerial intervention through phone calls:

Senator WATT: Have any of you been able to obtain ministerial intervention by making a couple of phone calls rather than putting in written documents?

Ms Watts: Never.

Ms Duncan: Never, that would never happen.

Ms Dale: No. It has never been RACS's experience that phone calls would amount to ministerial intervention.

Ms Watts: In fact, to even have a line to call in to the ministerial intervention section is—I no longer have a number that I can even get there. All communication has to be via email and takes days to come and go.⁶⁷

2.58 This was the case even in situations where a person was at risk of imminent removal with ongoing claims seeking asylum and were at risk of being returned to a country where they had genuine fears for their safety.⁶⁸

Committee view

2.59 The scope of ministerial intervention powers is extremely broad—they are non-delegable, non-compellable, and are not subject to judicial or merits review. While the power under section 195A of the Act can only be exercised 'if the Minister thinks that it is in the public interest', neither the Act nor the Regulations define 'public interest'. Guidelines have been developed to provide a degree of transparency and accountability. However, the minister is not in any way bound by these Guidelines. Nevertheless, underpinning ministerial decisions and actions is the requirement to adhere to the Ministerial Standards.

65 Ms Helen Duncan, *Submission 1*, p. 1.

66 Ms Eve Watts, Senior Migration Consultation, Inclusive Migration Australia, *Proof Committee Hansard*, 3 September 2018, p. 48.

67 *Committee Hansard*, 3 September 2018, p. 48.

68 Ms Sarah Dale, Principal Solicitor, Refugee Advice and Casework Service, *Proof Committee Hansard*, 3 September 2018, p. 50.

2.60 The purpose of this inquiry was not to determine whether Minister Dutton acted illegally in granting the tourist visas with respect to the Brisbane and Adelaide cases. Rather, the committee has been tasked with determining whether Minister Dutton's actions were appropriate in these cases.

2.61 In employing such broad powers, it is vitally important that the Minister do so in cases of well-assessed and determined need, and that decisions in no way reflect or are seen to reflect favour based on personal interest or connection. To do so is to erode confidence within the community that the Minister will act and apply the rules to all in an equal, impartial and fair manner. This is not a matter to be taken lightly and risks reflecting poorly on our system of government more broadly. On the evidence heard by the committee, Minister Dutton failed this critical test.

The facts established

2.62 The evidence before the committee shows that on 17 June 2015, a woman entered Brisbane airport on a tourist visa, and was questioned by Australian Border Force officers, who formed the view that she was intending to work in breach of her tourist visa. The visa was subsequently cancelled and the woman was placed in immigration detention. Her alleged prospective employer, who had worked with Minister Dutton in the Queensland Police Service in 1998–99, emailed Minister Dutton about the matter. This resulted in the minister, on the same day, exercising his ministerial intervention powers to grant the woman a three-month tourist visa.

2.63 A similar incident occurred on 31 October 2015, where a woman entered Adelaide airport on a tourist visa and was questioned by Australian Border Force officers about her possible intention to work. Documents obtained by the committee stated that the woman was previously counselled regarding her work rights on a tourist visa, which warned her against 'undertaking any form of work, including child minding.'⁶⁹ The departmental submission to Minister Dutton clearly indicated that the woman had 'advised [Australian Border Force] officers of her intention to work during her intended stay in Australia on this occasion.'⁷⁰ Minister Dutton's statement in the House of Representatives confirms that he was advised of their intention to work:

There were two young tourists who had come in on a tourist visa and declared in an interview with the Border Force officers at the airport—I was advised—they were here on a tourist visa but intended to perform babysitting duties while here.⁷¹

2.64 The committee is aware that the woman was to stay with the cousin of AFL Chief Executive Officer, Mr Gillon McLachlan, who admitted to having met with Minister Dutton about half a dozen times. On Sunday, 1 November 2015,

69 Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2018-19, Senator Murray Watt, Two submissions for decision released under FOI, (tabled 3 August 2018).

70 Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2018-19, Senator Murray Watt, Two submissions for decision released under FOI, (tabled 3 August 2018).

71 The Hon Peter Dutton MP, *House of Representatives Hansard*, 26 March 2018, p.2680.

Mr Gillon McLachlan asked Ms Donnelly, Head of Government and Stakeholder Relations for the AFL, to contact Minister Dutton's chief of staff, Mr Gill Maclachlan about this matter. Mr Craig Maclachlan made inquiries with the department about the woman's situation, and asked the department to prepare a ministerial submission under section 195A of the Act for Minister Dutton's signature. The formal ministerial submission was sent to the minister who decided on 1 November 2015 to exercise his powers under section 195A of the Act to grant the woman a three-month tourist visa.

Ministerial interventions

2.65 The Brisbane and Adelaide cases stand in contrast to the evidence heard by the committee in relation to other requests for a ministerial intervention, which, on the face of it, appear more worthy of intervention. While 'public interest' is not defined, the committee notes that it is difficult to see how the granting of a tourist visa to people who officers had determined were intending to breach their visa, would be in the public interest. The committee considers it difficult to reconcile the situation and decisions relating to the Brisbane and Adelaide cases, with the situation and decisions of the Romanian visa holder or the Tamil father, as described by witnesses.

2.66 Submitters raised concern that 'it is often a case of who the applicant knows that decides the outcome, rather than the merits of the application'.⁷² Indeed, the figures provided by the department show that twice as many ministerial interventions under section 195A, involving a tourist visa, were granted when the request for a ministerial submission came at the behest of the minister's office, as opposed to being initiated through the department.

2.67 The committee acknowledges that the minister is not obliged to consider the Guidelines. However, the committee notes that this has effectively resulted in two different rules being applied to applicants, which is dependent on access to the minister's office. Applicants without direct access to the minister's office must meet the Guidelines, and only after it has been accessed by departmental staff as meeting these Guidelines, is it referred to the minister for his consideration. Applicants with direct access to the minister's office may potentially by-pass the initial departmental vetting against these Guidelines and have a ministerial submission considered by the minister, regardless of whether their circumstances meets the criteria set out in the Guidelines. The committee is of the view that, in relation to the Brisbane and Adelaide cases, had the request for ministerial intervention been received by the department in the first instance, neither case would meet the Guidelines and therefore would not have been referred to the Minister for his consideration.

2.68 However, the minister is required to adhere to the Ministerial Standards which requires ministers to act with 'due regard for integrity, fairness, accountability, responsibility, and the public interest' particularly in light of the 'privilege and wide discretionary power' provided to ministers.⁷³ The Ministerial Standards also refers to

72 Ms Helen Duncan, *Submission 1*, p. 1.

73 The Hon. Scott Morrison MP, Prime Minister, *Statement of Ministerial Standards*, 30 August 2018, paras 1.1 and 1.2.

the requirement for ministers to 'observe fairness in making official decisions...taking proper account of the merits of the matter.'⁷⁴

2.69 Given the unfettered discretionary power provided to the minister, it is essential that the minister adheres to the Ministerial Standards. The committee fails to understand how the minister's decision to exercise his ministerial intervention powers in relation to two individuals visiting Australia on a tourist visa, whom, according to his department, admitted to intending to work in breach of their visas, could amount to a fair decision when 'taking proper account of the merits of the matter.' While the decision by Minister Dutton was within the scope of the law due to the unfettered discretion provided to him, the committee is of the view that the decisions in both the Brisbane and Adelaide cases falls short of meeting the Ministerial Standards.

Committee findings

2.70 It is the view of the committee that Minister Dutton had a clear personal connection and existing relationship with the intended employer of the au pair in the Brisbane case. Given his definitive answer in the House of Representatives, it is the view of the committee the minister misled Parliament in relation to this matter.

2.71 It is the view of the committee that Minister Dutton acted expeditiously in using his ministerial intervention powers to grant a tourist visa to the au pair in the Adelaide case. Whilst the use of these powers is within his rights as the relevant minister, the committee recognises this request for intervention may not have come to the attention of Minister Dutton prior to the individual's removal from Australia if it was not for the fact it was raised through personal connections. Minister Dutton appears to have failed to give consideration to the damage to public confidence in the integrity of the immigration system that his actions could cause and, at best, reflects very poor judgement on the part of the minister.

2.72 In the Adelaide case, Minister Dutton signed the intervention documents despite acting ministerial arrangements being in place. No evidence presented assured the committee that there were any reasons why Minister Dutton signed the ministerial intervention in the Adelaide case rather than acting Minister Keenan, heightening perceptions that Minister Dutton acted due to a personal interest.

2.73 It is the view of the committee that substantial inconsistencies in evidence provided by the department during the course of the inquiry leaves significant doubt as to whether all relevant ministerial interventions have been captured by the inquiry.

2.74 Given the broad powers of the Immigration Minister, any perception of conflict of interest or corruption in relation to the use of ministerial intervention powers is detrimental to the integrity of Australia's immigration system. While these powers are intended to ensure legitimate cases of humanitarian need or public interest can be addressed, Minister Dutton's interventions in these au pair cases do not reflect community expectations of how such powers should be used.

74 The Hon. Scott Morrison MP, Prime Minister, *Statement of Ministerial Standards*, 30 August 2018, paras 1.3(ii).

2.75 At best, Minister Dutton's actions have resulted in a perception, if not an actual, conflict of interest. To ensure transparent and accountable decisions, the Government should give serious consideration to strengthening the minister's Statement to Parliament, requiring the minister's Statement to declare that the ministerial intervention was made in accordance with the Ministerial Guidelines, thereby maintaining community confidence in the integrity of Australia's immigration system.

Recommendation 1

2.76 That the Government strengthen the minister's tabling statements to Parliament on ministerial interventions, by requiring the minister's statements to declare whether or not each ministerial intervention was made in accordance with the Ministerial Guidelines.

Recommendation 2

2.77 The committee recommends that the Senate consider censuring the Minister for Home Affairs (the Hon Peter Dutton MP) for the actions examined in this report, when he was the Minister for Immigration and Border Protection, for failing to observe fairness in making official decisions as required by the Statement of Ministerial Standards.

Recommendation 3

2.78 That the Minister representing the Minister for Home Affairs provide, within three sitting days, an explanation to the Senate responding to the matters raised in this report.

Senator Louise Pratt

Chair