

QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES HEARING: 1 November 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(59) Output 1.3: Enforcement of Immigration Law

Senator Crossin (L&C 35-36) asked:

- (1) Was the Ombudsman given the power, or did he always have the power, to investigate what may or may not have happened in the minister's office?
- (2) Could you advise us whether any contact was made with the minister's office from the Ombudsman in relation to that inquiry the Comrie?

Answer:

- (1) Information about the Ombudsman's jurisdiction is primarily a matter for the Ombudsman to comment upon.

Having said that, however, DIMIA notes that in response to a question asked by the Chair of the Senate Legal and Constitutional References Committee on 7 October 2005 in the course of the Committee's inquiry into the administration and operation of the Migration Act 1958, about whether the Ombudsman has the power to investigate actions of the minister or actions that happen in the minister's office, the Ombudsman has informed the Committee –

The Ombudsman can investigate administrative action taken by a Commonwealth Department or prescribed authority (s 5(1)(a) and (b)) but not action taken by a Minister (s 5(2)(a)). In some cases, the Ombudsman Act deems the actions of a person other than an agency employee (such as a Ministerial staffer) to have been taken by a body that can be investigated if:

- *The person taking the action in the exercise of the agency's powers or functions was authorized to do so on behalf of the agency (see definition of 'officer' and s 3(5) and (6)); or*
- *The person exercised a power or function that the person was authorized to exercise or perform by the Minister or Secretary (s 3(4)).*

The action taken by the person must be related to administration by a Commonwealth agency to be able to be investigated. There would be no obstacle to the Ombudsman requesting (s 8(3)) or issuing a notice to require (s 9(1) and (2)) information from a Ministerial staffer during the course of an investigation.

- (2) In relation to the inquiry into the circumstances of the Vivian Alvarez matter (the 'Comrie Report'), the Ombudsman has informed the Department that he spoke to the Minister on two occasions. On the first occasion the Ombudsman spoke to the Minister about briefing processes, and on the second occasion the Ombudsman handed the completed report to the Minister.