

## QUESTION TAKEN ON NOTICE

### SUPPLEMENTARY BUDGET ESTIMATES HEARING: 20 OCTOBER 2009

#### IMMIGRATION AND CITIZENSHIP PORTFOLIO

#### **(57) Program 1.1 Visa and Migration and 2.1 Refugee and Humanitarian Assistance**

Senator Fierravanti-Wells asked:

1. How many times has Minister Evans used his ministerial discretion since Labor came into office?
2. How many times has he used ministerial discretion this year?
3. In what circumstances has the Minister used ministerial discretion?
4. On average, how many times a month does Minister Evans use ministerial discretion?
5. What is the most commonly used form of ministerial discretion? How is that used?

*Answer:*

1. Between 3 December 2007 and 30 October 2009, Minister Evans has used his ministerial discretion to intervene for the following:

Section 417 of the *Migration Act 1958* (the Act) – 1092 persons  
Section 351 of the Act – 455 persons  
Section 195A of the Act – 166 persons

2. As at 30 October 2009, Minister Evans has used his ministerial discretion to intervene for the following in the current program year, 1 July 2009 to 30 June 2010:

Section 417 of the Act – 204 persons  
Section 351 of the Act – 94 persons  
Section 195A of the Act – 30 persons

3. Under sections 351 and 417 of the Act, the Minister has the power to substitute for a decision made by the Migration Review Tribunal or the Refugee Review Tribunal (the tribunals) a decision that is more favourable to the applicant, if he believes it is in the public interest to do so.

The Minister's public interest powers are non-compellable, that is, the powers are available to him but, under the legislation, he does not have a duty to consider whether to exercise those powers. The Minister has issued guidelines to the Department on the types of cases he wishes to consider.

What is and what is not in the public interest is a matter for the Minister to determine. This depends on a number of factors which must be assessed by reference to the circumstances of the particular case.

The legislation provides that, where the Minister exercises his public interest powers in a case, a statement is to be laid before each House of the Parliament which sets out the reasons for the Minister's decision, referring in particular to the Minister's reasons for thinking that his actions are in the public interest.

Under section 195A of the Act, the Minister has the power to grant a visa of a particular class to a person who is detained under section 189 of the Act, if he thinks it is in the public interest to do so. This is regardless of whether that person has applied for the visa.

4. As at 30 October 2009, on average Minister Evans has used his ministerial discretion to intervene for the following, per month, in the current program year, 1 July 2009 to 30 June 2010:

Section 417 of the Act – 51 persons  
Section 351 of the Act – 23.5 persons  
Section 195A of the Act – 7.5 persons

5. The Minister receives a larger number of requests under section 417 than section 351. As a result, he exercises his power in a larger number of cases under section 417 than section 351, to substitute a more favourable decision to that of the tribunals. The effect of the Minister's exercise of these powers is the grant of a visa.