

Dear Madam or Sir

I would like to make the following brief comments to the committee.

I am a solicitor who has been involved in the field of immigration advice and assistance for 16 years. I have lectured in immigration law for the past 6 years.

I run a small legal practice exclusively dealing in immigration.

Recently I have come across what I can simply call a disregard for the law, and gross ignorance, on the part of Compliance Managers in two regional offices, [REDACTED] and [REDACTED]. I have previously noted that Compliance Managers do not have an adequate knowledge of immigration law, and specifically, those parts of it they administer.

In the first instance, the [REDACTED] office had, in my view (and clearly so, given specific Departmental guidance in the Procedure Advice Manuals in regard to my client's specific circumstances) incorrectly and unlawfully cancelled the bridging visa A a client of mine held. This was an issue, as work rights were attached to the visa.

I put my point to the Manager of Compliance Cancellations in various written and oral submissions. She conceded that her office's decision was wrong in law, but stated "But it was on the only thing we could do". That is, this particular Manager was seemingly aware of the unlawful nature of her actions, but persisted with them. The rule of law was simply not followed, and consciously so (so that the result desired by the Manager was brought about).

I recently had a similar situation with the Compliance Manager in the [REDACTED] regional office. In spite of several facsimiles outlining the relevant provisions in the Migration Regulation 1994 by which my client was entitled to a bridging visa E, he threatened to detain (clearly unlawfully on the facts and law) my client who had lawfully made a substantive visa application. The lodgment of a substantive visa enlivens the grant of a bridging visa E - see the provisions of Schedule 2 pertaining to the subclass 050 bridging visa E. This Manager also threatened to report me to the Migration Agents Registration Authority (which he did not persist with when I implored him to consult his own Departmental lawyers about my client's situation. He did not answer my request to be given the details of the Regional Manager of the [REDACTED] office, for me to make a complaint).

I firmly note that the administration of the subclass 050 bridging E provisions is the only part of the Migration Regulations which this office (Compliance) administers. Clearly Managers should know these provisions, and certainly not improperly threaten (in the latter instance) a legal practitioner trying to educate him and keep a person out of unlawful detention!!.

I have noticed on other occasions ignorance on the part of Managers of Compliance, clearly senior people. This often happens when they give continuing professional development lectures, clearly a highly disappointing, and indeed ironic, situation.

Given the power of these DIMIA officials (and those who they supervise), I can only describe this situation as Zimbabwean. It is appalling, persistent, and seemingly impervious to advice from individual practitioners.

The culture of DIMIA staff seems not to have changed since the Palmer report (in my view, since no one has been held responsible for the misdeeds done).

I recently attended a meeting of DIMIA staff in ~~XXXXXX~~, to do with the administration of the E-visa lodgment system for student visas. There a group of migration agents were told, by 4 DIMIA staff, that registered migration agents (RMAs) were expected to spot a forged document when such a documents was tendered by a client. My protestations that this is impossible for RMA's to act as document examiners, that there were literally thousands of potential documents from different sources and countries (such as those from financial institutions across the world), were simply, and persistently, dismissed.

The Department seems to be a law to itself.

There must be firm controls on it, with this review power ultimately residing outside of the Department itself. This is because, in my view, the Department is incapable of effecting the cultural, educational and other changes needed to make it a responsible Federal Government Department.

I am more that willing to make submissions in person to the Committee in Sydney if necessary.

Kind regards

Paul Hense BA, BSW, LLB  
Principal Solicitor  
Paul Hense Migration Lawyers  
Suite 3808, Level 38  
2 Park Street  
SYDNEY NSW 2000  
Telephone: 61 2 9004 7495  
Facsimile: 61 2 9004 7795  
Mobile: 0402 448 449  
Email: Paul.Hense@henselaw.com.au