Chapter 2

Ministerial discretion in migration matters: explanation and history

2.1 This chapter provides a general introduction to the origins and development of the ministerial discretion powers in the *Migration Act 1958*. First, it provides a brief history of the discretionary powers in the Act followed by a summary of the major legislative reforms to immigration introduced in 1989. It then offers a detailed examination of sections 351 and 417 of the Act, which are the main focus of this inquiry. The chapter concludes with a brief summary of past parliamentary committee inquiries which have examined different aspects of the ministerial discretion powers.

Pre-1989 discretionary powers

2.2 Wide-ranging discretionary powers relating to entry, stay and deportation from Australia were incorporated into the *Immigration Restriction Act 1901* and subsequently codified in the *Migration Act 1958*.[1] However, the Migration Act gave the minister considerable scope to exercise the discretion, delegable to departmental decision makers, to grant a visa or entry permit to a non-citizen.[2] According to DIMIA, the migration regulations in force up to 1989 placed no requirements on the exercise of ministerial discretion. In fact, the guidelines relevant to the exercise of the powers were only set out in policy instructions. This meant they did not have the force of law and delegates were not legally obliged to follow them.[3]

2.3 The current use of ministerial discretion in immigration policy under the Migration Act stems from changes to migration law and policy brought about by reforms introduced in 1989 by the then Minister for Immigration, Local Government and Ethnic Affairs, Senator Robert Ray. The reforms were influenced in part by recommendations made by the Committee to Advise on Australia's Immigration Policies (CAAIP), chaired by Stephen Fitzgerald. CAAIP published its report (the 'Fitzgerald Report') in 1988.[4] Assisted by a specialist legal panel, it formulated a draft

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1 *Ministerial Discretion in Migration Matters*, Brief prepared for Senate Select Committee on Ministerial Discretion in Migration Matters, Department of the Parliamentary Library, Canberra, September 2003, p.1

2 DIMIA, Submission no. 24, p.3

3 DIMIA, Submission no. 24, p.21

4 *Immigration: A Commitment to Australia*, Report of the Committee to Advise on Australia's Immigration Policies, Australian Government Publishing Service, Canberra, 1988

model bill to take into account changing attitudes and practices, and to reflect a positive and forward-looking approach to immigration policy and administration.[5]

2.4 The Fitzgerald Report noted that the migration legislation was criticised for 'its indiscriminate conferral of uncontrolled discretionary decision making powers'.[6] The report reinforced this criticism by stating that a major deficiency of the Migration Act was 'the broad and unstructured nature of discretionary powers' which 'created a great deal of uncertainty'.[7] To overcome this deficiency, the draft model bill formulated by CAAIP included a system where 'identifiable policies and criteria for decision making will be clearly set out in statutory rules'.[8]

Legislative reforms of 1989

2.5 In December 1989, the Migration Act was amended by the *Migration Amendment Act 1989*, the *Migration Legislation Amendment Act 1989*, and the *Migration Legislation Amendment Act (No. 2) 1989*. The original Migration Legislation Amendment Bill 1989 (No. 1), introduced in the Senate in April 1989, sought, amongst other things, to expunge nearly all avenues for the exercise of ministerial discretion in immigration matters. In his second reading speech, the then minister, Senator Robert Ray, argued:

> The wide discretionary powers conferred by the Migration Act have long been a source of public criticism. Decision-making guidelines are perceived to be obscure, arbitrarily changed and applied, and subject to day-to-day political intervention in individual cases.[9]

2.6 When asked by ABC radio to respond to comments about the legislation made by the then Shadow Minister for Immigration and Ethnic Affairs, Alan Cadman, the minister was adamant that the legislation was about 'cutting political patronage out of immigration, cutting any sleazy aspect out of it'.[10]

2.7 This bill, however, was blocked in the Senate and subsequently withdrawn because the Opposition and the Democrats argued the bill went too far in removing ministerial discretion. Following negotiations between the government and Opposition

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5 *Immigration: A Commitment to Australia—Legislation*, The Committee to Advise on Australia's Immigration Policies, Australian Government Publishing Service, Canberra, 1988

6 *Immigration: A Commitment to Australia*, Report of the Committee to Advise on Australia's Immigration Policies, Australian Government Publishing Service, Canberra, 1988, p.112

7 *Immigration: A Commitment to Australia*, Report of the Committee to Advise on Australia's Immigration Policies, Australian Government Publishing Service, Canberra, 1988, p.113

8 *Immigration: A Commitment to Australia*, Report of the Committee to Advise on Australia's Immigration Policies, Australian Government Publishing Service, Canberra, 1988, p.112

9 *Senate Hansard*, 5 April 1989, p.922

10 *Ministerial Discretion in Migration Matters*, Brief prepared for Senate Select Committee on Ministerial Discretion in Migration Matters, Department of the Parliamentary Library, Canberra, September 2003, p.7

parties, an amended version of the bill was agreed to by both houses in June of that year (*Act 59 of 1989*).

2.8 Senator Ray as minister had strong reservations about the ministerial discretion provisions being inserted in the Act in the first place. His concern over its future operation was expressed in his Second Reading Speech to the Migration Legislation Amendment Bill (No. 2) 1989:

> I have only one objection to ministerial discretion. It is a remaining objection and one I will probably always have. What I do not like about it is access. Who has access to a Minister? Can a Minister personally decide every immigration case? The answer is always no. Those who tend to get access to a Minister are members of parliament and other prominent people around the country. I worry for those who do not have access and whether they are being treated equally by not having access to a Minister.[11]

2.9 A subsequent bill introduced in the Senate in December 1989, amending *Act 59 of 1989*, established the limited context under which the minister is able to exercise discretion in immigration matters, especially in relation to humanitarian claims for visa applications which fall outside the visa categories codified in the Migration Act. The bill was supposed to provide balance for an otherwise inflexible set of regulations to allow the minister a public interest power to grant a visa in circumstances not anticipated by the legislation where there are compelling, compassionate and humanitarian circumstances for doing so. Ministerial discretion conceptualised in this way was to act as a safety net:

> The Bill was welcomed by the opposition parties for its recognition of the need to restore a residual power of ministerial discretion in immigration matters, particularly in relation to applicants who do not meet the strictness of the new codified visa categories, but whose individual circumstances warrant humanitarian consideration.[12]

2.10 According to DIMIA, the comprehensive reforms introduced in 1989 were designed to enable government to regain control of onshore immigration determinations and to provide a more transparent determination process. The reforms included:

- Statutory criteria which, if satisfied, provided the applicant with a statutory right to be granted a visa. Similarly, if the applicant did not satisfy the statutory criteria, the visa application would be refused;

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11 Senator Robert Ray, *Senate Hansard*, 30 May 1989, p.3012

12 *Ministerial Discretion in Migration Matters*, Brief prepared for Senate Select Committee on Ministerial Discretion in Migration Matters, Department of the Parliamentary Library, Canberra, September 2003, p.3

- Statutory-based internal and independent merits review rights for some visa classes and applicants with a lawful connection to Australia[13] – the former Migration Internal Review Office (MIRO) and the Immigration Review Tribunal, now the Migration Review Tribunal (MRT). At that time, review decisions in refugee matters were undertaken by the Refugee Status Review Committee, whose functions were subsequently overtaken by the Refugee Review Tribunal (RRT) on 1 July 1993; and
- A non-compellable discretion for the minister to intervene personally to substitute a decision of a merits review body, with a more favourable decision for the applicant.[14]

2.11 Since 1989 there have been several further changes to this statutory framework, including changes to the section 351 and section 417 discretionary powers. These include the expansion of merits review rights to all visa applicants present in Australia and limitations on the grounds for judicial review of visa related decisions.[15]

2.12 DIMIA emphasised that the ministerial discretion powers built into the 1989 legislation provide flexibility in an otherwise highly prescriptive visa process with set criteria:

> The flexibility provided by the [discretionary] scheme enables the government to provide responsive visa solutions in exceptional and unforseen circumstances in a way which retains its capacity to manage the onshore visa framework and also limits the scope for unmeritorious applicants to use processes to frustrate and delay removal from Australia.[16]

2.13 DIMIA also stated: 'The ministerial discretion powers provide a mechanism for dealing with people in extenuating or exceptional circumstances that cannot be easily legislated in visa rules'.[17] Although there are currently 80 classes of visa and 143 sub-categories in the Migration Regulations which provide a comprehensive framework covering the large majority of personal circumstances, DIMIA noted that it is not possible to anticipate and codify 'all human circumstances'.[18]

2.14 The Commonwealth Ombudsman, Professor John McMillan, offered a similar view on the role of sections 351 and 417 of the Migration Act. He noted that the discretionary powers are a key part of the Act because:

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13 According to DIMIA, a 'lawful connection' is established either by a physical presence in Australia, or by an Australian citizen, permanent resident or Australian business sponsor of a visa applicant

14 DIMIA, Submission no. 24, p.4

15 DIMIA, Submission no. 24, p.5

16 DIMIA, Submission no. 24, p.7

17 DIMIA, Submission no. 24, p.13

18 DIMIA, Submission no. 24, p.51

> They play an important role in permitting or facilitating action that tempers the harsh, unpredictable or unintended effect that can arise occasionally in the administration of a heavily codified system of rules of the kind found in the Migration Act and Regulations. In an area such as migration decision-making, where the decisions can markedly affect the living situation not only of those about whom a decision is made, but also their relatives and accomplices in Australia, it is vital that a safety net scheme…is preserved in some form or another.[19]

Ministerial discretion powers under sections 351 and 417 of the *Migration Act 1958*

2.15 Significantly, the far-reaching changes to the Migration Act ushered in a new statutory framework with regard to immigration matters. The minister no longer had a general discretion to grant or refuse visa applications, but had to approve applications which met criteria prescribed by the Migration Act and its regulations.[20] The minister's discretionary power under the Act was circumscribed to enable the minister either to determine that certain provisions of the Act should not apply, or to substitute a more favourable decision than that of the merits review tribunal.[21]

2.16 Under the Migration Act, the minister can exercise various discretionary powers, including substitution powers and powers to vary processes, order release from detention and cancel visas on character grounds. However, this inquiry is mainly concerned with the use made by the former immigration minister, Mr Philip Ruddock, of the discretionary powers under sections 351 and 417 of the Act. An important distinction needs to be made at the outset between these powers. Section 351 powers may be exercised following a decision of the MRT which considers all cases except protection visa cases, whereas section 417 powers may be exercised following a decision of the RRT which considers only protection visa cases.

2.17 Under sections 351 and 417, the minister may substitute a more favourable decision than the one handed down by a tribunal 'if the Minister thinks it is in the public interest to do so'. In other words, the public interest or 'safety net' discretion that the minister may exercise is much broader than the strictures of the regulatory criteria.[22] While the legislation does not specify that a more favourable decision must result in the grant of a visa to the applicant, the discretionary power is most commonly used in that way.[23]

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19 Office of the Commonwealth Ombudsman, Submission no. 28, p.5

20 See section 65 of the Act

21 The relevant sections of the Migration Act are 37A, 46A, 46B, 72, 91F, 91L, 91Q, 137N, 261K, 351, 391, 417, 454, 495B, 501A, 501J and 503A

22 DIMIA, Submission no. 24, p.17. A number of the minister's other various discretionary powers under the Migration Act are also primarily linked to the 'public interest' – see subsections 46A(2), 46B(2) and 72(2) and sections 48A, 48B, 91F, 91L and 91Q

23 DIMIA, Submission no. 24, p.14

2.18 At least four features of the discretionary powers under sections 351 and 417 are worth noting:

- The discretionary powers may only be exercised in circumstances where a visa application has been assessed both at primary and merits review stages as failing to meet the criteria for grant of a visa – for example, at the MRT under section 351 and at the RRT under section 417;
- The discretionary powers are non-compellable, non-reviewable and non-delegable within domestic law. In other words, the minister does *not* have a duty to exercise the discretionary power, and a court cannot order the minister to use the discretionary power to consider an applicant's case. Section 476(2) states that: '…the Federal Court and the Federal Magistrates Court do not have any jurisdiction in respect of a decision of the Minister not to exercise, or not to consider the exercise, of the Minister's power under [sections 351 and 417]';[24]
- In making a decision under section 351 or 417, the minister is not bound by Subdivisions AA (about the making of a valid visa application) or AC (about matters that must be considered in making a decision about a visa) of the Migration Act. In practice, this means that when considering exercising the discretionary powers, the minister is not restricted by the type of substantive visa that can be granted, and does not have to be satisfied that criteria specified in the Migration Regulations have been met;[25]
- The minister must table a statement in both houses of parliament setting out the decision of the relevant tribunal, the decision substituted by the minister, and the reasons for substituting a more favourable decision. The statement must not name or, under the terms of section 417, identify the applicant or anyone associated with the request if the minister believes it to be in the public interest that the name not be included. The statement must be tabled within fifteen sitting days of the end of the six month period in which the decision is made; and
- The discretionary powers must be exercised personally by the minister and cannot be delegated. Subsections 351(7) and 417(7) both state: 'The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances'.[26]

2.19 Although the minister's discretionary power cannot be delegated, in practice the administration of these two sections, along with sections 345, 391, 454 and 501J is governed by a set of ministerial guidelines (known as Migration Series Instruction (MSI) 386) which 'delegate the vetting of a substantial volume of requests for Ministerial intervention to the Ministerial Intervention Unit and departmental case

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24 Ms Johanna Stratton, Submission no. 10, p.7. See also the reasons provided by Hely J in *Kolotau v MIMIA* [2002] FCA 1145, 5 September 2002

25 DIMIA, Submission no. 24, p.15

26 *Migration Act 1958*, Subsection 351(7)

officers'.[27] DIMIA told the Committee that the guidelines 'comprehensively outline circumstances where the Minister may consider it appropriate to use the discretionary powers'. The current version of the guidelines:

- explain how a request for the minister to consider the exercise of his public interest powers may be made;
- inform departmental staff when to refer a case to the minister so that he can consider exercising his public interest powers; and
- advise that other compelling cases may also be drawn to the minister's attention.[28]

2.20 DIMIA listed all the circumstances in which the minister can use his or her discretion. The list included circumstances where:

- The visa applicant has made a visa application to a delegate of the minister who is a departmental officer;
- The delegate has decided to refuse to grant a visa (the primary decision);
- The visa applicant or the Australian sponsor has applied to the relevant Tribunal for merits review of the primary decision; *and*
- The relevant Tribunal has accepted that merits review application; *and*
- The relevant Tribunal has made a decision under sections 349 or 414 about the visa applicant; *and*
- It is possible for the Minister to make a decision more favourable to the applicant than that of the Tribunal.[29]

2.21 The application of the ministerial guidelines is an area of interest to the Committee and is examined in detail in Chapter 4. The practice of departmental staff vetting requests made for special consideration by the minister raises an important question about the accountability of decision making within executive departments. Specifically the Committee examines decision making within DIMIA and the department's administration of the ministerial guidelines.

2.22 This practice of DIMIA vetting requests for ministerial intervention was challenged unsuccessfully in the Federal Court in *Ozmanian (1996)*.[30] On that occasion, Merkel J noted that the minister's discretion permits three different decisions: a decision to exercise the discretion; a decision not to exercise the discretion; and a decision not to consider whether to exercise the discretion. The

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27 *Ministerial Discretion in Migration Matters*, Brief prepared for Senate Select Committee on Ministerial Discretion in Migration Matters, Department of the Parliamentary Library, Canberra, September 2003, p.5. MSI 386 is entitled: Guidelines on ministerial powers under sections 345, 351, 391, 417, 454 and 501J of the *Migration Act 1958*

28 DIMIA, Submission no. 24, p.29

29 DIMIA, Submission no. 24, pp.15-16

30 141 ALR 322

important point, noted by Dr Mary Crock, is that the first two decisions must be exercised by the minister acting personally, whereas the third decision can be delegated to the department.[31]

2.23 The administration of sections 351 and 417 is not subject to judicial or tribunal review within domestic law, which means an important mechanism of external oversight that applies in other areas of executive decision making does not apply to the discretionary powers. Two mechanisms are available for controlling the administration of the discretionary powers. The first, as previously noted, is the administrative guidelines that guide the administration of sections 351 and 417 within the department. The second is the oversight of departmental administration that can be undertaken by the Commonwealth Ombudsman.[32] The Commonwealth Ombudsman, Professor John McMillan, told the Committee that under the *Ombudsman Act 1976* he is empowered to:

> …investigate departmental action either side of a ministerial decision. In this area, for example, we can investigate a complaint against the quality of a briefing given to the minister and whether a briefing should have been given to the minister. We can also investigate action to implement a ministerial decision. The Ombudsman's office has therefore been well placed to gauge the role that is played by the discretions conferred by sections 351 and 417 in the operation of the Migration Act scheme…Investigations by the Ombudsman, usually at the instance of complaints, is the main external oversight mechanism.[33]

2.24 The minister's discretionary powers can also be subject to scrutiny in international law through complaints mechanisms established by two United Nations Committees: the Human Rights Committee and the Torture Committee. However, the views of these committees are not legally binding or enforceable, and the efficacy of these committees relies on parties voluntarily agreeing to implement their views.[34]

Parliamentary consideration of ministerial discretion powers

2.25 Different aspects of ministerial discretion have been the subject of scrutiny by three parliamentary committee inquiries over the past decade. In 1992, the then Joint Standing Committee on Migration Regulations made a recommendation in relation to

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31 Mary Crock, 'A Sanctuary Under Review: Where to From Here for Australia's Refugee and Humanitarian Program?', *The University of New South Wales Law Journal*, vol.23, no.3, 2000, pp.281-82

32 Office of the Commonwealth Ombudsman, Submission no. 28, p.6. While the exercise of the minister's discretion cannot be the subject of investigation by the Commonwealth Ombudsman consistent with s5(2)(b) of the *Ombudsman Act 1976*, action taken by a department in relation to a ministerial decision can be the subject of investigation under s5(3A) of the Act

33 *Committee Hansard*, 18 November 2003, p.1

34 *Ministerial Discretion in Migration Matters*, Brief prepared for Senate Select Committee on Ministerial Discretion in Migration Matters, Department of the Parliamentary Library, Canberra, September 2003, p.4

the minister's discretionary powers, following an analysis of the refugee and humanitarian determination process. Recommendation 20 stated that:

> the Refugee Review Tribunal be empowered to recommend to the Minister for Immigration, Local Government and Ethnic Affairs that, in deserving cases which do not meet the requirements for grant of refugee status, the Minister grant stay on humanitarian grounds, in accordance with the Minister's discretionary powers under section 115 of the *Migration Act 1958*.[35]

2.26 The government's response to this recommendation reiterated the current procedure whereby the files of unsuccessful applicants for refugee status are referred to officers of DIMIA who may submit cases to the minister for possible exercise of the discretionary powers. It did not, however, address the core issue embedded in the recommendation – that the RRT be given the authority to make a direct recommendation to the Minister with regard to deserving cases, and not via existing administrative avenues within the department.

2.27 More recently, the Senate's Legal and Constitutional References Committee report of 2000, *A Sanctuary Under Review*, examined in detail, and as part of its terms of reference, 'the adequacy of a non-compellable, non-reviewable Ministerial discretion to ensure that no person is forcibly returned to a country where they face torture or death'.[36] Chapter 8 of that report dealt exclusively with the concept of ministerial discretion – its implementation and administrative procedures, and the nature of a non-compellable and non-reviewable decision and forced *refoulement* when an applicant is unable to gain refugee status under the Refugee Convention. The focus of the report's consideration of ministerial discretion is the lack of integration of several international human rights conventions within Australia's refugee immigration law. Following on from this, the report asks whether a new mechanism might be introduced that is more effective in offering protection for non-Convention asylum seekers than the ministerial discretion powers.

2.28 The report made seven recommendations dealing with various issues raised by the ministerial discretion powers. Recommendation 2.2 supported incorporation of international obligations under the Convention Against Torture (CAT), the Convention on the Rights of the Child (CROC) and the International Covenant on Civil and Political Rights (ICCPR) into Australia's domestic law.[37] The Committee examines this recommendation in Chapter 8, together with the government's response.

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35 Joint Standing Committee on Migration Regulations, *Australia's Refugee and Humanitarian System: Achieving a Balance Between Refuge and Control*, Australian Government Publishing Service, Canberra 1992, p.140

36 Senate Legal and Constitutional References Committee, *A Sanctuary Under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes*, June 2000

37 Senate Legal and Constitutional References Committee, *A Sanctuary Under Review: An Examination of Australia's Refugee and Humanitarian Determination Processes*, June 2000, Recommendation 2.2, p.60

2.29 The other six recommendations focused on procedural and administrative improvements to the way the discretionary powers are exercised. Issues covered by the recommendations included that:

- the minister should consult with stakeholders to ensure the ministerial guidelines are contemporary and address the specific purposes of Australia's obligations under the CAT, CROC and ICCPR (recommendation 8.1);
- the RRT should continue its current practice whereby members informally advise the minister of cases where there may be humanitarian grounds for protection under international conventions (recommendation 8.2);
- an information sheet be made available in appropriate languages to explain the provisions of s417 and the ministerial guidelines, as well as information about section 48B (recommendation 8.3);
- section 417 processes be completed quickly and the outcome advised to the relevant person (recommendation 8.4);
- the subject of the request should not be removed from Australia before the initial or first section 417 process is finalised (recommendation 8.5); and
- appropriately trained DIMA staff consider all section 417 requests and referrals against CAT, CROC, and ICCPR.

2.30 The government's response to the recommendations was noteworthy for its lack of engagement with many of the core concerns which they raise. The government maintained that certain of the recommendations are either current practice or not necessary because existing administrative procedures and arrangements are adequate. According to DIMIA's submission to the present inquiry, apart from the government enhancing the ministerial guidelines to cover CAT and the ICCPR: 'Other suggestions were not taken up due to the capacity to undermine or remove the Government's ability to effectively manage its migration program'.[38]

2.31 The government's response to recommendation 8.3 has been criticised for being misleading.[39] The government stated that DIMIA Fact Sheet 41 (which was renumbered Fact Sheet 61 in August 2003) explains the ministerial discretion powers and that further information is not necessary. However, the Fact Sheet provides only two sentences of information about ministerial discretion, but no advice on the process or how to make a request for consideration under the guidelines:

> The Minister has the power to intervene after an RRT or AAT decision relating to a Protection Visa, but is not compelled to do so. The Minister

38 DIMIA, Submission no. 24, p.33

39 *Ministerial Discretion in Migration Matters*, Brief prepared for Senate Select Committee on Ministerial Discretion in Migration Matters, Department of the Parliamentary Library, Canberra, September 2003, p.11

> may intervene to substitute a more favourable decision to the applicant if the Minister believes it is in the public interest to do so.[40]

2.32 The Committee believes that this information would not be of any assistance for a visa applicant seeking the minister's intervention. While the Fact Sheet is a public document, DIMIA advised the Committee that the department has no obligation to make information on the ministerial intervention process publicly available because the minister's powers are non-compellable.[41] When asked by the Committee if the two sentences contained in Fact Sheet 61 provide all the information that is currently available in the fact sheet series on ministerial discretion, the answer provided by the department stated: 'Yes'.[42]

2.33 The 2001 report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on visits to immigration detention centres also made a recommendation about the minister's powers under section 417, similar to that made by the Joint Standing Committee on Migration Regulations in 1992. On this occasion, Recommendation 7 stated that the current informal arrangement whereby the RRT can draw attention to humanitarian issues in the case of an asylum seeker should be formalised. This would require an amendment to section 417 of the Migration Act to permit these issues to be formally included in the minister's consideration of such cases.[43]

2.34 Consistent with the official response to recommendations made by the report *A Sanctuary Under Review*, the government did not accept the recommendation. It claimed the recommendation is not necessary because current arrangements are satisfactory:

> The Government considers the current arrangements to be sufficient to address cases where there are humanitarian concerns and, therefore, formalisation of this arrangement through legislative change is considered to be unnecessary.[44]

2.35 The Committee notes that the issues arising from these recommendations have been too easily brushed aside by government and remain unresolved. It believes that the issues raised by the findings and recommendations of these committee reports are central to this inquiry's terms of reference – for example, DIMIA's administration of the ministerial guidelines, the use made by immigration ministers of the discretionary powers, and the extent to which information about the discretionary process is publicly available.

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40 DIMIA, *Fact Sheet 61: Seeking Asylum Within Australia*, p.2

41 DIMIA, Submission no. 24D, Answer to question on notice N1

42 DIMIA, Submission no. 24D, Answer to question on notice N3

43 Joint Committee on Foreign Affairs and Trade, *Visits to Immigration Detention Centres*, Report No. 100, 2002

44 DIMIA, Submission no. 24, p.34