



COMMONWEALTH OMBUDSMAN

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REF:

9 May 2003

Mr WJ Farmer
Secretary
Department of Immigration and Multicultural and Indigenous Affairs
PO Box 25
Belconnen ACT 2616

Dear Mr Farmer,

As foreshadowed in our meeting last week, I am keen to ensure that we have a constructive working relationship. To that end I am writing to you today, to update you on some of the trends in complaints that my office has received over the past couple of months, and to draw your attention to some of the issues that we are currently addressing.

I intend to keep you informed of our activities in relation to your department on a regular basis by means of a "Quarterly Report" and I hope that you will find the information useful.

Complaint numbers

My office received 299 complaints for the period 1 January to 31 March 2003. This represents an increase of 9.5% from the previous quarter ending December 2002. Overall my office has noticed an increase in complaint numbers in relation to DIMIA for the past two years.

To date my office has received 880 complaints for the 2002/2003 financial year. If the trend of increasing complaint numbers continues for the remainder of this financial year, we would record an overall increase of 6.8% in complaints numbers compared to the 2001/2002 financial year.

In the same three months, we closed 306 cases covering 337 issues. Most complaints (42.7% of complaint issues) arose out of concern about DIMIA's actions and decisions, particularly in relation to detention and migration (permanent entry) decisions. Decisions about temporary entry visas also accounted for a substantial number of complaints in this category. In the majority of complaints it was asserted that DIMIA staff made the wrong decision or failed to act in the matter, followed by concerns about how the law was applied in the decision making process.

Detention Centre Complaints

My office currently has 177 open complaints of which nearly half are in relation to Immigration Detention Centres. This is of concern to us and there are several issues arising out of these complaints that we propose to investigate further. These are detainee access to medical/dental care, the use of handcuffs and assault of detainees. As you are aware we are also currently undertaking investigations into complaint handling processes within detention centres, and the Department's contract management of ACM.

Access to Medical/Dental Services

There are a number of complaints about access to appropriate medical and dental care for detainees and the standard of services provided. It is premature for my office to offer a concluded opinion on these issues, but the complaints do at this stage suggest that the standard of medical and dental services may not be to the level that we would expect in the community. There appear to be long delays in accessing services. By the time a detainee finally sees a dentist, the problem (in some complaints we have seen) has often become serious, treatment is labelled as 'emergency', persons have developed abscesses, needing costly treatment.

There is also evidence pointing to the need for medical treatment being ignored by Centre staff to the point where detainees become seriously ill, both in terms of their physical and mental health, before any action is taken. A concern that is prompted by our investigation so far is that medical needs of detainees may not be given adequate consideration in determining management plans, and that some advice from doctors on the management of a detainee's illness may be being disregarded in the process.

In addition, there appears to be evidence suggesting poor record keeping and maintenance of records: medical records are placed on the wrong file or lost which has implications for future treatment requirements. We are also concerned that the potential for inaccurate or inadequate recording of reasons for treatment, timing and types of treatment received may be hindering the management of individual detainees health needs.

We propose to develop an issues paper for your comment outlining our concerns on these matters in more detail.

The Use of Restraints (Handcuffs/Flexicuffs)

The use of restraints during transport of detainees, particularly to and from medical appointments, is another issue of concern. There is some evidence that restraints are used as a matter of course and detainees are not properly informed of the reasons for their use. There is also concern that restraints are not removed during medical appointments.

While we understand that the use of restraints is part of the risk management at the Centres and during transport and escorts, we would like to ensure that they are only used when absolutely necessary, with adequate explanations to detainees as to the reasons for their use and the appropriate care to avoid injuries.

Again, this is a matter on which we are developing an issues paper.

Assault on Detainees

There are allegations that detainees are, at times, assaulted either by other detainees or Centre staff. There appear to be issues as to whether investigation should be undertaken by DIMIA, ACM or police; how the decisions on investigations are made and documented; and what opportunity there is for detainees to contact police themselves and request an investigation.

There are questions as to which police authority should be contacted in the first instance – State police or the AFP. I understand that there have been some discussions aimed at developing Memoranda of Understanding (MOU's) between the Department and the respective State police authorities, but as yet there are no formal procedures in place to govern the investigation of allegations of serious criminal activity, such as assault.

In my view, formal arrangements delineating the responsibilities of police, DIMIA and the detention service provider in relation to allegations of criminal assault are important and all efforts should be made to finalise the MOU's. Senior Assistant Ombudsman, Catherine McPherson, who is also responsible for our law enforcement portfolio, has mentioned to Steve Davis that we may be able to assist in the process through our cross-jurisdictional law enforcement and ombudsman relationships. You may wish to further consider this possibility.

Complaint Handling Processes

Of the 337 complaint issues brought to our attention and closed during the three-month period, the office exercised discretion not to investigate on just over half of the issues (52.8%). We investigated 47.2% (159 issues). This is the highest investigation rate for any of the agencies that this office deals with.

Assisting government agencies in developing robust complaint handling systems has been a major administrative focus of this office in recent years. As part of a rolling program, we have now commenced an investigation on complaint handling processes within detention facilities, as a subset of an investigation into the Department's overall complaint handling processes.

The focus of our investigation will be whether there is scope for improving complaint handling mechanisms in the Department and the Detention Centres. It may be, as a consequence, that this office should be referring more complainants to those internal review mechanisms rather than investigating them in the first instance.

Contract Management

We understand that your Department considers that ACM service delivery has been rigorously monitored through various avenues, such as DIMIA on-site managers, and the contract management team. Visits by my staff to the detention facilities have identified situations where we believe that the contractor has failed to meet the Immigration Detention Standards (IDS).

In addition to the review of the IDS, which is nearing completion, we have begun an own motion investigation into your Department's contract management within detention facilities. I believe that through this process my office will be able to provide information, which is beneficial to the negotiation of a new contract with Group 4.

Other Issues

Use of Search and Entry Powers

DIMIA compliance officers have extensive powers to search and enter premises. Unlike members of the police force, they do not require the agreement of a magistrate before undertaking such actions. We have received a number of complaints about actions taken by DIMIA officers on the basis that they believed unlawful non-citizens were on the premises. The complaints include matters of adverse impact on the business, loss of revenue, the manner of the officers involved, the lack of accountability, and the lack of documentation on the exercise.

We are currently assessing the possibility of an own motion investigation into this issue, particularly with the view of how DIMIA's actions compare to those of other departments with similar search and entry powers, such as the Australian Taxation Office. You may wish to nominate a contact officer to assist us with preliminary inquiries on this matter.

Privative Clause

As I mentioned at our meeting last week, we continue to be interested in the application of the privative clause to migration decisions. In particular, we are concerned with cases where the department has acknowledged that some form of error was made in the processing of a visa application but has relied on the privative clause as a basis for refusing to re-visit those decisions.

I am currently considering my position on this.

Case Handling

Our statistics show that over a third of our current cases are over six months old. This is in part due to the complexity of the matters that we are currently investigating. It is also due to the length of time that we are experiencing in obtaining answers to our inquiries from the Department. It appears that, in the majority of cases, DIMIA officers need to request extensions of time in order to obtain the information for us.

This is of ongoing concern to us. However, I am satisfied that my staff are in regular contact with officers from your Ombudsman, Privacy and FOI Section (OPFOI) and Public Scrutiny and Coordination Section (PSCS) to discuss outstanding complaints and facilitate information flow. I believe we are beginning to see the benefits of this closer interaction.

For your information I have annexed to this letter additional statistical information on complaints dealt with by my office in the first quarter of this year (January to March 2003).

Yours sincerely



Professor John McMillan
Commonwealth Ombudsman

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COMPLAINTS TO THE COMMONWEALTH OMBUDSMAN CONCERNING THE DEPARTMENT OF IMMIGRATION, MULTICULTURAL AND INDIGENOUS AFFAIRS (DIMIA)

1 JANUARY 2003 – 31 March 2003

COMPLAINTS CLOSED

Our database allows us to record the issues identified in a complaint, as well as the underlying areas of concern (causes), which led to the complaint. Causes of complaints are separated into seven categories: advice, behaviour, decision/action, policy, timeliness, other and not determined. "Advice" refers to the advice given by departmental officers to DIMIA clients; "behaviour" related to the general conduct displayed by DIMIA officers and employees of contracted agencies towards clients; "decision/action" refers to decisions made and actions taken by DIMIA staff in the course of their work; "policy" refers to DIMIA's general policies and guidelines; and "timeliness" refers to the time it took to make a decision or proceed with an action. Table 1 gives an overview of complaint number closed and the underlying causes for the period January to March 2003.

Table 1: Complaint Issues closed by Cause of Complaint

Cause of Complaint		Number of Issues	Percentage of Total
ADVICE	Access	2	
	Clarity	4	
	Completeness	1	
	Fail to Provide	10	
	Inconsistent	6	
	Relevance	2	
	Wrong	5	
	Total Advice	30	8.9
BEHAVIOUR	Attitude	8	
	Bias	2	
	Corrupt	2	
	Harassment	6	
	Intimidation	1	
	Privacy	1	
	Rudeness	4	
	Total Behaviour	24	7.1
DECISION/ACTION	Application of Law/Rule	20	
	Calculation	1	
	Date of Effect	1	
	Failure to Act	31	
	Wrong	91	
	Total Decision/Action	144	42.7
POLICY	Legislation	3	
	Unfairness	14	
	Total Policy	17	5.1
TIMELINESS	Delay	77	
	Statutory Deadline	3	
	Total Timeliness	80	23.7
Other		31	9.2
Not Determined		11	3.3
GRAND TOTAL		337	100.0

Ombudsman Office Responses (Closed Complaints)

Of the 337 complaint issues brought to our attention and closed during the three-month period, the office exercised discretion not to investigate on just over half of the issues (52.8%). We investigated 47.2% (159 issues).

Where we exercised discretion not to investigate, we generally advised the complainant to pursue the issues with DIMIA first (in 45.5% of issues). In 28.7% of issues the complaint was not warranted under the circumstances and in 5.6% of issues the complaint was withdrawn or lapsed. Table 2 sets out this office's response to the 337 complaint issues closed for the period.

Table 2: Response for Complaints closed, 1 January – 31 March 2003

Response	Outcomes	Number of Issues
Discretion not to investigate	Advise to pursue with DIMIA	81
	Advise to pursue with court/tribunal	8
	Advise to pursue with subject specialist	1
	Being considered by Minister/Member of Parliament	8
	Has been or is being considered by court/tribunal	2
	Not warranted in the circumstances	51
	Insufficient interest by complainant	3
	Withdrawn by complainant or lapsed	10
	Written complaint requested but not received	7
	Out of jurisdiction	5
	Not determined	1
	Other	1
	Total	178 (52.8%)
Ombudsman investigation	Agency defect	35
	No agency defect	72
	Not determined	30
	Withdrawn by complainant	5
	Discretion not to investigate further	15
	Other	2
	Total	159 (47.2%)
GRAND TOTAL		337

Outcome of Complaint Issues Investigated

In 45.3 % of cases that we investigated, we found no defective administration. In 22% of issues investigated the outcome was a finding of 'defective administration' and in 18.9% of the issues we did not or could not make a determination as to whether or not defective administration existed. Table 3 provides an overview of the outcomes of our investigations in relation to the causes of complaints.

Table 3: Investigated complaint issues by cause and outcome

Cause of Complaint	Investigation Outcome	Number of Issues
ADVICE	Agency Defect	2
	No Agency Defect	9
	Not Determined	2
Total Advice		13
BEHAVIOUR	Agency Defect	2
	No Agency Defect	3
	Not Determined	2
	Out of Jurisdiction	1
Total Behaviour		8
DECISION/ACTION	Agency Defect	12
	No Agency Defect	34
	Not Determined	15
	Withdrawn or lapsed	2
	Discretion not investigate further	9
Total Decision/Action		72
POLICY	Agency Defect	2
	No Agency Defect	1
	Discretion not investigate further	1
Total Policy		4
TIMELINESS	Agency Defect	12
	No Agency Defect	22
	Not Determined	10
	Withdrawn or lapsed	2
	Discretion not investigate further	4
	Other	1
Total Timeliness		51
Other	Agency Defect	5
	No Agency Defect	3
	Not Determined	1
	Withdrawn or lapsed	1
Not Determined	Discretion not investigate further	1
GRAND TOTAL		159

The most commonly investigated concerns related to the Department's decisions and the timeliness of actions taken. We investigated 63.8% of all complaint issues relating to timeliness and 50% of issues relating to DIMIA decisions/actions. Though the numbers are small we only investigated about a quarter of complaint issues relating to departmental policy. We found defective administration in relation to 23.5% of concerns about timeliness and in 16.7% of issues in relation to decisions/actions.

