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Mr Robert Illingworth  
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Department Immigration, Multicultural & Indigenous Affairs  
Central Office,  
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By Fax 6264 2747

## **RE: NAURU CASES**

Dear Mr Illingworth,

I refer to your letters dated 14<sup>th</sup> February and 18<sup>th</sup> March.

In your letter 14/2/05 you refer to a letter forwarded to you by Mr John Okely. I assume you received a copy of my ten page letter to Mr Okely dated 31/1/05.

Since the 31/1/05 letter, I have followed up with a second letter to Mr Okely, dated 9/2/05, in which I continue to track the "new information" I submitted to Mr Alan Hutchinson in June **and July** 2004. Please find accompanying, a copy of the 9/2/05 letter to Mr Okely.

The most pertinent point in both those letters is that material submitted to the DIMIA, via Mr Hutchinson, which appears to have been forwarded to three case officers was NOT placed on the majority of the case files.

I reiterate, **only Ms Christine Darlington** filed the material in an appropriate manner, on one file, and none of the case officers put anything in writing to the applicants or myself, as their advisor.

Since the second letter to Mr Okely, I have submitted new information on behalf of a number of the applicants on Nauru. These new submissions specifically criticised the decision making process in each individual case, as well as highlighting changed, and deteriorating, circumstances in their home provinces/ countries.

As examples of the serious nature of my concerns, I attach the most recent two papers, the submissions for AXX RXXXX and BXXX AXXXX submitted to DIMIA 11/2/05 and 18/3/05 respectively. I urge your consideration of the matters raised in these submissions given that these two young men's lives are in the balance and whatever is determined about them on Nauru will affect their futures.

I also hand-delivered copies of all the 2005 new submissions to Mr John Nation and Mr Mike van Mana'an in the Minister's office on 24/3/05.

I attach a three page cover letter to the Minister (also dated 24/3/05), which lists the range of flaws in the processing of the Nauru caseload which have become obvious as the full files have gradually been released.

This criticism of the Nauru processing listed for the Minister last week is **not exhaustive**. As I complete each new file, serious new problems with the processing on Nauru are becoming apparent.

I also include, for your information, two letters which I have prepared for the FOI Section, Central Office.

These letters, dated 23/3/05 and 28/3/05, document the difficulties I have faced getting access to the files under FOI for even the small number of applicants who were rejected during the 2004 re-examination process.

The primary issue in relation to FOI requests are:

1. Delays of more than 12 months in releasing **any** files under FOI for the Nauru caseload.
2. A confusing blurring of boundaries between the Refugee and Humanitarian Section and the FOI Section in relation to the partial release of material. Mr Alan Hutchinson facilitated a speedy electronic release of the 2002 review decision for each applicant, without any official FOI decision record.
3. The official FOI process was meant to be happening simultaneously, with original 956 forms and a letter of request being hand delivered to the FOI Section on 4/2/04. At this stage, I still have not received all files for those remaining on Nauru.
4. The two letters to FOI Section (accompanying) give more details about the issues in relation to the FOI process.
5. It is important to note that the FOI Section in Central Office appears to be grossly understaffed and suffers from an extraordinarily high staff turnover.

Referring back to your latest letter, dated 18/3/05, you make a number of statements which need to be examined.

1. *“The offshore reassessment process was designed to **obviate** the need for any professional assistance to those on Nauru.”*
  - a. The pocket MacQuarie Dictionary defines “obviate” as “*to meet and get rid of, or prevent (difficulties, objections, etc) by effective measures.*”<sup>1</sup>
  - b. Far from being a professional in need of obviation, the Minister herself acknowledged me as representing asylum seekers on Nauru in her Press Release dated 30/12/03.
2. *“DIMIA arrangements ... provided the opportunity for them to have a representative accompany them at interview or submit material for reconsideration.”*

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<sup>1</sup> MacQuarie Dictionary, 1989, p720.

- a. I was not present at any of the re-examination interviews for the Afghan caseload **due to delays in the issuing of my first visa** to Nauru. I arrived on Nauru in time to speak briefly to Barbara O'Farrell just before she and the rest of the DIMIA interviewing team left Nauru.
  - b. Careful file notes of all the phone conversations involved in securing my visa(s) to Nauru have been kept. I am happy to transcribe for you the details of these phone conversations, as they illuminate the process and are instructional about the Nauru visa system.
  - c. Suffice to say, the Afghan applicant's had NO power over whether or not I was able to be present at their re-examination interviews.
3. The fact that you are able to "*confirm all of the (June 2004) material ... was passed to the relevant assessing officers,*" when only one file shows any evidence of new material being submitted to the DIMIA. That alone is a serious breach of standard practise and throws the notion of "proper processing" into disrepute.
  4. "*This material was taken into account in reaching final reassessment outcomes.*"
    - a. Contrary to that assertion there is **no evidence** on the files of any, let alone any serious, consideration of the material.
    - b. For example, numerous Afghan witnesses were not contacted and questioned.
    - c. Nothing in writing, other than one sentence by one case officer about one applicant, (in an internal email), was placed on the files.
  5. "*They have confirmed that this material was taken into account in reaching the final reassessment outcomes*"
    - a. How have they confirmed this, to whom? Is there anything in writing? Why was I never written to with a response?
    - b. You mention material from June 2004.
    - c. What about the material from July 2004?
    - d. What about the further individual submissions for each applicant as I have the opportunity to read the full DIMIA files?
    - e. What about when new information about nationality comes back to contradict the basis of their rejection?
  6. What about the fact that the decisions were handed down in May 2004 and all the new information has been submitted "post-decision?"
  7. "*However, material ... was passed ... as it was received, to the officers who conducted the recent reassessments so that DIMIA could respond appropriately should any of this material raise new issues of significance.*"
    - a. Please define what you think an **appropriate** response would be to the large body of new information provided by me on behalf of my clients.
    - b. I have submitted that **one sentence** from Mr Alan Hutchinson in a half page letter (10/9/04) was NOT an appropriate response to the large variety of new information submitted on behalf of a diverse caseload.

- c. *“The additional material has been considered but has been found to not affect the outcome of the re-examination of these cases”* was a grossly inappropriate response in September, 2004. In March 2005, in light of the serious flaws in the decision making process that have come to light through a thorough reading of the files, I would hope that a more robust response can be expected to all the new material, both that submitted in July 2004 and January to March 2005.
8. In relation to the issue of how the FOI requests for the Nauru caseload have been handled, I trust that you will be taking note of my numerous references and letters about this issue and will be not only responding in writing, in depth, but actually recommending to the appropriate DIMIA Division / Minister / Treasury the need for providing more resources and funds to re-sourcing the FOI Section of Central Office at an appropriate staffing level.

Thank you very much for your assistance.

Yours sincerely,

MARION LE, OAM  
29/3/05

List of attachments accompanying letter:

1. Copy of second letter to John Okely, dated 9/2/05.
2. Copy of 2005 Submission for AXX RXXX, dated 11/2/05.
3. Copy of 2005 Submission for BXXX AXX, dated 18/3/05.
4. Copy of letter to FOI Section, dated 23/3/05.
5. Copy of letter to FOI Section, dated 28/3/05, including Appendices A-O.