

COMMONWEALTH OMBUDSMAN

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19 December 2003

Mr Alistair Sands
Secretary
Select Committee on Ministerial Discretion in Migration Matters
Parliament House
CANBERRA ACT 2600

Dear Mr Sands

Data and information requested by the Committee

I enclose an edited transcript for my appearance before the Committee on 18 November 2003. I also enclose a page from my recent Annual Report, which updates the provisional complaint figure earlier given in my submission (specifically the number of migration complaints in 2002-03 was 1121, not 893 as given at paragraph 2.2.1 of the submission).

I was asked by the Committee to provide a range of information and data. The Committee requested the following:

1. The number of complaints broken down by the person representing on behalf of the complainant and the complainant in the migration area in the last couple of years;
2. The number of complaints that have arisen post tribunal and prior to any judicial review
3. The number of complaints that have arisen post judicial review;
4. For the years 1998-99, 1999-00, 2000-01, 2001-02 and 2002-03, whether any Statutory Notices had been issued to the Department of Immigration and what the compliance rates in relation to those statutory notices have been;
5. Whether or not the Ombudsman's office had received any complaints from Mr Karim Kistrwani, Mr Hbeiche or Mr Boutros Al Draibi since 1999; and
6. If complaints had been received, how many and the nature of the complaint(s).

The Ombudsman's office uses a database known as 'COMBi' to record details of complaints received and to manage the complaint workload. COMBi was introduced in early 2002 and also holds some data from an earlier, less sophisticated database. In order to meet the request of the Committee a variety of searches have been undertaken in the COMBi database. While the database allows the extraction of a considerable range of data, it was not designed to capture some of the detail requested by the Committee. The results obtained are reflected in the attached tables.

1. The number of complaints broken down by the person representing on behalf of the complainant and the complainant in the migration area in the last couple of years.

This table summarises the number of Immigration complaints received where the record shows that (at least one) of the complainants was acting on behalf of the primary complainant:

Year Received	DIMIA	MRT	RRT	Total
1998-1999	240		1	241
1999-2000	257	10	1	268
2000-2001	285	7	1	293
2001-2002	313	6	3	322
2002-2003	236	8	2	246
Total	1331	31	8	1370

2 & 3. In order to try to identify:

- a. the number of complaints that have arisen post tribunal and prior to any judicial review; and
- b. the number of complaints that have arisen post judicial review,

a search against all Immigration complaints in the data base for the expressions, "Minister's Discretion", "Minister's Powers", "Public Interest", "s417", and "s351" was completed. The complaint summaries of the 89 cases identified were then reviewed so that (where possible) the complaints were classified according to the timing of the complaint.

Number of complaints identified	91
Number received prior to any Tribunal or Judicial review	25
Number received post to RRT hearing	12
Number received post RRT hearing and after lodgement of a request with the Minister	25
Number received post to MRT hearing	8
Number received post MRT hearing and after lodgement of a request with the Minister	6
Number received post AAT	1
Number received post Judicial review	4
Number where complaint related to matters where access to MRT, RRT, was not applicable (eg Conditions in detention)	10

4. For the years 1998-99, 1999-00, 2000-01, 2001-02 and 2002-03, whether any Statutory Notices had been issued to the Department of Immigration and what the compliance rates in relation to those statutory notices have been.

Year	Number of Notices
1998-1999	0
1999-2000	0
2000-2001	0
2001-2002	17
2002-2003	8
Total	25

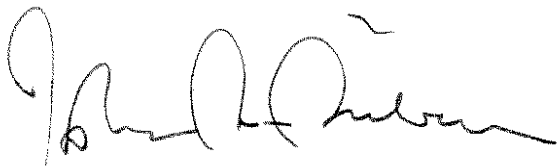
When documents have been requested under section 9 of the Ombudsman Act, the Department has provided the documents requested in a reasonably timely manner.

5 & 6. Whether or not the Ombudsman's office had received any complaints from Mr Karim Kisrwani, Mr Hbeiche or Mr Boutros Al Draibi since 1999.

A search of the database for the specified time frame has not identified any complaints received from the persons identified.

***Note:** As the database does not require Investigation Officers to identify whether or not the complaint was received pre or post a tribunal hearing or Judicial review and does not require the recording of 'Minister's Public Interest Powers', the data provided is as accurate as possible given the nature of the database interrogation completed and the resources available to complete the task.

Yours sincerely



Prof. John McMillan
Commonwealth Ombudsman

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IMMIGRATION

COMPLAINTS OVERVIEW

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) continued to be a significant source of complaints received by the Ombudsman during the year. Overall, the office received 1,121 complaints about DIMIA. This was a small increase (23, or 2%) on the number of complaints received last year (see Figure 6.1).

The major areas of DIMIA activity about which complaints were made were immigration detention and visa processing. In both areas, DIMIA has been working to improve both the general administration of its programs and the handling of complaints. The results of our investigations have been able to feed these improvements.

The Ombudsman's office investigated 47% of complaint issues arising from complaints about DIMIA. This compares to the general average of

'DIMIA has been working to improve both the general administration of its programs and the handling of complaints.'

29% across all Commonwealth agencies. During the year, the Ombudsman raised with DIMIA the point that the higher investigation rate for DIMIA complaints could probably be reduced by the development or enhancement of internal procedures within DIMIA for handling complaints.

Of the 578 DIMIA issues investigated, the Ombudsman identified arguable administrative defect or error in 127 issues (22%). This compares favourably to the Commonwealth average of 29%.

Figure 6.1: Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) complaint trends, 1999-2003

