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17 November 2005

Mr Andrew Metcalfe  
 Secretary  
 Department of Immigration and Multicultural  
 and Indigenous Affairs  
 PO Box 25  
 BELCONNEN ACT 2616

Dear Mr Metcalfe

I am writing to provide my regular report on complaint handling and other assessments by my office concerning the Department. The reports are usually provided on a quarterly basis, however on this occasion the report will cover two quarters April to June and July to September 2005.

I apologise for the delay in providing you with this report. As you will appreciate this office, like DIMIA, has had its priorities thrown into some disarray in recent months. In the future I intend, as per previous arrangements, to provide the reports on a quarterly basis.

**Complaint numbers**

The table below shows the number of complaints received in the April to June 2005 quarter and the July to September 2005 quarter. The total number of complaints received in the April to June 2005 quarter was slightly higher than the previous quarter and about the same as it was for the same quarter in 2003-04. However, the total number of complaints received in the July to September 2005 quarter was significantly higher than previous quarters. This followed the amendments to the *Migration Act 1958* in June 2005 and the commencement of my new statutory role in reviewing the cases of detainees who have been in detention for two years or more. The statistics do not, however, include the long term detention review cases. I believe that the increase in complaints has been largely attributable to the increased profile of my office in its Immigration oversight role and in this context I note that the increase in detention related complaints accounts for nearly the entire increase.

Quarter	Complaints received
July - September 2003	220
October - December 2003	215
January - March 2004	209
April - June 2004	223
July - September 2004	231
October - December 2004	208
January - March 2005	207
April - June 2005	227
July - September 2005	333

In 2004-05 the main issues identified in complaints received related to migration (34%), detainees (23%) and temporary entry (13%).

The first quarter of 2005-06 saw a marked increase in detainee issues (50%). On a percentage basis, migration issues identified in complaints received during this period (23%) were notably lower than the previous quarter and financial year, as were temporary entry issues (8%). However, on a numerical basis, this decrease was not so notable.

For complaints closed during April to June 2005, 46% of issues were investigated. This compares with 48% in the corresponding period in 2004, 42%, 41% and 41% for the subsequent three quarters. For complaints closed during July to September 2005, 34% of issues were investigated. This compares with 42% in the corresponding period in 2004.

In April to June 2005 a recording of 'Defective Administration' was made in relation to 7 complaints. In July to September 2005 a recording of 'Defective Administration' was made in relation to 9 complaints.

I trust you have received a copy of the Commonwealth Ombudsman Annual Report 2004-05. A statistical summary of complaints received, and complaints and issues finalised, in 2004-05 is provided in that report.

### **Enhanced role in Immigration Review**

#### ***Two year Detention Review***

As you may be aware I have completed seven assessment reports as part of the review of long term detainees. The review process is taking a little longer than originally envisaged. There are a variety of reasons for this. As I mentioned in my covering statement to the Minister, which accompanied my initial two reports, the process of arranging an interview has been more difficult and lengthy than anticipated at first. The interviews sometimes highlight other issues that need to be explored such as arranging a further medical assessment, or consulting a friend or advocate nominated by the person interviewed. Notwithstanding this, I am satisfied with the progress that is being made with these assessments and expect that the reporting process will become more streamlined in the future.

The first reports have drawn heavily from the information provided by your Department. I have therefore relied upon that information being comprehensive, accurate and up to date. On that point, may I specially request that my office be notified of any material change during the reporting period, such as a person being released from detention or of other changes in the detention arrangements. The relationship with the Department has been good in this respect and I appreciate the challenges faced by Departmental staff in ensuring that each decision is notified to my office on a case-by-case basis. I am satisfied with the rate at which my office is receiving reports on individual detainees from the Department.

While my office continues to focus on conducting interviews with people held in detention facilities, my staff have also conducted many interviews of individuals now in the community or in facilities such as Glenside Psychiatric Hospital in Adelaide. During visits to various locations, staff from my office also generally meet with community groups to inform them of the processes involved in these assessments. I acknowledge the assistance your staff have provided my office with facilitating visits to the detention facilities.

#### ***Investigation of the referred Immigration cases***

As you may be aware, my office is presently giving priority to investigating cases that have been identified as possibly involving mental health or data issues. While at this stage it is not possible to predict with accuracy how long it will take to investigate all the 220 cases that have been referred, I anticipate that the first reports should be completed by early next year.

Given media coverage and Senate committee processes, there continues to be a high level of interest and scrutiny in relation to the timeliness and thoroughness of the investigation into these cases. That scrutiny relates both to the processes within my office as well as the level of openness and assistance provided by your Department. Cooperation between my office and your Department, especially with access to appropriate data and other information, will be fundamental to the successful completion of this investigation. Over the past few weeks my office has raised a number of issues about the comprehensiveness and timing of data we have been getting from the Department. I am pleased that these requests received appropriate attention and priority. I also recognise the recent difficulty faced by the Department in responding to information requests when much of that information may be held in the Blue building at Benjamin offices, and there has been a need to ensure staff safety in light of asbestos concerns.

### **Section 501 visa cancellations own motion**

My office is nearing completion of an own motion investigation into the removal of long-term Australian permanent residents whose visas have been cancelled on character grounds under s 501 of the *Migration Act*. I am presently reviewing a draft version of the own motion report and hope, within the next week or so, to be in a position to provide you with a copy of a draft for comment.

In recent correspondence I have requested the deferral of removal action of those who may benefit from Government acceptance of recommendations in the (imminent) draft report. I appreciate the level of cooperation your Department has provided to date on this issue. The group of people referred to in that correspondence are those who would fit the following profile:

- arrived in Australia as a minor;
- spent the formative years in Australia;
- has effectively been absorbed into the Australian community;
- has strong ties – in particular strong family ties - to the Australian community;
- removal from Australia would cause significant hardship to the individual;
- removal from Australia would cause significant hardship to other Australians, including family members;
- has no real ties to the country of removal;
- removal from Australia is unlikely to have been achieved under s 200 criminal deportation provisions of the *Migration Act*;
- return to country of origin poses significant problems in terms of language, cultural, educational, and/or social factors; and
- release from detention, or placement in an alternative form of detention, would not result in a significant risk to the Australian community.

I stress that we are not requesting the Department to defer the removal of those who have been convicted of a crime involving serious physical harm or violence and who continue to be a threat to the Australian community.

### **Red One and other Management unit operational procedures**

Thank you for providing my office with draft versions for comment of the operational procedures for the Baxter IDC Red One facility and for the Management Support Unit – Transfer and Accommodation. I understand that these operational procedures are presently in operation. Our initial examination of the procedures suggests that they contain more appropriate arrangements than previously, and that they take up many of the suggestions my office has made over the past year or so. We will provide a more detailed analysis of the operational procedures in the coming month or two. We also propose to consider the

procedures further in the context of the broader review of immigration detention that the Department is conducting in response to the Palmer Report. It is important, I believe, that they not be evaluated in isolation from the broader detention reforms.

### **DIMIA's response to the Rau and Alvarez inquiries**

I acknowledge your Department's readiness to address the issues and recommendations coming out of the Rau and Alvarez Inquiries; the Department's change agenda appears to be comprehensive and focused broadly on structure, governance and values. I note your view that the effective implementation of this agenda is important in improving the standard of decision-making and general administration within the Department.

Over the past couple of months we have noted the positive and open approach taken by officers of the Department in addressing some issues that have been of long-standing concern to this office, especially in relation to detention and compliance. The open and accountable approach of the Department is welcomed. I also welcome the opportunity for my office to be represented on the Values and Standards Committee that you have established.

### **Immigration Detention**

#### ***Immigration Detention Health Service Provision***

I appreciate the progress updates on the initiatives DIMIA is taking to improve the provision of health services within immigration detention facilities. Complaints and issues in relation to the provision of health services at immigration detention facilities remain a key focus of my office. Health service issues have not only been raised in many general complaints to my office but have also been also a common theme in the assessment of those who have been in immigration detention for two years or more.

You will be aware that that my office will not pursue funding of the previously proposed Health Advisory Panel (which was to be established in my office and advise me), in light of the Department's intention to establish an independent panel. Nevertheless, immigration detention health services will remain an important area for external scrutiny. Detention health issues will be among the key areas of priority for my enhanced role as Immigration Ombudsman.

I also appreciate the inclusion of my office in the recent consultation rounds with the Department's new Health Advisory Panel. My Deputy, Mr Ron Brent, who attended the initial meeting was positive about the outcome. In particular, we support the outcome that the entirety of recommendation 6.11 in the *Palmer Report* would not be implemented because it moved beyond my oversight role to areas of policy development and administration. I believe that my office can effectively oversee the standards that are ultimately developed by the Department following advice from appropriate bodies. External and internal complaint handling mechanisms will be an important feature of any new immigration detention health services structure. Clearly this will be an area of interest for my office.

#### ***Detention Services Steering Committee***

Our involvement in the Department's Detention Services Steering Committee will provide another forum where we can provide constructive feedback on the adequacy and quality of detention services. We nevertheless harbour a concern – communicated by Mary Durkin to Lyn O'Connell – that our participation in the Committee should not conflict with our primary investigation role and the need to be independent (and be seen as independent). Our concern arose from a couple of the terms of reference for the Committee that possibly see it playing a role as part of the executive decision-making processes in the Department. For the moment we have accepted the invitation to be on the Steering Committee and we will monitor how it progresses. At this stage, I believe it would be more advantageous to be on

the Committee where we can make a constructive input into the Department's planned implementation of the Palmer Report recommendations

### **Privacy**

My office has been provided with a draft version of the Department's Staff Privacy Instructions for comment and feedback. We are presently perusing the draft and will provide your Department with comment. One initial observation I will make is that the draft Instructions should at least be consistent with the provisions relating to privacy outlined in the *Migration and Ombudsman Legislation Amendment Act*. My office will shortly be providing a more comprehensive response.

### **Use of Force and Restraints**

In a letter dated 19<sup>th</sup> May 2005, the former Secretary, Mr Farmer, responded to my July - September 2004 quarterly report stating that a staff member in my office had advised your Department that the draft document *Appropriate Use of Restraints within the Immigration Detention Environment* was no longer required. Mr Farmer's letter indicated that this was the last point of discussion on the subject between our offices. The staff member has since left my office and I regret that she had not passed on such a message or made a file note of the discussion. We had, however, twice sought the document on subsequent occasions. The final document was later provided, although six months had elapsed from when the draft was first requested. My intention in raising this issue is merely to express the wish that issues of this kind (whether classed as a disagreement or a misunderstanding) can in future be resolved more easily, consistently with the wish of both agencies to establish an open and cooperative working relationship.

### **DIMIA complaint handling**

Mr Farmer's letter of 19<sup>th</sup> May 2005 also advised me that DIMIA is working on an integrated dispute resolution system to combine both the handling of client complaints and investigations by statutory oversight bodies. I understand the Department has made further progress on this issue. I also acknowledge that officers from the Department have organised time to meet with Mary Durkin and George Masri from my office to provide them with an initial briefing on the proposed complaint handling model. I appreciate the Department's willingness to consult with my office on this issue. I look forward to being briefed on the proposed complaint handling model and being given the opportunity to provide constructive feedback.

I believe that if the DIMIA complaints system is sufficiently robust it will result in a reduction in the number of complaints that we decide to investigate in the first instance. Implementation of a robust internal complaints mechanism will enable my staff to refer complainants to the Department for resolution where appropriate. As I and staff from my office have stated previously in discussions and correspondence with your Department, we are presently reluctant to do this with immigration related complaints.

In his letter Mr Farmer queried our higher than average investigation rate for DIMIA complaints based on statistics showing that a lower proportion of DIMIA complaints was upheld. He suggested that, based on this data, more complaints should be referred back to DIMIA rather than investigated by us. My response is to say that the data can be read differently. A probable consequence of the higher investigation rate of DIMIA complaints is that there is no filtering of some simpler matters that can be resolved without a finding of administrative deficiency. I do not see the need to pursue this issue further, other than to reiterate the point made earlier that the development of a robust complaint handling system by DIMIA will likely meet the objective of both our agencies, namely, that a greater proportion of complaints to this office is referred to the Department for initial investigation.

### **Provision and recording of oral advice**

On 20<sup>th</sup> May 2005, Mr Abul Rizvi wrote to Ms Mary Durkin to outline the Department's approach to the provision and recording of oral advice. I appreciate the briefing provided to my office and acknowledge that the Department's approach to this issue is comprehensive and thoughtful. My office is likely to be examining this issue further, as part of the enhanced role as Immigration Ombudsman and also in the context of a possible across-agency own motion.


### **General comments**

I would like to thank the Department for inviting my office on the recent trip to view the immigration detention facilities at Perth, Port Hedland, Christmas and Cocos Islands, and Darwin. George Masri from my office found the trip worthwhile, not only being able to view the detention centres first hand but also having the opportunity to discuss a range of detention related matters with senior staff from the Department.

I would also like to thank the Department for providing my staff with a range of training and information sessions on such topics as DIMIA's case management IT systems, DIMIA's document management system, Legondcom, Bridging Visas and Temporary Protection Visas. Given the relatively large number of new staff working on immigration matters in my office it is important that they are able to come up to speed quickly on key areas of immigration law, policy and procedures. These training and information sessions supplement our internal training and assist my staff to gain further knowledge of immigration administration.

I look forward to the continued constructive working relationship with you and your Department, especially within the framework of my role as Immigration Ombudsman.

Yours sincerely



Prof. John McMillan  
Commonwealth Ombudsman

The information provided below may be subject to further change following further quality assurance processes.

**Table 1 Issues identified in complaints received 2003-04 and 2004-05**

Table 1 shows the issues identified in complaints received by the office over the past two financial years.

<b>Complaint issue received</b>	<b>2003-04</b>	<b>% of 2003-04</b>	<b>2004-05</b>	<b>% of 2004-05</b>
Citizenship	38	4	59	6
Complaint service	14	1	21	2
Compliance activity	-	-	30	3
Detainee	231	24	216	23
FOI/general access	7	1	6	1
FOI/personal access	15	2	33	3
Humanitarian	42	4	43	5
Migration	358	38	320	34
Multicultural services	0	0	3	0
Other	97	10	91	10
Temporary entry	151	16	124	13
Tender/contract	1	0	4	0
<b>Total</b>	<b>954</b>	<b>100</b>	<b>950</b>	<b>100</b>

**Table 2 Complaint issues identified in complaints received April to September 2005**

Table 2 shows the issues identified in complaints received in the April to June 2005 quarter and the July to September 2005 quarter.

<b>Complaint issue received</b>	<b>Apr-Jun 05</b>	<b>% received</b>	<b>Jul-Sept 05</b>	<b>% received</b>
Citizenship	10	4	17	5
Complaint service	6	2	2	0
Compliance activity	5	2	8	2
Detainee	57	24	184	50
FOI/general access	2	1	2	0
FOI/personal access	16	7	10	3
Humanitarian	11	5	15	4
Migration	75	31	86	23
Multicultural services	0	0	0	0
Other	23	10	19	5
Temporary entry	34	14	28	8
Tender/contract	1	0	0	0
<b>Total</b>	<b>240</b>	<b>100</b>	<b>371</b>	<b>100</b>

**Table 3 Complaints closed by issue and Ombudsman Office response April to June 2005**

<b>Complaint issue closed</b>	<b>Discretion at outset</b>	<b>Preliminary inquiries</b>	<b>Ombudsman investigation</b>	<b>Total</b>	<b>% Investigated</b>
Citizenship	2	1	9	12	75
Complaint service	0	2	4	6	67
Compliance activity	1	3	3	7	43
Detainee	14	7	33	54	61
FOI/general access	0	1	1	2	50
FOI/personal access	7	4	6	17	35
Humanitarian	5	0	2	7	29
Migration	33	8	31	72	43
Other	9	4	6	19	32
Temporary entry	20	4	13	37	35
Tender/contract	1	0	0	1	0
<b>Total</b>	<b>92</b>	<b>34</b>	<b>108</b>	<b>234</b>	<b>46</b>

**Table 4 Complaints closed by issue and Ombudsman Office response July to September 2005**

<b>Complaint issue closed</b>	<b>Discretion at outset</b>	<b>Preliminary inquiries</b>	<b>Ombudsman investigation</b>	<b>Total</b>	<b>% Investigated</b>
Citizenship	7	2	4	13	31
Complaint service	1	0	2	3	67
Compliance activity	1	0	6	7	86
Detainee	91	7	38	136	28
FOI/general access	1	0	0	1	0
FOI/personal access	3	1	3	7	43
Humanitarian	8	2	3	13	23
Migration	41	7	29	77	38
Other	10	4	6	20	30
Temporary entry	12	0	11	23	48
Tender/contract	0	0	0	0	0
<b>Total</b>	<b>175</b>	<b>23</b>	<b>102</b>	<b>300</b>	<b>34</b>



**Table 5 Ombudsman Office responses to closed complaints July to September 2005**

Table 5 summarises the Ombudsman Office responses and outcomes to complaints closed during the April to June 2005 quarter and the July to September 2005 quarter. Investigation officers closed 216 complaints with 234 issues in the April to June 2005 quarter and they closed 265 complaints with 300 issues in the July to September 2005 quarter.

Response	Outcomes	Number of issues	
		Apr-Jun 05	Jul-Sept 05
Discretion at outset	Advised to pursue elsewhere	17	21
	Advised to pursue with agency	45	57
	Approach not pursued	4	12
	Ombudsman investigation not warranted	26	81
	Out of jurisdiction	0	4
<b>Sub-total</b>		<b>92</b>	<b>175</b>
Preliminary inquiries	Advised to pursue elsewhere	5	2
	Advised to pursue with agency	5	3
	Approach not pursued	10	5
	Ombudsman investigation not warranted	14	13
<b>Sub-total</b>		<b>34</b>	<b>23</b>
Ombudsman investigation	Administrative deficiency	7	9
	Advised to pursue elsewhere	0	1
	Advised to pursue with agency	4	1
	Approach not pursued	2	6
	No administrative deficiency	40	49
	Ombudsman investigation not warranted	16	10
	Resolved without determination	39	26
<b>Sub-total</b>		<b>108</b>	<b>102</b>
<b>Total</b>		<b>234</b>	<b>300</b>

**Table 6 Outcome of complaint issues investigated April to June 2005**

Complaint issue investigated	Admin deficiency	Advised to pursue elsewhere	Advised to pursue with agency	Approach not pursued	No admin deficiency	Ombudsman investigation not warranted	Resolved without determination
Citizenship	0	0	1	1	4	0	3
Complaint service	0	0	1	0	0	0	3
Compliance activity	0	0	0	0	0	2	1
Detainee	1	0	0	1	11	6	14
FOI general access	1	0	0	0	0	0	0
FOI personal access	3	0	0	0	2	0	1
Humanitarian	0	0	0	0	1	0	1
Migration	2	0	1	0	15	6	7
Other	0	0	1	0	3	0	2
Temporary entry	0	0	0	0	4	2	7
Total	7	0	4	2	40	16	39

**Table 7 Outcome of complaint issues investigated July to September 2005**

Complaint issue investigated	Admin deficiency	Advised to pursue elsewhere	Advised to pursue with agency	Approach not pursued	No admin deficiency	Ombudsman investigation not warranted	Resolved without determination
Citizenship	0	0	1	0	3	0	0
Complaint service	0	0	0	0	0	0	2
Compliance activity	1	0	0	0	2	0	3
Detainee	1	0	0	4	19	6	8
FOI general access	0	0	0	0	0	0	0
FOI personal access	1	0	0	0	0	0	2
Humanitarian	0	0	0	1	1	0	1
Migration	5	1	0	0	15	2	6
Other	1	0	0	0	4	0	1
Temporary entry	0	0	0	1	5	2	3
Total	9	1	1	6	49	10	26

**Table 8 Complaint issues closed by cause and outcome April to September 2005**

Cause of complaint	Outcome	Number of issues	
		Apr-Jun	Jul-Sept
ADVICE	Administrative deficiency	0	1
	Advised to pursue elsewhere	1	2
	Advised to pursue with agency	8	11
	Approach not pursued	0	2
	No administrative deficiency	4	2
	Ombudsman investigation not warranted / No further investigation warranted	2	7
	Resolved without determination	7	4
	Sub-total		22
BEHAVIOUR	Administrative deficiency	0	2
	Advised to pursue elsewhere	1	1
	Advised to pursue with agency	4	7
	Approach not pursued	2	1
	No administrative deficiency	2	1
	Ombudsman investigation not warranted / No further investigation warranted	1	5
	Out of jurisdiction	0	1
	Resolved without determination	3	3
Sub-total		13	21
DECISION/ACTION	Administrative deficiency	1	3
	Advised to pursue elsewhere	17	16
	Advised to pursue with agency	20	24
	Approach not pursued	6	12
	No administrative deficiency	16	24
	Ombudsman investigation not warranted / No further investigation warranted	25	40
	Resolved without determination	15	7
Sub-total		100	127
NOT DETERMINED	Advised to pursue with agency	7	4
	Approach not pursued	1	0

	No administrative deficiency	1	0
	Ombudsman investigation not warranted / No further investigation warranted	0	2
<b>Sub-total</b>		<b>9</b>	<b>6</b>
<b>OTHER</b>	Advised to pursue elsewhere	1	2
	Advised to pursue with agency	2	6
	Approach not pursued	0	2
	No administrative deficiency	4	4
	Ombudsman investigation not warranted / No further investigation warranted	5	14
	Resolved without determination	2	1
<b>Sub-total</b>		<b>14</b>	<b>29</b>
<b>POLICY</b>	Advised to pursue elsewhere	1	2
	Advise to pursue with agency	2	3
	Approach not pursued	1	0
	No administrative deficiency	2	3
	Ombudsman investigation not warranted / No further investigation warranted	14	15
	Resolved without determination	2	1
<b>Sub-total</b>		<b>22</b>	<b>24</b>
<b>TIMELINESS</b>	Administrative deficiency	6	3
	Advised to pursue elsewhere	1	1
	Advised to pursue with agency	11	6
	Approach not pursued	6	6
	No administrative deficiency	11	15
	Ombudsman investigation not warranted / No further investigation warranted	9	21
	Out of jurisdiction	0	3
	Resolved without determination	10	9
<b>Sub-total</b>		<b>54</b>	<b>64</b>
<b>Total</b>		<b>234</b>	<b>300</b>

**Table 9 Complaints closed April to September 2005 where 'defective administration' was recorded**

Reference No.	Name	Issue	Cause	Comment
2003-2093273	Losana Bavesi	Migration – Family Members	Decision/Action – Failure to Act	Decision to refuse spouse visa subject to legal error
2005-2386595	Fatih Tuncok	Detainee	Timeliness – Delay	FOI delay
2005-2389905	Mohammad Habibi	Migration – Family Members	Timeliness - Delay	Delay in processing spouse visa application after successful MRT appeal
2005-2406133	Isata Tunkana	FOI Personal Access - Processing	Timeliness – Statutory Deadline	FOI delay
2005-2409900	Michael Clothier	FOI Personal Access - Processing	Timeliness – Statutory Deadline	FOI delay
2005-2450350	Easy Migrate Consultancy Services	FOI Personal Access - Processing	Timeliness – Statutory Deadline	FOI delay
2005-2453638	Marion Le	FOI General Access - Processing	Timeliness – Statutory Deadline	FOI delay – internal review
2005-2471704	Alexandre Dias	Migration – Family Member	Decision/Action – Wrong	Incorrect notification of decision to refuse spouse visa
2005-2499503	Anna Librizzi	Migration - Other	Decision/Action – Wrong	Provision of misleading information
2004-2167408	Eleonor Matthews	Detainee – Recovery of Cost	Advice – Fail to Provide	Failure to advise cost of detention
2005-2439611	Jill Western	FOI Personal Access - Processing	Timeliness – Statutory Deadline	FOI delay
2005-2450595	Joan Bamford	Migration – Family Members	Decision/Action – Failure to Act	Delay in processing spouse visa application

2004-2296024	Michael White	Compliance Activity – Field Visits and Warrants	Behaviour - Intimidation	Inappropriate interview arrangements and intimidation at interview
2005-2466823	Natalia Kornilova	Migration – Family Members	Timeliness - Delay	Delay in processing spouse visa application
2005-2428972	Robert Cashdollar	Other	Decision/Action – Wrong	Retirement visa renewals – loss of passports
2004-2256614	Robert O'Rourke	Migration – Family Members	Timeliness – Delay	Inappropriate interview arrangements and intimidation at interview