

Our ref: A/2003-2012213

26 May 2005

Mr W J Farmer
Secretary
Department of Immigration and Multicultural
and Indigenous Affairs
PO Box 25
BELCONNEN ACT 2616

Dear Mr Farmer

I am writing to provide you with my report on DIMIA complaints and statistical data covering the period January – March 2005.

Complaint numbers

The table below shows the number of complaints received in the January – March quarter. The total number of complaints received for this quarter is about the same as it was last quarter and for the same quarter in 2003-04.

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

Our analysis of complaints received in January to March 2005 indicates that the broad trends of the last financial year are continuing, with about 22% of complaints relating to detainees, 35% to migration, and 12% to temporary entry.

For complaints closed during January to March 2005, 41% of issues were investigated. This compares with 40% for the corresponding period in 2004, 48%, 41% and 42% for the subsequent three quarters.

A recording of 'agency defect' was made in relation to 4 cases. This compares with 12 issues in each of the previous two quarters, and 9 for the same period in 2004.

I should note that there may later be some small changes to the statistical data supplied in the attached tables, following further quality assurance processes. There may also be some slight discrepancies between the statistics in this report and our annual report data.

Independent inquiries into Immigration matters

The Palmer Inquiry

The scope and legal basis of the powers available to the present inquiry being conducted by Mr Palmer have been a matter of some parliamentary and public debate. I understand that the issue is currently under consideration by the Government. While recognising that is a matter for the Government to decide when and how to establish an inquiry into a matter of public interest, I will take this opportunity to reiterate the view I had earlier conveyed to you concerning the preparedness and suitability of my own office to be a part of any continuing inquiry.

A special feature of the office of Ombudsman is that it is endowed by statute with the powers, protections and immunities that can be important if not essential in conducting an inquiry in a setting where issues of legal liability are a concern. Specifically, the *Ombudsman Act 1976* confers power upon the office to require the production of information or documents from any person, to examine witnesses under oath, and to enter premises (ss 9, 13, 14). A statutory obligation of confidentiality is imposed upon the Ombudsman and other staff of the office (s 35). Nor are they compellable before a court, tribunal or similar body to disclose information or documents that have been obtained during an Ombudsman inquiry (s 35(8)). The Ombudsman, together with any person acting under his direction or authority, is not liable to an action, suit or proceeding in respect of any action taken in good faith in conducting an inquiry under the Ombudsman Act (s 33). There is a similar protection against civil action for any other person who has provided information or documents to the Ombudsman (s 37).

I need not elaborate that those features of the Ombudsman Act have both provided a backdrop for and played a part in investigations undertaken by the office for nearly three decades. The office is therefore well-accustomed to undertaking sensitive and prolonged inquiries in a safe, responsible and confidential manner.

My comments relate both to the present inquiry being conducted by Mr Palmer, and to any future inquiry that may be necessary into the administrative actions of the Department. I would be happy to discuss these issues further, or to convey these views separately to the Government.

The Hamburger Inquiry

The inquiry being conducted by Mr Hamburger into the movement of detainees between Maribyrnong and Baxter Immigration detention facilities is one of a number of special inquiries that have been established by the Department into matters about which complaints have been received. I recognise that it is a matter for the Department to establish an independent inquiry into any issue. On occasions I have responded to the Department's initiative by forestalling an inquiry that I might otherwise undertake into the same issue. An example is the inquiry into the Port Hedland incident, where my office acted upon the complaint it had received by temporarily deferring to and having input into the inquiry conducted by Mr Hamburger.

I feel the need to place on the record my view that the initiation of a separate inquiry by the Department should not be considered as necessarily replacing or negating a continuing

investigation by my own office into the same issue. I make this point in the context of a difficulty that has arisen in obtaining access to a draft report prepared by Mr Hamburger into the Maribyrnong transfer. I have written separately to Mr Steve Davis on this issue, making the point that timely access to the draft of Mr Hamburger's report could be important if the office was to fulfil its role properly of playing a part in the investigation of complaints that we had received.

I stress that on this occasion my office had not agreed to postpone our investigation of the complaints we had received prior to Mr Hamburger being appointed to conduct an inquiry. However, because such an inquiry was conducted, the sensible course was for my own office to look at the draft of his report to gauge whether all the issues that we might investigate had been addressed and that the investigation process was rigorous. Delaying access to the report until it had been finalised and perhaps adopted by the Department or conveyed to the Minister could hamper the opportunity for my office to discharge its investigatory role in an efficient and influential manner. I understood the Department's concern to limit disclosure of a draft report until completion of a procedural fairness process, and to that end undertook to limit access to the draft report within my own office and to ensure that it was securely kept.

I have reiterated my concern about this issue in this quarterly report in order to draw attention to the broader point made above that the initiation of an independent inquiry by the Department should not be treated as a reason in itself for suspending the obligation of the Department to respond to an inquiry into the same issue being conducted by the Ombudsman's office. Equally, I am always prepared to agree upon a sensible strategy for reducing a duplication of investigative effort into complaint issues.

Section 501 cancellations

I have written separately to inform you of my intention to conduct a formal own motion investigation under the *Ombudsman Act 1976* into DIMIA's administration of s 501 cancellations and detention and removal processes. The investigation is in response to a number of complaints we have received in recent years from detainees who have been very long term residents of Australia and find themselves in detention when their visas have been cancelled pursuant to s 501 of the *Migration Act 1958*.

FOI delays

My office continues to receive many complaints and representations from organisations concerning significant delays in processing FOI requests. These delays go well beyond the statutory timeframe of 30 days. I understand the backlog of FOI cases was about 750 as at the end of the quarter.

I would like to thank Kate Pope for the open and informative discussions my staff have had with her in relation to how the Department is planning to implement a range of initiatives to address the problem.

I am satisfied that the strategy being put in place by the Department will get the processing of FOI requests back under control in the longer term. I would nevertheless appreciate your advice regarding when the Department assesses that its strategy will see the backlog under control and once again complying with the statutory requirement of processing within 30 days.

In the meantime, my office will continue to treat individual complaints in accordance with our usual practice. As such, should there be significant delays in processing individual FOI

requests my office will notify the Department of our intention to record a proposed finding of defective administration, providing DIMIA with an opportunity to comment.

Because of the continuing number of complaints we are receiving on this issue, I propose to place a statement on our website explaining the approach taken by this office. The dual reason for doing so would be to explain how the office has responded to an issue of public administration on which many complaints have been received, and thereby to lessen the need for individual complainants to draw attention to the issue. A draft of the statement is attached. I would appreciate any comments you wish to make on the statement by close of business on 3 June 2005.

Red One compound

In November last year Mary Durkin, Senior Assistant Ombudsman, wrote to the Department expressing some preliminary concerns we had about the Red One compound at Baxter IDF and requesting information, some of which has been supplied. This is another issue on which I am presently contemplating an own motion investigation but I will monitor progress of the Department's discussions with GSL and the provision of information to my office, prior to making a final decision on this. Again, this is a matter on which I will write separately to you.

Access to medical services in detention

My office continues to investigate complaints in relation to the provision of medical services to detainees. I understand the Department is undertaking some form of review of the adequacy of medical services for detainees – in particular in the context of the Palmer Inquiry and the recent Federal Court decision of *S v Secretary, DIMIA*. I would appreciate being kept informed on this matter. Also I would be grateful for my office being provided with an opportunity to provide feedback on any changes being proposed.

Recordings of defective administration

In August 2004, you requested advice about the progress of my review into how my office records defective administration and sought my views on reasons for a decrease in findings of agency defect in relation to DIMIA complaints. I apologise for the delaying in responding but I opted to progress our consideration of how we report to agencies before replying so that I would have something substantive to provide.

After considerable discussion within my office, I am presently considering alternative ways of recording the outcome of complaints for introduction in the coming reporting year and I will advise you about these in due course.

Our current practice – which will continue until any change is notified – is that investigation officers can record a 'proposed finding' of agency defect when closing a case. The statistics on these cases are published in the Annual Report and, in the case of immigration matters, also in the Quarterly Report I provide to you.

A recording of agency defect is generally not made unless the matter is first discussed with the appropriate manager or team leader. Matters that are contentious or involve specialist advice are discussed as well with the relevant agency specialist or the Senior Assistant Ombudsman and sometimes with myself. The Senior Assistant Ombudsman and I are of the view that if the Department has resolved a matter, we would not generally record agency defect, although if the error is regarded as significant or serious we may take a different approach to this.

I have also requested my staff to ensure that agency comment is sought before a recording of agency defect is made. More specifically I have instructed staff contemplating agency


defect in relation to DIMIA cases to advise the Department by email or in writing, noting that he/she 'intends to record a proposed finding of agency defect' and not that he or she has made a 'finding' or reached a 'conclusion'. The Department is then invited to comment.

I believe that the additional rigour required in relation to these processes could well have contributed to a reduction in recordings of agency defect in relation to the Department. Other possible factors, however, could be improved complaint handling within DIMIA and a greater willingness to resolve matters in consultation with my office. I acknowledge receipt of your letter of 19 May on this issue and will respond shortly.

General comments

May I also take this opportunity to thank the Department for the assistance provided in organising my recent visit to immigration facilities on Christmas Island. I had been planning a relatively low key visit to the Island and the effort put in by the Department at short notice was very much appreciated. Similarly, my staff also appreciate the assistance provided in relation to recent visits to Baxter and Maribyrnong IDFs and the Melbourne Contact Centre.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John McMillan', written in a cursive style.

Prof. John McMillan
Commonwealth Ombudsman

Table 1 Complaint issues identified in complaints received January– March 2005

Table 1 shows the issues identified in complaints received in January to March 2005. This information may be subject to further change, particularly as those complaints which are open are dealt with further.

[Mary: the headings in the third and fourth columns of the following table are not self-explanatory]

Complaint issue received	Jan–March 05	% Jan-March 05	% recd Jul 04-Mar 05 (year to date)
Citizenship	18	8	7
Complaint service	5	2	2
Compliance activity	6	3	3
Detainees	52	23	22
FOI/general access	1	0	1
FOI/personal access	7	3	2
Humanitarian	7	3	5
Migration	74	33	35
Multicultural services	1	0	0
Other	28	13	10
Temporary entry	23	10	12
Tender/contract	-	0	0
Total	222	100	100

Table 2 Ombudsman's Office responses to closed complaints January – March 2005

Table 2 summarises the Ombudsman's Office responses and outcomes to complaint issues closed during the January – March 2005 period. Investigation officers closed 207 complaints with 234 identified issues.

Response	Outcomes	Number of Issues
Discretion at Outset	Advise to pursue with agency complained of	55
	Advise to pursue with court/tribunal	2
	Advise to pursue with industry/subject specialist	3
	Consider by Member of Parliament/Minister	4
	Has been or is considered by court/tribunal	1
	Not warranted in all circumstances	33
	OOJ	2
	Over 12 months old	1
	Withdrawn by complainant or lapsed	3
	Written complaint requested but not received	2
Total		106 (45%)
Preliminary Inquiries	Advise to pursue with agency complained of	10
	Advise to pursue with court/tribunal	2
	Has been or is being considered by court/tribunal	2
	Not warranted in all circumstances	11
	OOJ	1
	Withdrawn by complainant or lapsed	4
	Written complaint requested but not received	2
Total		32 (14%)
Ombudsman Investigation	Advise to pursue with agency complained of	4
	Agency defect	4
	Consider by a Member of Parliament/Minister	1
	No agency defect	48
	Not Determined	27
	Not warranted in all circumstances	9
	Withdrawn by complainant or lapsed	2
	Written complaint requested but not received	1
Total		96 (41%)
GRAND TOTAL		234

Table 3: Complaints closed by issue and Ombudsman office response, January to March 2005

Complaint issue closed	Discretion at Outset	Preliminary Inquiries	Ombudsman Investigation	Total Jan-Mar05	% Investigated
Citizenship	8	3	5	16	31
Complaint service	0	0	2	2	100
Compliance activity	5	1	2	8	25
Detainee	17	7	36	60	60
FOI/general access	0	1	0	1	0
FOI/personal access	3	0	2	5	40
Humanitarian	2	1	5	8	63
Migration	44	13	32	89	36
Multicultural services	1	0	0	1	0
Other	16	2	5	23	22
Temporary entry	10	4	7	21	33
Tender/contract	0	0	0	0	0
Total	106	32	96	234	41

Table 4: Complaint issues investigated – outcome, January to March 2005

Complaint issue investigated	Advise to pursue with Agency complained of	Consider by a Member of Parl/ Minister	Agency defect	No agency defect	Not determined	Not warranted in all circs	Withdrawn / lapsed
Citizenship		1	0	3	0	1	0
Complaint service		0	0	1	1	0	0
Compliance activity		0	0	2	0	0	0
Detainee	1	0	1	16	15	2	1
FOI/general access	0	0	0	0	0	0	0
FOI/personal access	1	0	1	0	0	0	0
Humanitarian		0	0	4	1	0	0
Migration	2	0	2	14	8	4	1
Multicultural services		0	0	0	0	0	0
Other		0	0	4	1	0	0
Temporary entry		0	0	4	1	2	0
Tender/contract		0	0	0	0	0	0
Total	4	1	4	48	27	9	2

Table 5 Complaint issues closed by cause and outcome January – March 2005

Table 5 provides an overview of the actions taken in relation to particular complaint issues and the conclusions reached.

Cause of complaint	Outcome	Number of issues
ADVICE	Advise to pursue with agency complained of	6
	Agency defect	1
	Has been or is being considered by court/tribunal	1
	No agency defect	3
	Not Determined	2
	Not warranted in all circumstances	5
	Withdrawn by complainant or lapsed	1
	Written complaint requested but not received	3
Total Advice		22
BEHAVIOUR	Advise to pursue with agency complained of	4
	Advise to pursue with industry/subject specialist	2
	No agency defect	5
	Not Determined	5
	Not warranted in all circumstances	1
Total Behaviour		17
DECISION/ACTION	Advise to pursue with agency complained of	25
	Advise to pursue with court/tribunal	3
	Advise to pursue with industry/subject specialist	1
	Agency defect	2
	Consider by a Member of Parliament/Minister	2
	Has been or is being considered by court/tribunal	2
	No agency defect	27
	Not Determined	15
	Not warranted in all circumstances	19
	Withdrawn by complainant or lapsed	5
Written complaint requested but not received	1	
Total Decision/Action		102
POLICY	Advise to pursue with agency complained of	4
	Advise to pursue with court/tribunal	1
	Consider by a Member of Parliament/Minister	2
	No agency defect	1
	Not Determined	1
	Not warranted in all circumstances	7
	Over 12 months old	1
	Written complaint requested but not received	1
Total Policy		18
TIMELINESS	Advise to pursue with agency complained of	15
	Agency defect	1
	Consider by a Member of Parliament/Minister	1
	No agency defect	12
	Not Determined	4
	Not warranted in all circumstances	14
	OOJ	1
Withdrawn by complainant or lapsed	3	

Total Timeliness		51
Other	Advise to pursue with agency complained of	8
	Not warranted in all circumstances	6
	OOJ	2
Other Total		16
Not determined	Advise to pursue with agency complained of	7
	Not warranted in all circumstances	1
Not Determined Total		8
GRAND TOTAL		234

Table 6 Complaints closed January – March 2005 where ‘defective administration’ was recorded

Table 6 summarises the complaints closed during the period where ‘defective administration’ was recorded.

Ref. No.	Name	Issue	Cause	Comment
2004 - 2153133	Rehmany	Detainee Property	Decision/Action application of Law/Rule	Failure to record property accurately
2004 - 2318695	Singh	Skilled Australian Sponsored	Decision/Action - wrong	Failure to identify invalid application, inaccurate information provided about why invalid and refund delayed
2004 - 2338663	Kim	Migration - Family	Decision/Action - wrong	Overseas post failed to record receipt of applicant's passport – leading to delay in returning passport
2005 - 2383803	Roper	FOI	Timeliness – statutory deadline	Significant delay in processing