

Our Ref: A/2003-2012213

26 August 2004

Mr WJ 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 the attached statistical summary for the last quarter of the 2003/04 financial year, covering the period April to June 2004. Overall the statistics for this quarter show a more mixed result than the steady decline of complaints I was able to bring to your attention in my last report. I am pleased to point out though that the number of complaints from detention centres has continued to decline during this period.

The main results for this quarter are:

- An increase in complaints received.  
The office received 223 complaints during the period, an increase of 6% over the previous quarter, thus marking a change in the continuous downward trend that we had experienced in the past 12 months.
- A further reduction in detention related complaints.  
Detention related complaints accounted for 22% of complaints closed during the period, a reduction of 2% from the previous quarter. Previously, detention complaints accounted for 30-40% of complaints closed.
- An increase in issues investigated.  
We investigated 48% of complaint issues closed this quarter. This represents an increase of 8% from the previous quarter, although it is not as high as the 50% or more of complaint issues investigated last year.
- An increase in conclusions of 'defective administration'.  
'Agency defect' was recorded in 14% of complaint issues investigated, a small increase of 5% over the previous quarter.

Findings from this period follow the trend identified previously, in that most complaint issues were about the Department's decisions/actions, followed by complaints about timeliness. Most complaints about migration issues continue to relate to family/spouse visas and skilled migration, while complaints about temporary visas concern student and tourist visas. Complaints from detention centres in this quarter focussed on property and assault issues, followed by concerns about the provision of medical services. Other complaint issues related to FOI and citizenship matters.

## **Significant issues for the April – June quarter**

### ***Port Hedland Incident of December 2003***

In February this year I reported that the Ombudsman's Office was approached by Dr Carmen Lawrence MP with a complaint about the disturbance at Port Hedland on 4 December 2003. At that stage, I advised Dr Lawrence that we would be conducting preliminary inquiries only and we entered into discussion with DIMIA about the most appropriate action on this complaint. I am pleased to say that I received the report of the investigation carried out by Mr Keith Hamburger of Knowledge Consulting and that I found the report represented a thorough investigation of the circumstances surrounding the incident and addressed all issues of concern raised with my office. In the extensive discussions with senior officers from your Department that followed, we were advised that all of Mr Hamburger's recommendations would be accepted and acted upon.

In view of Mr Hamburger's frank and comprehensive report and your Department's commitment to the implementation of the recommendations, I decided that there was no need for my office to conduct further inquiries into this matter. I believe that DIMIA's handling of this incident serves as a good example of how improved communication between our two agencies can lead to efficient complaint handling.

The only lingering concern I had at the end of the investigation was to do with the issue of disclosure of the findings. Normally, in an investigation conducted by my own office where an administrative deficiency had been detected, we would attempt to give the complainant a more rather than a less expansive report on the investigation and findings. In this instance, because the investigation was undertaken by the Department, we thought it appropriate for the Department to decide how much to disclose about the findings. Our preference, however, is that a full explanation should be given to a complainant that acknowledges their interest in being informed about an investigation in which they may have played a role and addresses all the issues that the complainant has raised.

I understand that Dr Lawrence may have taken up separately with your Department her desire for a fuller disclosure of the findings. For my part, I have advised Dr Lawrence of my decision not to conduct any further investigation of the Port Hedland incident, and that her complaint is now closed.

### ***Videotaping of detention centre incidents***

As part of the Port Hedland complaint, but also as part of a number of other complaints from detainees, we have been provided with videotapes of alleged

incidents. I appreciate very much DIMIA's willingness to provide these tapes to my office. I am, however, concerned about the quality of the tapes.

At times, pictures are blurry or shot from an angle and do not capture the significant action for the most part. At other times, the tapes seem to be recordings of an empty cell (e.g. where the complaint is about treatment within a Management Unit) or appear to be a still picture. Most tapes do not have sound and do not seem to record a designated time sequence, i.e. a couple of minutes might suddenly be missing (if they were recorded at all).

I am not familiar with the videotaping procedures in detention centres and I therefore cannot judge whether these tapes meet the requirements of your Department. I would appreciate it if I could be informed of any guidelines/procedures for the operations of the video cameras in the Immigration Detention Facilities (IDFs) and advice on whether it is possible to improve on the quality of the tapes. I am also interested in whether tapes are kept for an extensive period of time or reused after a time, who might have access to the tapes, whether they are viewed by DIMIA officers on a regular basis and whether they are able to be altered by a staff member. I would value your comments in this regard as the tapes represent an important part of the record of incidents in IDFs.

### ***Compliance activities***

You may be aware that I have conducted an investigation into the circumstances surrounding the execution of a search warrant on the premises of the [redacted] on Sunday 2 December 2001. I have reached preliminary opinions on this matter and have provided two DIMIA officers involved in the incident with an opportunity to comment on my views, as required by Section 8(5) of the *Ombudsman Act 1976*.

I have not yet received comments from one individual, but I would like to take the opportunity to inform you that I have decided to monitor more closely any complaints about DIMIA's compliance activities over the coming year. To date complaints have centred around the information leading to the issuing of a warrant, the manner in which it is executed and the lack of documentation of the exercise.

When I have responses from the Department about some compliance complaints, the Deputy Ombudsman and Senior Assistant Ombudsman will seek to meet with Departmental officers to discuss general issues around compliance activities. I will keep you informed of progress in this area in future reports.

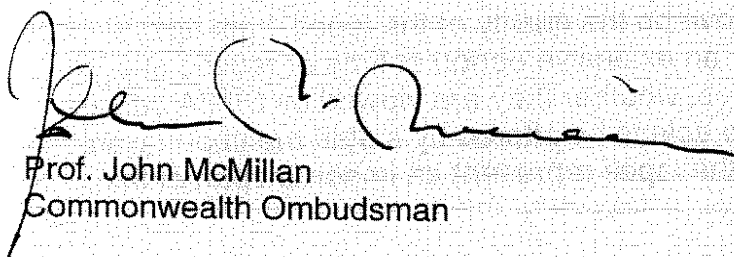
### ***Accuracy of information contained in DIMIA letters***

We received a complaint from the Legal Aid Commission of NSW expressing concern about the accuracy of information contained in departmental letters. The Commission was specifically concerned about the problem of incorrect dates relating to applications for review of visa decisions. It was asserted that applicants were advised for example that they had x number of days to lodge a request for review, not working days, which, of course can make a significant difference in time, particularly during a holiday period. Initially, the problem was identified within the Onshore Protection Section in DIMIA's NSW State Office. That section has advised that all its

correspondence templates have been checked and are now correct. It has been asserted, however, that the problem is more widespread. I would appreciate if you could remind appropriate officers of the need to ensure that all correspondence is correct in terms of the timeframes stipulated by the legislation and that the simple omission of a word can have more wide ranging consequences.

In general, I continue to be pleased with the ongoing willingness of your Department to work with my officers on speedy and efficient complaint resolution. We continue to meet at all levels on a regular basis and we are informed of any significant changes, particularly in the detention area, in a timely fashion.

Yours sincerely



Prof. John McMillan  
Commonwealth Ombudsman

**Table 1 Complaints closed 1 April 2004 – 30 June 2004**

Table 1 summarises complaints closed according to the issue identified as the basis for the complaint for the period April to June 2004. Investigation officers closed 203 complaints with 223 identified issues.

**Table 1: Complaint issues closed by cause of complaint**

Cause of Complaint		Number of Issues	Percentage of Total
ADVICE	Clarity	4	
	Completeness	1	
	Fail to provide	7	
	Inconsistent	2	
	Relevance	2	
	Wrong	9	
	<b>Total Advice</b>		<b>25</b>
BEHAVIOUR	Attitude	1	
	Corrupt	3	
	Harassment	2	
	Sexual Harassment	1	
	Rudeness	5	
<b>Total Behaviour</b>		<b>12</b>	<b>5%</b>
DECISION/ACTION	Application of Law/Rule	8	
	Date of effect	1	
	Failure to act	24	
	Wrong	79	
<b>Total Decision/Action</b>		<b>112</b>	<b>50%</b>
POLICY	Legislation	2	
	Unfairness	8	
<b>Total Policy</b>		<b>10</b>	<b>4%</b>
TIMELINESS	Delay	49	
<b>Total Timeliness</b>		<b>49</b>	<b>22%</b>
Other		7	3%
Not Determined		8	4%
<b>GRAND TOTAL</b>		<b>223</b>	<b>100.0</b>

This quarter continues the trend set in previous quarters, in that most complaint issues (50%) related to the Department's actions/decisions, followed once again by complaints about timeliness. The number of complaints closed fell for the fifth consecutive quarter, though complaint issues about timeliness/delay rose slightly from the previous quarter.

**Table 2 Ombudsman's Office responses to closed complaints**

Table 2 summarises the Ombudsman's Office responses and outcomes to complaint issues closed this quarter. Data indicates an increase in the number of issues investigated for this quarter (to 48% from 40%). A finding of 'agency defect' was recorded in 14% of the issues investigated (on 15 issues). This represents a rise of 5% from the previous quarter, or a rise from 4% to 7% of all complaint issues closed during the quarter. As in previous quarters, we continued to have a relatively high rate of complaint issues (37% of those investigated) in which we could not make a determination as to whether or not defective administration existed.

**Table 2: Response for complaints closed, 1 April – 30 June 2004**

Response	Outcomes	Number of Issues
Discretion not to investigate	Advise to pursue with DIMIA	42
	Advise to pursue with court/tribunal	5
	Advise to pursue with subject specialist	1
	Being considered by Minister/Member of Parliament	2
	Has been considered by court/tribunal	4
	Not warranted in the circumstances	46
	Over 12 months old	1
	Related to commercial activity	1
	Withdrawn by complainant or lapsed	8
	Written complaint requested but not received	5
	Out of jurisdiction	2
<b>Total</b>		<b>117 (52%)</b>
Ombudsman investigation	Agency defect	15
	No agency defect	42
	Not determined	39
	Withdrawn by complainant	1
	Discretion not to investigate further	9
<b>Total</b>		<b>106 (48%)</b>
<b>GRAND TOTAL</b>		<b>223</b>

**Table 3 Complaint issues closed by cause and outcome**

Table 3 provides an overview of the actions taken in relation to particular complaint issues and the conclusions reached. The most commonly investigated concerns again related to the Department's decisions and the timeliness of actions taken.

**Table 3: Investigated complaint issues by cause and outcome**

Cause of complaint	Outcome	Number of issues
ADVICE	Agency defect	2
	No agency defect	5
	Not determined	6
	Withdrawn or lapsed	3
	Discretion	7
	Out of jurisdiction	2
<b>Total Advice</b>		<b>25</b>
BEHAVIOUR	Not determined	1
	Discretion	10
	Withdrawn or lapsed	1
<b>Total Behaviour</b>		<b>12</b>
DECISION/ACTION	Agency defect	9
	No agency defect	19
	Not determined	21
	Withdrawn or lapsed	2
	Discretion	61
<b>Total Decision/Action</b>		<b>112</b>
POLICY	No agency defect	3
	Discretion	6
	Withdrawn or lapsed	1
<b>Total Policy</b>		<b>10</b>
TIMELINESS	Agency defect	3
	No agency defect	15
	Not determined	10
	Withdrawn or lapsed	2
	Discretion	18
	Out of jurisdiction	1
<b>Total Timeliness</b>		<b>49</b>
Other	Not determined	1
	Discretion	6
Not determined	Agency Defect	1
	Discretion	7
<b>GRAND TOTAL</b>		<b>223</b>

**Table 4 Complaints by cause, issue and outcome  
1 April – 30 June 2004**

Table 4 provides details of complaints closed categorised by the subject of the complaint, migration (all visa processing related complaints), detention (complaints arising from detainees or submitted on behalf of detainees) and other (citizenship, language services etc) for the period April to June 2004.

In this quarter, detention related complaints accounted for 22% of issues (50 of 223), a slight drop from the previous quarter, while migration matters accounted for 63% (141 of 223) and other accounted for 15% (32 of 223) of all complaints we closed. In this quarter, a finding of 'agency defect' was recorded in six cases of detention related issues and seven issues pertaining to migration matters.

**Table 4: Complaints by cause, issue and outcome, 1 January – 31 March 2004**

Cause	Issue	Agency Defect	No Agency Defect	Not Determined	Withdrawn	Discretion	OOJ	Total
Advice	Detention	1	1	-	-	-	-	2
	Migration	-	3	4	3	4	1	15
	Other	1	1	2	-	3	1	8
		2	5	6	3	7	2	25
Behaviour	Detention	-	-	-	1	1	-	2
	Migration	-	-	1	-	8	-	9
	Other	-	-	-	-	1	-	1
		-	-	1	1	10	-	12
Decision/Action	Detention	3	6	12	1	14	-	36
	Migration	6	12	8	1	41	-	68
	Other	-	1	1	-	6	-	8
		9	19	21	2	61	-	112
Policy	Detention	-	1	-	-	-	-	1
	Migration	-	1	-	-	6	-	7
	Other	-	1	-	1	-	-	2
		-	3	-	1	6	-	10
Timeliness	Detention	1	4	1	-	1	-	7
	Migration	1	9	6	2	15	1	34
	Other	1	2	3	-	2	-	8
		3	15	10	2	18	1	49
Not determined	Detention	1	-	-	-	-	-	1
	Migration	-	-	-	-	6	-	6
	Other	-	-	-	-	1	-	1
		1	-	-	-	7	-	8
Other	Detention	-	-	-	-	1	-	1
	Migration	-	-	-	-	2	-	2
	Other	-	-	1	-	3	-	4
		-	-	1	-	6	-	7
<b>GRAND TOTAL</b>		<b>15</b>	<b>42</b>	<b>39</b>	<b>9</b>	<b>115</b>	<b>3</b>	<b>223</b>