



COMMONWEALTH OMBUDSMAN

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

Dear Mr Farmer,

Thank you for your response to my Quarterly Report for the period ending 31 December 2003. I note your comments regarding the Department's procedures in relation to the removal of unauthorised arrivals from Australia. Attached to this report is the statistical summary for the first quarter of the new year, 1 January 2004 to 31 March 2004.

Overall, I am pleased to say that there has been a further reduction in complaints about the Department and specifically, complaints from detention centres have declined significantly. The statistics highlight the following main points:

- A reduction in complaints received.
The office received 209 complaints during the period, a reduction of 3% from the previous quarter, and representing a continuous downward trend for more than 12 months.
- A reduction in detention related complaints.
These accounted for less than one quarter (24%) of complaints closed during the period. Previously detention complaints accounted for 30-40% of complaints closed.
- A reduction in issues investigated.
We investigated 40% of complaint issues, whereas previously 50% or more of complaint issues were investigated.
- A reduction in the finding of 'defective administration'.
'Agency defect' was recorded in only 9% of complaint issues investigated, a reduction of around 30% from previous quarters.

As in previous quarters, the most number of complaints were about the Department's decisions/actions, followed by complaints about timeliness. Most complaints about migration issues related to family/spouse visas and skilled migration, as well as student and tourist visas in terms of temporary entry. Complaints from detention centres still

focused on the provision of medical services, followed by complaints about assault and the removal of detainees from Australia. Other complaint issues related to FOI applications and the granting of citizenship.

Significant issues for the January – March quarter

Meeting with GSL

Staff from my office recently met with representatives of the new service provider, GSL. We are encouraged by the professional attitude taken by GSL to the provision of services in detention centres and the strong commitment to efficient complaint handling. We also discussed the benefits of increased direct contact between my Investigation Officers and staff at detention facilities as a means of resolving complaints quickly and preventing them from escalating into major issues. I am hopeful that this can be negotiated in the future, resulting in a positive impact on complaint numbers.

Handling of property in detention

Complaints about the loss of property have been a source of a significant number of detention related complaints during the past two years. They relate generally to the apparent lack of systematic recording of all possessions, leading to disputes between the service provider and the detainee over alleged possessions which cannot later be accounted for. In many cases it appears that the alleged losses occurred during transfers to other centres, and frequently involved property which was classified as 'in possession' rather than 'in trust'. In some cases this has raised the question of appropriate compensation, particularly in cases where 'in possession' property was destroyed or lost, apparently due to no fault on the part of the detainee.

Those detainees remaining in detention for considerable periods of time may accumulate a large range of possessions and it is therefore increasingly important that detainees understand their responsibilities and those of the service provider in respect of property. In my view many, if not most, complaints of this nature can be avoided if administrative procedures are followed and detainees are made aware of their responsibilities in relation to their own possessions (e.g. asking that any new property received during visits or given to them by other detainees is recorded, regularly checking accuracy of records, etc). In our regular meetings with DIMIA staff we have, therefore, suggested that consideration be given to producing an information brochure for detainees which outlines their rights and responsibilities in relation to issues like property management so that complaints can be minimised. We are continuing our negotiations with your staff on this matter.

Complaints of assault

Complaints of assault in detention centres also continue to be of concern to us. In recent complaints, there seems to have been some confusion about the process that is to be followed in these matters. There is some evidence that detainees have not been assisted by the service provider to lodge a complaint of assault with the police and there appears to remain a continuing lack of clarity about who will respond to such complaints in each facility (i.e. AFP or State Police).

Again, I believe it is important that a clear process is established for dealing with complaints about assault and that both detainees and detention centre staff are aware of their roles and responsibilities in these cases. My staff have suggested that consideration be given to clarifying the existing procedure for dealing with complaints of assault by issuing a checklist to detainees and detention officers which details the responsibilities of detainees, service providers and DIMIA staff in such situations.

I also understand that MOU's are currently being negotiated with state police forces and the AFP which should assist in clarifying the process for referral and investigations. I would suggest that in light of these complaints, MOU negotiations should be progressed as a priority and I would welcome copies of the MOU's once they are finalised.

Consideration under s 417 - Submission to the Minister

In January this year, the Deputy Ombudsman expressed his concern at the Department's handling of the protection visa application of [redacted] and her son [redacted] and the subsequent departmental submission to then Minister for Immigration, Mr Ruddock, in relation to exercising his powers under s 417 of the Migration Act (DIMIA reference CLF2002/54562, Ombudsman reference 2003-2103227).

[redacted] protection visa application was refused by DIMIA in October 2002, a decision upheld by the RRT. However, the RRT referred the case back to the Department for consideration under s 417 on Humanitarian grounds. In its submission of August 2003, the Department recommended to the Minister that he consider not exercising his power under s 417, as the case does not meet the guidelines and the circumstances are not exceptional or unique. The Minister subsequently decided not to exercise his power under s 417.

In early March 2004, we were advised that the matter was with the Minister for further consideration on the basis of the concerns we raised in relation to the initial referral to the Minister. As [redacted] is still relying on the support of community organisations, I would appreciate your advice on the current status of [redacted] application.

General comment

Finally, I would like to convey my appreciation of your Department's continued willingness to discuss potential issues of concern and to invite comments on draft documents from my Office, with a view to preventing future complaints. My staff were invited to comment on GSL's new draft complaints handling guidelines, the proposed new MSI on 'Transfers of Detainees within detention facilities' and the proposed move of several long-term detainees from the Maribyrnong and Villawood centres. We appreciate these opportunities for collaboration with your staff. I would like to mention by name Garry Fleming and Steve Davis, who have made particular efforts to address our concerns of the past.

The Deputy Ombudsman, Mr Ron Brent, and Ms Mary Durkin (the recently appointed Senior Assistant Ombudsman with responsibility for Immigration matters) also recently met with Mr Abul Rizvi, Head of the Migration and Temporary Entry Division. The meeting was a success and served to progress some of our most difficult cases. I believe these types of activities are beneficial and foster an effective working relationship between our agencies.

Yours sincerely



Prof John McMillan
Commonwealth Ombudsman

Table 1 Complaints closed 1 January 2004 – 31 March 2004

Table 1 summarizes complaints closed according to the issue identified as the basis for the complaint for the period January to March 2004. Investigation officers closed 216 complaints with 247 identified issues.

Table 1: Complaint issues closed by cause of complaint

Cause of Complaint		Number of Issues	Percentage of Total
ADVICE	Access	1	
	Clarity	4	
	Fail to provide	12	
	Inconsistent	6	
	Wrong	8	
Total Advice		31	13%
BEHAVIOUR	Attitude	9	
	Bias	3	
	Corrupt	1	
	Harassment	1	
	Intimidation	4	
	Rudeness	1	
	Total Behaviour		19
DECISION/ACTION	Application of Law/Rule	9	
	Date of effect	2	
	Failure to act	26	
	Wrong	86	
	Calculation	1	
Total Decision/Action		124	50%
POLICY	Legislation	1	
	Unfairness	12	
	Entitlement Gap	1	
Total Policy		14	6%
TIMELINESS	Delay	40	
	Departmental deadline	2	
	Statutory deadline	1	
Total Timeliness		43	17%
Other		10	4%
Not Determined		6	2%
GRAND TOTAL		247	100.0

As in previous quarters, most complaint issues (50%) related to the Department's actions/decisions, however overall complaint numbers fell for the fourth consecutive quarter. The most significant decline was found in complaint issues about timeliness/delay and departmental policy. Complaints about policy decreased by 50% and complaints about timeliness by 33% from the first quarter of this financial year.

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 a decline in the number of issues investigated (to 40%). A finding of 'agency defect' was recorded in 9% of the issues investigated, decline of 14% from the first quarter of the financial year. A finding of 'no agency defect' was made in 39% of issues, but we continued to have a relatively high rate of complaints in which we could not make a determination as to whether or not defective administration existed.

Table 2: Response for complaints closed, 1 January – 31 March 2004

Response	Outcomes	Number of Issues
Discretion not to investigate	Advise to pursue with DIMIA	52
	Advise to pursue with court/tribunal	8
	Advise to pursue with subject specialist	2
	Being considered by Minister/Member of Parliament	5
	Not warranted in the circumstances	60
	Related to commercial activity	1
	Withdrawn by complainant or lapsed	11
	Written complaint requested but not received	7
	Out of jurisdiction	3
	Total	149 (60%)
Ombudsman investigation	Agency defect	9
	No agency defect	38
	Not determined	37
	Withdrawn by complainant	5
	Discretion not to investigate further	9
Total	98 (40%)	
GRAND TOTAL		247

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	2
	Not determined	5
	Withdrawn or lapsed	1
	Discretion	21
Total Advice		31
BEHAVIOUR	No agency defect	2
	Not determined	2
	Discretion	12
	Out of jurisdiction	1
	Withdrawn or lapsed	2
Total Behaviour		19
DECISION/ACTION	Agency defect	3
	No agency defect	26
	Not determined	18
	Withdrawn or lapsed	11
	Discretion	65
	Out of jurisdiction	1
Total Decision/Action		124
POLICY	No agency defect	1
	Not determined	1
	Discretion	11
	Out of jurisdiction	1
Total Policy		14
TIMELINESS	Agency defect	4
	No agency defect	6
	Not determined	10
	Withdrawn or lapsed	2
	Discretion	21
Total Timeliness		43
Other	No agency defect	1
	Discretion	9
Not determined	Not determined	1
	Discretion	5
GRAND TOTAL		247

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

Table 4 provides details of complaints closed categorized 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 January to March 2004.

In this quarter, detention related complaints accounted for 24% of issues (60 of 247) while migration matters accounted for 55% (136 of 247) and other accounted for 21% (51 of 247) of all complaints we closed.

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	1	-	-	-	3
	Migration	1	1	3	1	15	-	21
	Other	-	-	1	-	6	-	7
		2	2	5	1	21	-	31
Behaviour	Detention	-	-	2	-	4	-	6
	Migration	-	1	-	-	6	-	8
	Other	-	1	-	2	2	-	5
		-	2	2	2	12	-	19
Decision/Action	Detention	0	7	10	5	12	1	35
	Migration	1	17	6	4	43	-	71
	Other	2	2	2	2	10	-	18
		3	26	18	11	65	1	124
Policy	Detention	-	1	-	-	-	1	2
	Migration	-	-	1	-	8	-	9
	Other	-	-	-	-	3	-	3
		-	1	1	-	11	1	14
Timeliness	Detention	-	1	6	-	4	-	11
	Migration	-	4	3	1	13	-	21
	Other	4	1	1	1	4	-	11
		4	6	10	2	21	-	43
Not determined	Detention	-	-	-	-	1	-	1
	Migration	-	-	1	-	-	-	1
	Other	-	-	-	-	4	-	4
		-	-	1	-	5	-	6
Other	Detention	-	-	-	-	2	-	2
	Migration	-	-	-	-	5	-	5
	Other	-	1	-	-	2	-	3
		-	1	-	-	20	-	21
GRAND TOTAL		9	38	37	16	144	3	247

A finding of 'agency defect' was recorded in only one case of detention related issues. The highest number of 'agency defect' was recorded in relation to 'other issues'. These mainly concerned timeliness in processing FOI applications. In 32% of detention issues investigated, it was not determined whether or not there was an agency defect.

