



COMMONWEALTH OMBUDSMAN

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3 February 2004

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 the Quarterly Report for the period ending June 2003 which I received on 24 December 2003. It was agreed during the November liaison meeting between OPFOI and my office that rather than providing a report for the period ending September 2003, a six monthly report ending December 2003 would be provided.

Attached to this letter is a statistical summary for the period July 2003 to December 2003. In the following discussion I will note briefly the current issues that have been identified during the recent investigation of complaints.

Issues arising from previous reports



Detainee access to medical services

Detention Policy has agreed to arrange a meeting in the near future with the new Service Provider and to provide my office with copies of Operating Policies for IDFs under the new contract for our reference.

Finding of Defective Administration

As the internal review of guidelines on the finding of 'defective administration' progresses, I will provide you with updates.

Removal of unauthorised arrivals

Thank you for the advice regarding  circumstances. I acknowledge that my letter incorrectly referred to Refugee Review Tribunal rather than to the Federal Court. Notwithstanding the error, and changes in  personal circumstances, I remain interested in the administrative principles underlying the complaint. I would appreciate your confirmation that it would be considered good practice for a Removal Notice not to be issued until the timeframe for any avenue of appeal/review has expired, given that a detainee may decide to exercise their right to lodge an appeal, or seek leave to appeal, at

any time up to, and including, the final day of the prescribed period. Your confirmation of this standard would assist our consideration of any future complaints, should they arise.

Complaint numbers

In the period 1 July to 31 December 2003 my office received 435 DIMIA related complaints. This represents a decrease of 19% from the number received during the previous six months (down from 540 to 435). The number of complaints received in the final quarter of 2003 (215) was lower than the number received in the first quarter (299) by over 28%. It is pleasing to observe a continuing fall in the number of new complaints received and that the number of complaints finalized exceeded the number of new complaints received (435 new complaints received July-December, 493 complaints closed).

In early December, Steve Davis and Garry Fleming met with Ron Brent, Deputy Ombudsman, and Deborah Tyler, A/g Senior Assistant Ombudsman, to provide details of the arrangements for the transfer of the Detention contract from ACM to GSL Aust. During that meeting it was agreed that it would be beneficial to all parties if as many as possible of the outstanding complaints could be finalised prior to the transfer of each IDF. The number of complaints closed during the final quarter of 2003 in part reflects the positive commitment made by both agencies during that meeting.

Detention related complaints continue to account for a significant proportion of the number of complaints as well as the workload devoted to the investigation and resolution of complaints generally. In the period July to December 2003, 493 complaints were closed by this office, covering 582 issues. Over one-third of the issues investigated (212 of 582) arose from a complaint from or on behalf of a detainee. By comparison, complaints about the timeliness of visa application processing accounted for 10.6% of issues (62 of 582).

Significant Issues for the July – December period

Ombudsman office response to complaints

In 98 of the 582 (16%) issues raised by complainants in the period, complainants were advised to pursue the matter with DIMIA and in a further 200 cases (34%) a decision was made not to investigate the issue. A decision was made to investigate 284 issues (49%), which is consistent with the previous quarters. Of the 284 issues investigated, an agency defect was recorded in 54 instances (19% of cases).

Complaint handling in Immigration Detention Facilities

It has been pleasing to note the positive relationship which has developed between Detention Policy and my office over the last weeks of 2003. The benefits to all parties have already been demonstrated in the closure of a significant number of detention related complaints by the end of December. In addition, I understand that a number of other positive strategies have been agreed to during those ongoing discussions.

Firstly, in order to address the range of factors contributing to the generation of a large number of lost property complaints, representatives from OPFOI, Detention Policy and my office are working together to design and market an information product for detainees which will assist them to understand their responsibilities with respect to the recording of property (and management of their records more generally) as well as the complaints process which is in place within IDFs. It is envisaged that such a product will clarify the role of the Service Provider, DIMIA and the Ombudsman so that where possible complaints can be resolved at the local level.

Also, Garry Fleming has confirmed that arrangements will be made so that representatives from my office can meet with GSL Aust to provide an explanation of the role of the Ombudsman and to discuss the types of complaints received over previous years and possible strategies for the resolution of such complaints. I look forward to advising you of the outcomes of these strategies in future reports.

Outstanding responses

During 2003 the monthly liaison meetings between OPFOI, Public Scrutiny and my office were used to provide regular updates on outstanding responses. It is pleasing to note that by the end of December a number of cases which had been outstanding since April and August 2003 had been finalized. The Immigration team within my office will continue to provide regular reports to OPFOI and Public Scrutiny to ensure that the timeliness of responses is continually reviewed.

We appreciate the detail provided by the Department in the response to our April enquiry about the management of detainees with 'special needs'. At present we are considering the information provided by the Department in more depth. We will contact the Department in the near future to advise of what, if any, further action we intend to take with respect to the processing of Bridging E Visas and evaluation of alternative places of detention in such circumstances.

Port Hedland disturbance 4 December 2003

Dr Carmen Lawrence MP forwarded a complaint to the Ombudsman's office about the events at Port Hedland. Garry Fleming arranged for video records and Incident Reports to be forwarded to the Investigation Officer and for a briefing for Ron Brent about the Department's approach to the investigation of the disturbance. Before Christmas my office provided some comment on the Department's proposed terms of reference for the investigation. Since then, Ron Brent and Rosemarie Hawke have met with Garry Fleming and the consultant to discuss in more detail the issues that had been identified by the Ombudsman's office for further investigation and confirmed the details of those issues in writing. Dr Lawrence has been informed that the Ombudsman's office has decided to conduct preliminary inquiries only at this time, and that once the report from the Department's consultant has been received, that decision will be reviewed. Again, the Department's willingness to respond in a timely and positive manner to our requests for information and documentation has been appreciated.

Conditions in Immigration Detention Facilities

As advised in October 2003, I have decided to provide you with a summary of our assessment of DIMIA's progress against the recommendations which were included in the March 2001 Report (Conditions in Immigration Detention Centres) and a range of supporting documentation for your reference. At this stage, I expect to be able to forward this documentation to you by the end of February 2004.

I have attached for your information and reference further statistical information on complaints dealt with by my office from July to December 2003.

Yours sincerely

[Handwritten initials]



Prof John McMillan
Commonwealth Ombudsman

Table 1 Complaints Closed 1 July 2003 – 31 December 2003

Table 1 summarises complaints closed according to the issue identified as the basis for the complaint for the period July to December 2003.

Table 1: Complaint issues closed - cause of complaint

Cause of Complaint		Number of Issues	Percentage of Total
ADVICE	Access	1	11%
	Clarity	7	
	Fail to provide	27	
	Inconsistent	14	
	Relevance	2	
	Wrong	14	
Total Advice		65	
BEHAVIOUR	Attitude	7	8%
	Bias	4	
	Corrupt	3	
	Harassment	10	
	Intimidation	7	
	Privacy	1	
	Rudeness	12	
Total Behaviour		44	
DECISION/ACTION	Application of Law/Rule	25	44%
	Date of effect	2	
	Failure to act	59	
	Wrong	167	
	Calculation	1	
Total Decision/Action		254	
POLICY	Legislation	8	8%
	Unfairness	37	
	Entitlement Gap	1	
	Demarcation	1	
Total Policy		47	
TIMELINESS	Delay	107	19%
	Departmental deadline	1	
	Statutory deadline	1	
Total Timeliness		109	
Other		38	7%
Not Determined		25	4%
GRAND TOTAL		582	100.0

As in previous quarters, most complaint issues (44%) related to the Department's actions/decisions. While the total number of issues recorded fell during the period, there was a rise in the number of complaints about 'inconsistency/conflict' in Departmental advice which rose from 3 in the September quarter to 11 in the fourth quarter. Timeliness of processing fell from 20% of issues raised to 16% in the same period.

The most common issues for complaint remain:

- 1) that the Department's action or decision was wrong;
- 2) that there was a delay in the Department's actions; and
- 3) that the Department failed to act.

**Table 2 Ombudsman's Office responses to closed complaints
1 July 2003 – 31 December 2003**

Table 2 summarizes the reasons for the decisions made by the Ombudsman's office to close complaints.

Table 2: Response for complaints closed, 1 July – 31 December 2003

Response	Outcomes	Number of Issues
Decision not to investigate	Advise to pursue with DIMIA	98
	Advise to pursue with court/tribunal	16
	Advise to pursue with subject specialist	7
	Being considered by Minister/Member of Parliament	10
	Has been or is being considered by court/tribunal	2
	Not warranted in the circumstances	127
	Insufficient interest by complainant	3
	Withdrawn by complainant or lapsed	18
	Written complaint requested but not received	12
	Out of jurisdiction	5
Total		298 (51%)
Ombudsman investigation	Agency defect	54
	No agency defect	93
	Not determined	105
	Withdrawn by complainant	6
	Decision not to investigate further	17
Total		284 (49%)
GRAND TOTAL		582

**Table 3 Outcome of complaints investigated
1 July 2003 – 31 December 2003**

Table 3 provides an overview of the conclusions made in relation to issues investigated.

A finding of 'agency defect' was recorded in 19% of issues investigated. A finding of 'no agency defect' was made in 33% of cases. Again, we continued to have a relatively high rate of complaints in which we did not or could not make a determination as to whether or not defective administration existed (37% of the issues).

Table 3: Investigated complaint issues by cause and outcome

Cause of complaint	Investigation outcome	Number of issues
ADVICE	Agency defect	10
	No agency defect	8
	Not determined	11
	Withdrawn or lapsed	0
	Discretion	1
Total Advice		30 (11%)
BEHAVIOUR	Agency defect	2
	No agency defect	6
	Not determined	8
	Discretion	2
Total Behaviour		18 (6%)
DECISION/ACTION	Agency defect	21
	No agency defect	52
	Not determined	42
	Withdrawn or lapsed	4
	Discretion	10
	Out of jurisdiction	0
Total Decision/Action		129 (45%)
POLICY	Agency defect	3
	No Agency defect	3
	Not determined	14
	Discretion	3
Total Policy		23 (8%)
TIMELINESS	Agency defect	16
	No agency defect	18
	Not determined	24
	Withdrawn or lapsed	0
	Discretion	7
Total Timeliness		65 (23%)
Other	Out of jurisdiction	0
	No agency defect	2
	Withdrawn or lapsed	2
	Not determined	4
	Discretion	1
Total Other		9 (3%)
Not Determined	Agency defect	2
	No agency defect	4
	Not determined	2
	Discretion	2
Total Not determined		10 (4%)
GRAND TOTAL		284

**Table 4 Complaints by cause, issue and outcome
1 July 2003 – 31 December 2003 -**

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 July to December 2003.

In this quarter, detention related complaints accounted for 36% of issues (212 of 582) while migration matters accounted for 31% (181 of 582) and other accounted for 32% of all complaints we closed.

Table 4: Complaints by cause, issue and outcome, July – December 2003

Cause	Issue	Agency Defect	No Agency Defect	Not Determined	Withdrawn	Discretion	Total
Advice	Detention	1	1	1	1	3	7
	Migration	7	4	5		14	30
	Other	2	3	5	1	17	28
		10	8	11	2	34	65
Behaviour	Detention	-	3	4	-	16	23
	Migration	-	-	1	-	4	5
	Other	2	3	3	1	7	16
		2	6	8	1	27	44
Decision/Action	Detention	10	18	25	8	55	116
	Migration	5	14	7	4	27	57
	Other	6	20	10	3	42	81
		21	52	42	15	124	254
Policy	Detention	1	1	10	-	10	22
	Migration	2	2		-	10	14
	Other	-	-	4	-	7	11
		3	3	14	-	27	47
Timeliness	Detention	1	5	5	1	8	20
	Migration	6	9	13	1	33	62
	Other	9	4	6	2	6	27
		16	18	24	4	47	109
Not determined	Detention	1	3			6	10
	Migration	1	-	1		6	8
	Other	-	1	1		5	7
		2	4	2		17	25
Other	Detention			1	2	11	14
	Migration					5	5
	Other		2	3		14	19
			2	4	2	30	38
GRAND TOTAL		54	93	105	24	306	582

A finding of 'agency defect' was recorded in 26% (14 cases) of detention related issues investigated and in 39% (21 cases) of migration issues investigated. In 44% (46) of detention issues investigated it was 'not determined' whether or not there was an agency defect, while in migration issues investigated it was not possible to determine whether or not there was agency defect in 26% (27) of cases.

