

### Outcome

DIMA agreed with our view that it had failed to notify Ms A of the visa decision within a reasonable time and that Ms A was unable to receive DSS benefits due to that delay. Accordingly, the department undertook to consider a request under the Compensation for Detriment Caused by Defective Administration scheme.

### Ministerial discretion

Under the *Migration Act 1958* the Minister has several personal discretions which allow him to substitute decisions of tribunals and to grant visas to people who are not otherwise eligible. This is done when he deems it is in the public interest for humanitarian or compassionate reasons.

This office had been concerned about the way in which applications for exercise of the personal discretions had been processed by the previous Minister and a number of concerns and issues were raised in a draft report in February 1996. At that time the Minister's senior adviser signed letters to applicants advising them whether or not their applications would be submitted to the former Minister. The clients clearly expected that the Minister himself would exercise such a "personal" discretion. Guidelines had been issued by the Minister as to which cases he wished to see, but it appeared that these guidelines were not being followed. Indeed, some cases outside the guidelines were being considered directly by the Minister, while others that appeared to fall within the guidelines were not.

The new Minister suspended these arrangements and has implemented new procedures whereby he signs all letters to applicants. These arrangements have not been widely publicised but the department has recently advised that the guidelines will be included in a future published version of the departmental instructions.

In my view, it is important that the process for administering applications is transparent and on the public record so that applicants can be assured that the Minister has an opportunity to decide whether he wants to consider their case.

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I look forward to this being the case.

It is important that applicants whose cases lack merit should not be able to use the Ministerial discretion process to delay their departure from Australia — but this could be avoided if the processes were clear and prompt. It must also be remembered that some cases do not fit into any category and do require the humanitarian consideration envisaged through the use of “ministerial discretion.”

### **Criminal deportations**

In the 1995-96 Annual Report, I reported on an own motion investigation into the transfer of immigration detainees from immigration detention centres to state prisons.

A number of people were in effect being retained in prisons as a result of an administrative decision, rather than a criminal assessment. As reported, the department agreed to a number of changes to address the issues we raised in the report.

A similar problem currently exists when non-citizens serving criminal sentences in Australia are detained in prison after their sentence has been completed, if they are awaiting deportation and/or an assessment as to whether they should be deported.

The problem in part arises because the deportation order is often not considered or decided upon, until close to the end of the criminal sentence. Additional delays can also occur if there are difficulties with obtaining travel papers or delays in hearing appeals to the AAT or the Federal Court.

Complaints to this office have indicated the following range of problems:

- difficulties with communication by potential deportees while held in state prisons;
- long periods of detention in prison after the completion of the original non parole sentence;