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An update from the Commonwealth Ombudsman Immigration Team

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Immigration Matters

The Commonwealth Ombudsman's bulletin on immigration-related matters

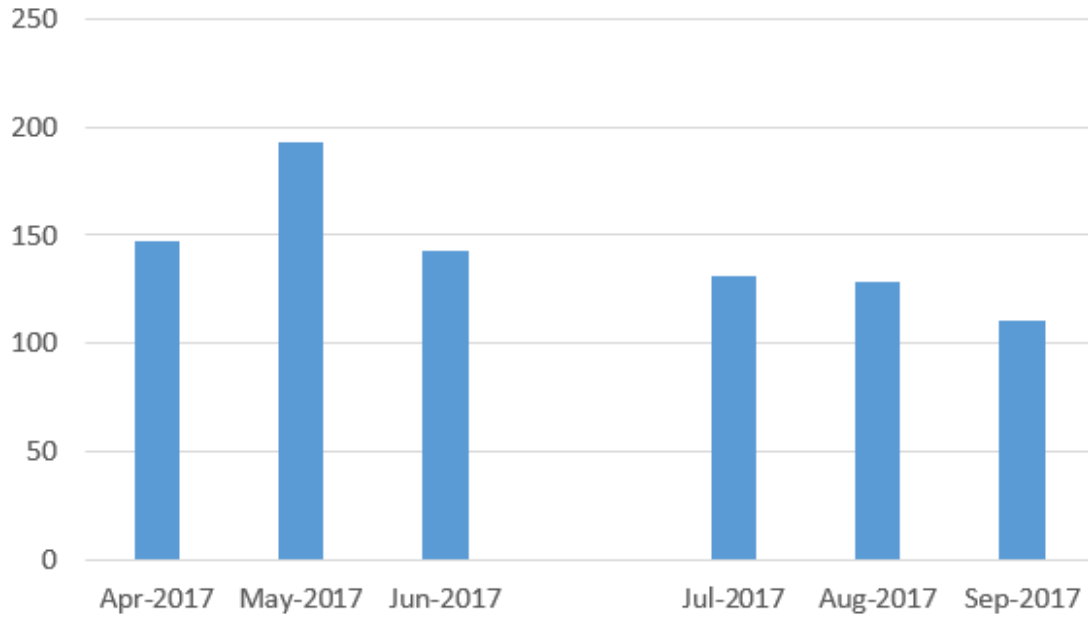
Welcome to the second edition of the Immigration Matters newsletter. This edition includes updates on what our Office is doing in the immigration space, including investigation of the recent proposed changes to citizenship processing and our oversight of the Department of Immigration and Border Protection's compliance and removal operations.

Immigration complaint trends

During the period 1 April 2017 to 30 June 2017 we received 483 complaints relating to immigration and Australian Border Force (ABF) matters, and between 1 July 2017 and 30 September 2017 we received 369 complaints relating to these topics. Some of the most commonly complained about matters included delays in spouse visa processing, citizenship delays, immigration detention placements, access to medical treatment in immigration detention and cases of misplaced property.

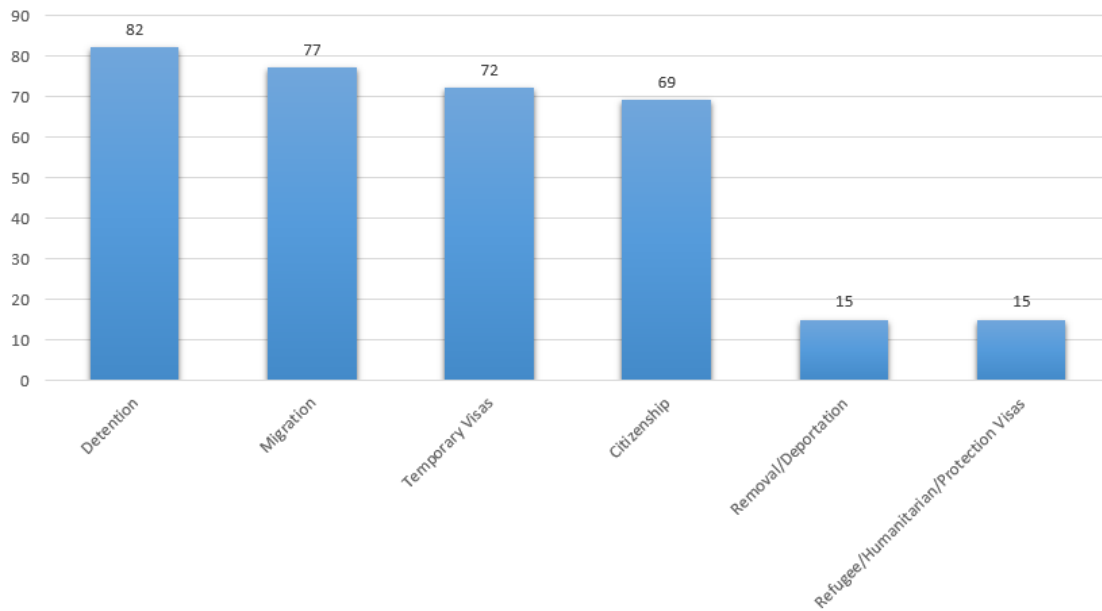
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Complaints received by Office of Commonwealth Ombudsman

Immigration Complaint Issues



The most common types of complaints received by Office of the Commonwealth Ombudsman between 1 July and 30 September 2017 regarding immigration issues.

Case studies – Use of force

The Ombudsman's Office receives a number of complaints each year about the unplanned use of force on detainees in immigration detention.

In one instance, a complainant made allegations to our Office that he had been subjected to unreasonable use of force, which injured him, and that he was subsequently placed in isolation and denied access to medical care and basic hygiene.

We investigated the complaint and after assessing CCTV footage, incident reports, the post incident review and medical records we were unable to identify any records that substantiated the

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In another instance, a complainant alleged that he had been assaulted by service provider staff during a room search at an immigration detention facility. After examining use of force reports, incident reports, the post incident review report, and hand held and body mounted camera footage, we were unable to conclude whether the use of force on the detainee was reasonably proportionate in the circumstances.

We recommended to the Department that they ensure service provider staff are given further training on Standard Operating Procedures including ensuring detainees are present during room searches, hand held and body mounted cameras are activated throughout the duration of a room search, and evidence handling and recording techniques are properly followed.

Changes to Australian citizenship

On 20 April 2017, the Australian Government announced changes to Australian citizenship. A bill to enact the changes, *The Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017* (the bill) was introduced into Parliament on 15 June 2017.

The Office has received complaints from people concerned that their application for Australian citizenship would be assessed under the new proposed requirements, subject to their passage in Parliament. Complainants were particularly concerned that the department was deliberately not processing their application until the bill had been passed.

After investigating this issue, the department advised the Office in August that it had not made any decision to hold off on the processing of applications lodged on or after 20 April 2017. The department advised that due to a backlog it was still processing Australian citizenship applications that had been lodged before 20 April 2017. On 18 October 2017, the bill was removed from the Senate's consideration.

We are aware that the department's website has been updated with information that if a person applied for citizenship before, on or after 20 April 2017, their application will be assessed according to the current requirements for citizenship.

The Office is aware that there has been delays in citizenship processing. We will monitor this issue as part of our ongoing liaison with the department.

Visits to immigration detention facilities

Since July 2017 the Commonwealth Ombudsman's office has conducted the following detention facility inspections:

Facility

Brisbane Immigration Transit Accommodation (Brisbane QLD)

Visitation date

24 - 26 July 2017

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Villawood Immigration Detention Centre (Sydney NSW)	4 - 8 September 2017
Adelaide Immigration Transit Accommodation (Adelaide SA)	28 - 29 September 2017
Yongah Hill Immigration Detention Centre (Northam WA)	9 - 13 October 2017

Key areas of note in this cycle of visits were:

- The inspection cycle has allowed for an assessment of the newly introduced Serco Care Manager (SCM) system; a centralised IT system covering detainee welfare and property management. Inspections have demonstrated several efficiencies and shortfalls in the system.
- The inspection cycle has provided an opportunity to develop an enhanced understanding of detainee transfer operations, logistics and detainee placement selection. The team accompanied a charter flight from Brisbane to Christmas Island and met with ABF to discuss detainee placement selection.
- The inspection cycle has provided an opportunity to note improvements in the detention network as a result of suggestions from our recent own motion investigation into the use of mechanical restraints and behaviour management regimes.

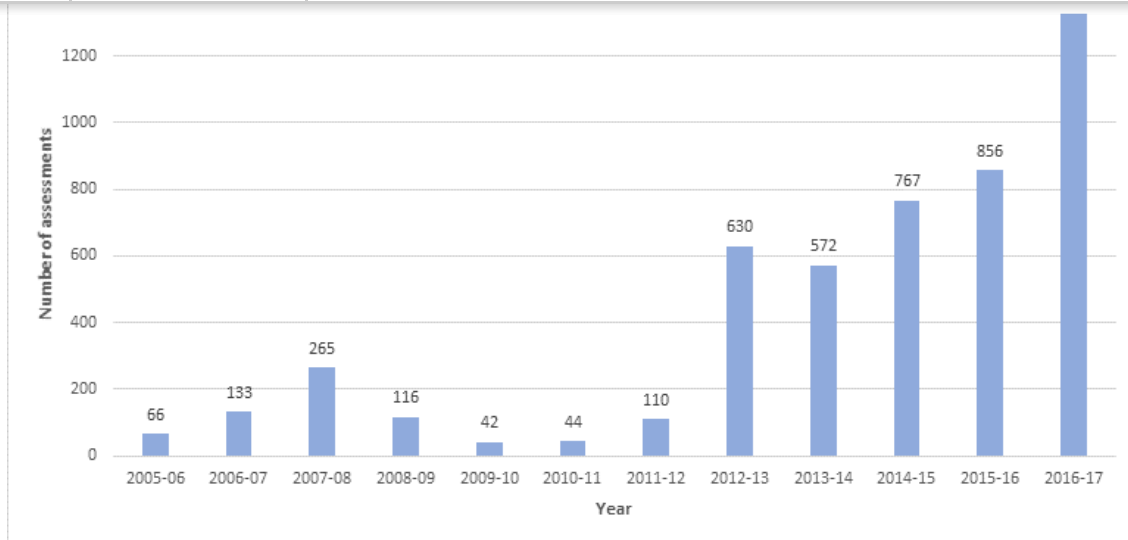
Two year detention review reports

After a person has been in immigration detention for a period of two years, and every six months thereafter, the Secretary of the department must give the Ombudsman a report about the circumstances of the person's detention. The Ombudsman, under s486O of the *Migration Act* is then required to give the Minister an assessment of the appropriateness of the arrangements for that person's detention.

The Ombudsman currently has over 700 cases of people, or families, in detention for two years or longer. In 2016–17, 1325 assessments relating to 2125 people were tabled in Parliament.

Key issues include:

- the length of time people spend in immigration detention and the impact this has on their mental health
- placement decisions for detainees to be closer to family support, access to specialist medical treatment, legal representation and court hearings
- people not owed protection but who are unwilling to return home and cannot be involuntarily returned
- continued detention of individuals with vulnerabilities
- people who have been returned to Australia from Regional Processing Centres (RPC) for medical treatment and who are not well enough to be sent back to an RPC and cannot have their claims for protection assessed in Australia.

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Compliance Monitoring

Under the *Migration Act 1958* the Department of Immigration and Border Protection and the Australian Border Force (ABF) officers are conferred with significant coercive powers, including the power to search premises and deprive people of their liberty by detaining them in an immigration detention facility. Since 2013, we have undertaken an ongoing own motion investigation into the Department of Immigration and Border Protection/ABF's compliance activities that locate, detain and remove unlawful non-citizens. The Ombudsman's Office oversight of the ABF's compliance operations provided a degree of assurance to the Australian public that these activities are conducted in a legal and professional manner.

The Ombudsman oversight is done by:

- conducting desktop reviews of warrants issued under sections 251 and 487 of the *Migration Act 1958* and associated documentation
- observing compliance and removal operations
- reviewing the cases of persons detained and later released as lawful non-citizens.

The Ombudsman's Office also presents at training courses for ABF officers on the role of the Ombudsman and areas we have identified where practices could be improved.

We report on our compliance monitoring activities in our Annual Report.

Desktop reviews

Desk top audits report on a sample of section 251 warrants (a search warrant for unlawful non-citizens, persons with temporary visa with a work condition and associated travel documents) and section 487 warrants (a warrant for evidential material relating to work offences under the *Migration Act 1958*). Issues identified in past audits include a need, in some warrant applications, to more clearly state the evidence to support the belief that a person will be located at the residential address the warrant is for. There was also a need for more detail in the report on the execution of the warrant, in particular, the need to clearly list all participants involved in the execution of the warrant.

Observing compliance and removal operations

In 2017 observations of ABF operations occurred in:

- Brisbane March 2017
- Sydney April 2017

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	<ul style="list-style-type: none"> <li data-bbox="284 159 608 181">• Adelaide June 2017 <li data-bbox="284 192 608 215">• Darwin June 2017 <li data-bbox="284 226 632 248">• Leeton (NSW) August 2017

Key issues we have identified from observing ABF operations and activities include:

- the need for improved processes for the handling of detainee valuables
- the need for better communication with employers about the Visa Entitlement Verification Online (VEVO) system
- the role of Serco in transporting persons detained in field compliance operations.

Reviewing the cases of persons detained and later released as lawful non-citizens.

During 2016, 25 out of a total of 6,876 people detained by the ABF (0.36 per cent) were later released as lawful non-citizens. This compares to 22 (0.29 per cent) out of 7,653 persons detained during 2015.

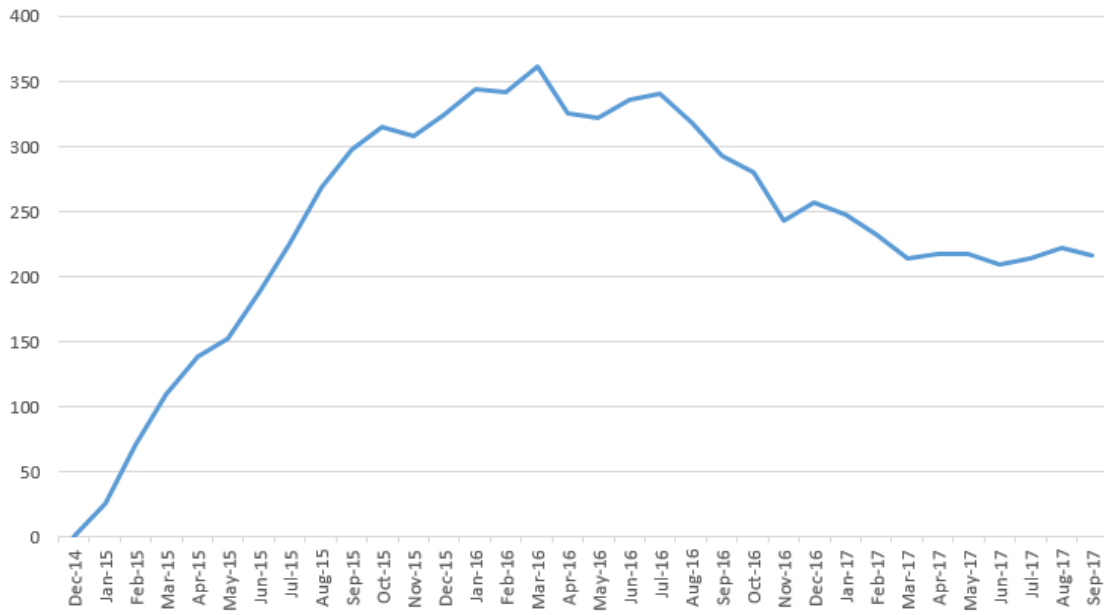
The reasons why people are detained due to a belief they are unlawful non-citizens and later released when it is determined they still hold a visa, are often complex but mostly relate to the operation of case law. In previous cases, courts have determined that for a visa refusal or cancellation to be effective certain requirements need to be met, such as notifying a person of the time they have to lodge an appeal against the decision. If this requirement is not met, the person's visa remains in force until the refusal or cancellation is done in a way that meets such requirements. These rulings apply retrospectively and affect visas cancelled or refused prior to the court's decision.

Generally, we are satisfied that most detentions are not due to maladministration but instead are due to a defect in the notification of a refusal or cancellation of a visa not being identified for people with complex immigration histories who have made multiple visa applications. This is especially the case where ABF officers are required to make an on the spot decision in the field about whether or not to detain someone who is showing on the department's systems as an unlawful non-citizen. In these cases, the officer will not have access to all documents associated with the person's immigration history, nor time to check for errors in paperwork from many years ago. We noted however, in some cases, that the person being detained was the target of an ABF operation that had been planned for weeks and the ABF would have had time to conduct more thorough checks.

2017 figures - Revocation of visa cancellations under section 501 of the *Migration Act 1958*

The last edition of *Immigration Matters* featured an article on the findings of our investigation into the Department of Immigration and Border Protection's administration of s 501. Our investigation identified that a backlog in identifying persons subject to visa cancellation under this section and a delay in deciding the outcome of revocation requests was leading to former prisoners spending prolonged periods in immigration detention awaiting an outcome to the revocation process. The last edition of the newsletter reported on the data from the investigation period dating up to March 2016.

The Department of Immigration and Border Protection has since provided us with updated data about the processing of requests for revocation of visa cancellations under s 501 in 2016 and 2017. The data shows that there has been a decline in the number of people held in immigration detention while awaiting a decision on the revocation of the mandatory cancellation of their visa under s 501. The Office continues to consider issues relating to revocation decisions through our complaint handling work.

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