

What's New in Complaint Handling?

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'Good, Better, Best ... Changes in Public Integrity'*

Welcome to the 2009 Commonwealth Ombudsman national conference. Our last such conference was in 2007, when we were celebrating our 30th anniversary. The success of that conference demonstrated the need for a regular national conference to discuss the role that complaint handling and administrative investigations play in ensuring integrity and accountability in government and business. This has become an important dimension of the way that governments and large corporations conduct business.

Three perspectives are presented in this opening session: from my own office of Commonwealth Ombudsman, which handles complaints against Australian Government agencies; from the Telecommunications Industry Ombudsman, which handles complaints against telecommunications providers; and from the Competition and Consumer Commission, which receives consumer complaints against business enterprises.

Together, these three agencies receive upward of 350,000 complaints and approaches from the public each year. We are heavily immersed in complaint handling, and are well-placed to gauge community sentiment. I will identify three themes arising in the recent work of my office.

'Helping people ... improving government'

There is a strong emphasis in our work, on operating at two levels – resolving individual grievances, while also up picking up broader or systemic issues that require attention. In one sense there is nothing new in that challenge. It is a long-standing feature of Ombudsman work that we resolve individual complaints and also initiate own motion investigations designed to improve public administration.

A change has nevertheless occurred in the style and intensity of the work that is undertaken at those two levels. This is captured in the Commonwealth Ombudsman maxim, *'helping people ... improving government'*.

At the individual level, we once described those who complained to us as citizens who had a right to be treated lawfully and fairly by government agencies. Yet people now relate to government in many different ways. In one guise we are all citizens, who have a right to insist that the decision on our taxation liability or passport application is lawfully made. We can also be consumers purchasing a service from government, such as a postal service, a fishing licence or a skills assessment. We can be customers of a new service offered by an agency, such as an advice service, a business incentive scheme, or a subsidy or rebate program to encourage energy efficiency. People are also clients of government agencies when they receive support and assistance for a disability or to relieve a disadvantage suffered in an accident or natural disaster.

In short, we interact with government in many different ways – as citizens, consumers, customers and clients. This has implications for complaint handling. In dealing with a complaint, it is no longer a simple task of enquiring whether the legislative or policy rules

were applied correctly. Nor can each complaint be resolved by pronouncing that the complaint is upheld or dismissed.

Not infrequently, at the heart of the complaint, is a soured relationship between an agency and a person who has a continuing relationship, as a taxpayer or benefit recipient. Clarifying a person's understanding of the advice given to them by an agency is another common complaint theme. Who is right and who is wrong is not the issue, or at least will not provide a quick and effective resolution of a person's grievance.

The people who approach a public sector ombudsman office are as likely to have spoken on another occasion to an industry ombudsman office or to a consumer complaint agency. They may approach each complaint agency with the same expectation of its role and the assistance it can provide.

That explains why, in the work of the Commonwealth Ombudsman, we have changed style over the years in the way that we receive and handle complaints. We no longer portray ourselves as a 'last resort' agency that a person can approach with a formal complaint after exhausting other complaint options. We now accept that a major part of our work is to provide assistance, guidance and advice to the public. Allied to that we are developing assisted transfer programs, to transfer a person's complaint to another agency, rather than send the person away to take that action themselves (which often they don't).

Another change is that we do not conclude most investigations by deciding if an agency was at fault. Our primary reporting category is the remedy we provide a person. The remedy can be as straightforward as providing a better explanation or expediting agency action; but it can equally be more hard-edged, such as recommending administrative compensation or a change to a decision.

In addition to that dedicated focus on individual complaint handling, we also work at another level. We devote considerable attention to identifying agency defects that impair good administration. These issues – commonly described as systemic issues – are identified through individual complaints. A chief means of exploring these issues and improving government is to conduct an own motion investigation that culminates in a published report. This year my office expects to publish as many as 25 reports.

Complaint handling bodies are uniquely placed to identify these broader or systemic issues. It is important that we do so, as the problems are not always apparent to the agencies themselves. Systemic problems regularly occur in the administration of complex programs. The problem indicators may be treated by an agency as an isolated occurrence, or as an inevitable and tolerable result of complexity. Other factors that impair the ability of agencies to detect serious problems in the programs they administer are frequent changes in program rules and policy; greater automation and less discretion in administering program rules; and dispersal of the responsibility for administering programs between multiple agencies.

A recent example from Commonwealth Ombudsman work of individual complaints being used to identify a broader problem in agency administration was a report on executive schemes.¹ The report pointed to the increasing use by government of executive rather than statutory schemes, for activities such as benefit distribution, emergency payments, industry restructuring, disaster relief and administrative compensation. Problems identified in the report included that executive scheme rules are not always well drafted, the scheme rules

¹ Commonwealth Ombudsman, *Executive Schemes*, Report No 12/2009.

are not always published or easy to find, and there is no mechanism for review of disputed decisions.

Another theme in some recent reports is that government does not always perform well in resolving complaints when a scheme is administered by multiple agencies. Examples are international mail sorting, administration of departure prohibition orders, the delivery of services by multiple agencies pursuant to a purchaser/provider arrangement, and airport complaint handling.

A special challenge for Ombudsman offices is to build on the insights gained from handling individual complaints and preparing systemic reports: the challenge is to distil the wisdom by defining principles for good administration. An example of that approach was a report we published in 2007, *Lessons for Public Administration*, after completing the investigation of over 200 cases of wrongful immigration detention.²

Encouragement to undertake this work was given in a report of a taskforce on Access to Justice launched this week by the Commonwealth Attorney-General.³ The report recommended that the Commonwealth Ombudsman participate with the Department of the Prime Minister and Cabinet and the Attorney-General's Department in developing a Charter of Good Administration. Work on such a project is, in fact, already underway in my office.

Technology in complaint handling

A second theme I will highlight is the importance of technology, and technological innovation, in achieving greater efficiency and effectiveness in complaint handling.

We are all familiar with the improvements that accompanied the introduction of electronic case management systems, such as Resolve. Electronic systems not only improve information management and retrieval, but enable superior case management, for example, in controlling which officers have authority to close a case or to make a finding of administrative deficiency. The systems can also be programmed to send an alert when a case has been opened past a certain date, or there has been no activity recorded for a specific period.

The latest innovation in the Commonwealth Ombudsman office is the introduction of a new web-based complaint lodgement form. This is based on Smartform technology, through a site hosted by the Department of Finance and Deregulation. I invite conference participants to trial this complaint form, which is a substantial improvement on former electronic lodgement options. The new system provides people with a secure, intuitive and easy way to make a complaint. We expect this new system, through the better guidance it provides to users, to be effective in reducing the level of out-of-jurisdiction complaints, which can be as high as 50% of the complaints received.

Another advantage of the Smartform technology is that the information recorded by a person can be saved to their own system, either for record retention or in draft form to be completed and submitted later. A recurring problem we find is that the internet technology used by some agencies does not leave complainants with a record of their complaint or allow their complaint to be saved in draft. The new technology will also aid in developing both the

² Commonwealth Ombudsman, *Lessons for Public Administration*, Report No 11/2007.

³ Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, Report by the Access to Justice Taskforce (Sept 2009).

assisted transfer of complaints to other agencies, and the integration of complaint information into the electronic record system of the office.

Another innovation being led by complaint agencies is the creation of a single and shared web portal for complaints against government. An example from Queensland is a web portal, www.complaints.qld.gov.au, implemented jointly by the Anti-Discrimination Commission Queensland, Commission for Children, Young People and Child Guardian, Commonwealth Ombudsman, Crime and Misconduct Commission, Health Quality and Complaints Commission, and Queensland Ombudsman.⁴ The portal is an important step in making justice more accessible and efficient. There are benefits both for the public in reaching the appropriate complaint agency, and for those agencies in spending less resources referring people to other bodies.

The Commonwealth Ombudsman office will soon spearhead a more ambitious project. We are the registered owner of the domain name www.complaints.gov.au.⁵ The plan is to make this a shared portal of all Australian parliamentary Ombudsman offices, and eventually of all agencies that handle complaints against government. The site will use the advanced Smartform technology to provide a simple though more sophisticated point of entry for any complaint against government, and to allow greater integration of the work of Commonwealth and State complaint agencies. The objective is to take complaint handling to another level.

Other examples abound of how technology can improve complaint handling. Two examples illustrate this point. My office actively supported the Child Support Agency in recording all telephone calls with customers. This has made it easier for us to resolve disputes about oral advice, rudeness and misunderstanding. Similarly, we advise complainants to consider using email rather than the telephone to make an inquiry or to complain to an agency. If a later dispute arises, the record trail is more reliable than a person's memory of what was said, and there will be less need to spend time obtaining documents or further information from an agency.

The oversight and accountability framework

My third theme is the changing landscape for dispute resolution and external oversight of government administration.

It is commonly observed that, thirty years ago, Ombudsman offices stood alone as the external agency that handled complaints against government. A sharp distinction was drawn between their role and that of courts and tribunals. Not least, the Ombudsman could only make recommendations, and was said to be best suited to dealing with the minor grievances and complaints that could be resolved without formal dispute resolution. One way of capturing this difference was to classify Ombudsman offices as part of the executive branch of government, to be differentiated from the judiciary which was a separate and independent branch.

Much has changed in the last thirty years, and the pace of change is quickening. A large number of other oversight and complaint agencies have been created, including human

⁴ Two other similar sites are (in Australia) www.complaintline.com.au and (in New Zealand) www.complaintline.org.nz

⁵ Presently this address leads only to the Commonwealth Ombudsman website.

rights and anti-discrimination commissioners, information and privacy commissioners, anti-corruption and misconduct commissions, and inspectors-general of taxation, defence, intelligence and security. It is problematic to regard those bodies as executive agencies. They have statutory independence of the Executive branch, and their role is to hold it to account.

Nor can they easily be distinguished, in terms of their role and effectiveness, from traditional accountability bodies such as courts. Ombudsman and other agencies are as much concerned with the legality and propriety of government action; they have proved adept at securing effective remedial justice for people, such as compensation and release from unauthorised detention; they deal with disputes across the full spectrum of government; and the public turns to them frequently and with confidence.

The time has come for a different theory of the institutional location and function of complaint agencies. One suggestion is to regard them as located within a new fourth branch of government – an oversight, review and integrity branch. In fact, it is common now to describe Ombudsman and other bodies as being ‘integrity’ agencies. In Western Australia four such agencies have joined to establish the Joint Integrity Group.⁶ At the national level, many of those agencies have been grouped together in the Prime Minister and Cabinet portfolio, and referred to as the integrity group.

A related change is to view Ombudsman and similar agencies as being a part of the justice system. That is, their role is not distinct from that of courts and tribunals; rather, they sit together on a dispute resolution continuum that ranges from formal to inexpensive and informal mechanisms.

As recently as a year ago Ombudsman offices were not mentioned in the list of alternative dispute resolution mechanisms on the website of the National Alternative Dispute Resolution Advisory Council (NADRAC). That has changed, as illustrated in the Access to Justice Taskforce Report released this week by the Commonwealth Attorney-General. The report notes that ‘*An accessible and effective way of resolving disputes is ... central to the rule of law*’.⁷ The report strongly favours a new approach to resolving disputes, that places less emphasis on the need for people to resort to the machinery of formal justice, and more emphasis on preventing disputes and providing inexpensive and informal mechanisms for dispute resolution.

Ombudsman offices are mentioned prominently in the report. One illustration is that the report notes that for each \$1M invested in the justice system in 2007-08, about 60 cases could be resolved by the Federal Court, or 1,000 matters by the Ombudsman. As the Attorney-General observed in endorsing the report, ‘*The critical test is whether our justice system is fair, simple, affordable and accessible*’.⁸

The challenge for complaint handling bodies is to demonstrate that they are the frontline of the justice system. In doing so they can be even more effective in handling people’s problems and promoting integrity in government and business.

⁶ Auditor-General, Crime and Corruption Commission, Commissioner for Public Sector Standards, Western Australian Ombudsman.

⁷ Above note 3 at 2.

⁸ Above note 3, Foreword.