

Topic : Multiple Jurisdiction of Ombudsman Offices

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In Australia, Ombudsman Offices have assumed responsibility for multiple jurisdictions.⁸⁴ No doubt this has happened in other parts of the World.

This paper is primarily dealing with the multiple jurisdictions for which the Office of the Commonwealth Ombudsman ('the Ombudsman') has responsibility but reference is also made to the jurisdictions of Industry funded Ombudsmen in Australia as well as, in general terms, State Parliamentary Ombudsmen.

The Office of the Ombudsman, was established in 1977. Complaints to it are investigated under powers contained in an Act of the Commonwealth (or National) Parliament which establishes the Office of the Ombudsman. The Ombudsman also performs other functions conferred by other legislation.

The functions of the Ombudsman can be described, broadly, as follows.

The Ombudsman can investigate action by public servants and contractors to Government relating to a matter of administration by a Department or Agency in respect of which a complaint has been made to the Ombudsman. The Ombudsman also has the power to investigate any action that relates to a matter of administration by a Department or Agency using what is known in Australia as the 'Own Motion Power'. The Ombudsman also conducts compliance audits in relation to the exercise of covert interception powers, oversights Immigration detention and a Public Interest Disclosure scheme, and provides information about private health insurance.

In certain jurisdictions, the Ombudsman and other Parliamentary Ombudsmen can also investigate the actions of private sector organisations, providing services to the Australian Community.

For example, the Ombudsman can investigate complaints about administration by firms offering Private Health Insurance products. In Australia there are a number of private health insurers who operate in the Australian market and offer insurance services to the Australian community. There are significant tax benefits for the citizens of Australia who take out private health insurance. It is not compulsory to take out private health insurance but the personal taxation benefits which accrue when a citizen does so, are significant. The types of complaints the Ombudsman's office handles in its private health insurance industry jurisdiction include whether or not the terms and conditions of a policy were properly disclosed to an Australian citizen, where for example that citizen sought to make a claim for a benefit and the private health insurer declined to meet the cost of the procedure provided in a hospital to that citizen. So the expertise required on the part of those handling such complaints in the Ombudsman's Office includes having an ability to understand the terms and conditions of some quite complex, at times, insurance policies which are not in a standard form. At the same time Ombudsman staff must be able to explain to an Australian citizen why a staff member agrees that a decision to deny a claim by the private health insurer was correct. Or, to explain to the Health Insurance provider that the denial of a claim was wrong.

The Ombudsman is also the Overseas Students Ombudsman. In that jurisdiction, the Ombudsman takes complaints about the administrative actions of private sector education service providers where those services were provided to students from overseas. The second largest category of export industry for Australia in monetary terms is now the provision of education services to students from overseas.

⁸⁴ A list of all Ombudsmen who are members of the Australian New Zealand Ombudsman Association (ANZOA) operating in Australia appears in the Appendix.

In that jurisdiction, the problems that arise include where a student is told by an education provider that she or he has made unsatisfactory progress in a course and is unable to continue with the course at that institution. That is a significant problem as far as an overseas student is concerned because the entry visa provided by Immigration authorities to that student is normally dependent upon satisfactory progress being made in relation to any course in which the student is enrolled. If a visa is revoked, a student must leave Australia.

The Ombudsman can assist a student to get precise information on why progress is deemed unsatisfactory and may be able to negotiate a change to that assessment.

The Ombudsman is also the Postal Industry Ombudsman. That jurisdiction is in respect of the Government owned Australia Post. Complaints arise in relation to mail services in Australia. Complaints about private sector parcel delivery organisations can also be dealt with. That jurisdiction involves, quite often, the Ombudsman being called upon to make a recommendation in relation to compensation where a mail article or parcel has been mislaid during the delivery process.

The Ombudsman has also recently assumed additional responsibilities as Defence Force Ombudsman. Where allegations are made by either serving Defence Force members or those who have previously been a member of the defence forces, that physical or mental abuse has been sustained, a complaint can be made to the Ombudsman. The remedies available in this jurisdiction include, in suitable cases, the provision of psychological counselling services together with 'restorative engagement' with those whose actions have led to the damage suffered by the complainant. The assessment of suitability for such remedies is made by the Ombudsman in consultation with qualified consultants. The Australian Defence Force is also, as a result of this process, better able to appreciate the benefits of appropriate member management.

As part of the monitoring role, referred to;

- the Ombudsman conducts statutory inspections each financial year across Commonwealth, state and territory law enforcement agencies and other enforcement agencies. The majority of the inspections are in relation to the use of covert powers such as the use of telecommunication interception and surveillance devices.
- The frequency, scope and reporting of these inspections is mandated under legislation. Some reports are tabled in Parliament, others are subject to secrecy provisions and are only provided to the relevant Minister; and
- The Ombudsman makes annual mandatory appearances before the Parliamentary Joint Committee on Law Enforcement and the parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity.

That monitoring role provides assurance to the Australian community that the exercise of covert intrusive activities by agencies is conducted appropriately. And that role requires a capability somewhat different from that required for the dispute resolution function inherent in complaint handling.

In the privately funded Industry Ombudsman jurisdictions in Australia, there exist ombudsmen who handle complaints about financial services providers, power, water and gas service providers and also telecommunications companies.

If one considers the very broad range of financial services products which are available, one can appreciate that the major scheme in this area, the Financial Ombudsman Service needs to provide dispute resolution in relation to, for example, issues as broad as whether a certain amount was lodged in a bank account, to a claim for compensation for flood damage under an insurance policy for a house. Similarly in relation to complaints about suppliers of telecommunications products, the telecommunications industry ombudsman scheme which handles those complaints must deal with arguments about telephone bills and also the provision of internet services and other services based on the provision of such technology.

In relation to the State Parliamentary Ombudsman Offices, these handle a number of matters which are directly related to the provision of what could be described as 'grass roots community services'. For example, State Ombudsman's offices handle complaints not only about state governments and how, for example, prisons are managed but also in relation to local government through which a range of services are provided from garbage collection to road maintenance services. A very broad range of administrative matters therefore are also dealt with by State based Parliamentary Ombudsmen.

So with this background, I now consider the question of what issues arise for complaint handling and other services where Ombudsman schemes receive a very broad range of complaints about public and private sector entities.

The manner in which ombudsman offices deal with that broad range of responsibilities will be, no doubt a little different in each jurisdiction but the fundamental matters required to be dealt with can, in my view, be summarised as follows.

First, the staff of all ombudsman offices must be capable of being good listeners and analysers of the complaints which come to those offices in order to properly explain to the entity in respect of which the complaint is received, what the citizen is really complaining about. Those who have performed the role of ombudsman know, in a way only too well, that on many occasions, the essence of a complaint about an administrative action is made with some emotion. Complaints require careful analysis in order to ensure that any response by the department or agency complained about is directed to the essential element of the complaint being made by the citizen. Staff need to have a developed capability to monitor compliance with legislation, given some of the broader roles. Overall, therefore, staff need an ability to give attention to detail.

Second, the Office of an Ombudsman dealing with complaints must be properly resourced or have resources available to it. Offices need staff to handle complaints but they also need a capacity to, depending upon the case, seek expert advice outside the office where such advice might be required in order to understand the issue about which the complaint is being made. For example, assistance may be required in relation to a complex financial services complaint. The Financial Ombudsman Service may need to make an inquiry of another organisation which had expertise in, for example, the complex nature of a futures contract, where a complaint was about the sale of such an investment to a citizen. Similarly in relation to a Parliamentary Ombudsman called upon to look into an administrative act involving the interpretation of a statute, there may be a need to get specialist legal advice on the interpretation of that statute.

Third, given that many citizens have difficulty expressing themselves in writing, the resources for discussing an issue 'across a desk', is a service which should be available especially for the most vulnerable in a community. In Australia, Indigenous Australians often reside in remote areas. The availability of such 'personal' service should be given to those people who are often the most vulnerable Australians and very much in need of such service.

The three elements I have referred to are fundamental to the effective operation of an Ombudsman's office. They can be summarised as

- Superior analytical, communication, and monitoring skills.
- Resources; and
- Citizen focussed service delivery.

These elements are, of course, the 'fundamentals'. Ombudsmen should also be, amongst other matters, easily accessible to the community and open and transparent in all their dealings.

The final point which I would like to make in relation to the existence of the mix of jurisdictions in an ombudsman's office, is that the existence of several jurisdictions enhances the breadth of experience which staff can enjoy whilst working in an ombudsman's office. As we who are experienced in the role of an ombudsman know, the happier an ombudsman's office is, speaking broadly, the greater the level of productivity and engagement with the office. In my opinion an office which has responsibility for a very broad range of work is often 'happier' because of the opportunities which staff have to handle a range of matters about different services and issues.

Appendix

Richard Connock, Tasmanian Ombudsman website
Sandy Canale, Energy & Water Ombudsman South Australia website
Chris Field, Western Australian Ombudsman website
Philip Field, Lead Ombudsman - Banking & Finance, Financial Ombudsman Service website
Cynthia Gebert, Energy & Water Ombudsman (Victoria) website
Deborah Glass, Victorian Ombudsman website
Treasure Jennings, Public Transport Ombudsman Victoria website
Judi Jones, Telecommunications Industry Ombudsman website
Wayne Lines, South Australian Ombudsman website
Professor John McMillan, Acting NSW Ombudsman website
Colin Neave, Commonwealth Ombudsman website
John Price, Lead Ombudsman - General Insurance, Financial Ombudsman Service website
Peter Shoyer, Northern Territory Ombudsman website
June Smith, Lead Ombudsman - Investments and Advice, Financial Ombudsman Service website
Shane Tregillis, Chief Ombudsman, Financial Ombudsman Service website
Raj Venga, Ombudsman & CEO, Credit & Investments Ombudsman website
Janine Young, Energy & Water Ombudsman NSW website