

## **Commonwealth Ombudsman's Report**

### **Monitoring the Northern Territory Emergency Response & other Indigenous Programs in the Northern Territory January – June 2010**

#### **Role of the Commonwealth Ombudsman in the Northern Territory**

The Commonwealth Ombudsman's office is the primary avenue of independent oversight of many Australian Government Indigenous programs. The office conducts outreach visits to NT communities to provide Indigenous Australians with an accessible, independent complaints mechanism. Through this presence in the communities and the complaints received, the office is uniquely placed to also provide information to the responsible agencies about the impact of their programs on the ground. The office is also well placed to assess the effectiveness of multi-jurisdictional and cross-agency working arrangements. The feedback we provide enables agencies to adjust and refine their processes and thereby improve the quality of government programs and services.

The office is funded for five positions to provide independent oversight of the implementation of the policies and programs called 'Closing the Gap in the Northern Territory' (CtGNT). The office has supplemented this to the extent that eight full time staff are placed in the Unit, although this is likely to reduce in 2010-11 to accommodate the efficiency dividend.

Despite the original intention of the Government, the Commonwealth Ombudsman's office does not have membership on any cross-agency forum monitoring Indigenous programs in the NT. The information in this report has been primarily collected from visits to communities, complaint investigations and related briefings from agencies.

We are most grateful for the cooperation of agencies during the reporting period.

#### **Engagement with Indigenous people**

Between January and the end of June 2010, the Ombudsman's office visited nine remote communities and 11 town camps in the NT and 181 complaints were made to the office about the NTER and related programs.<sup>1</sup> Only 17 of these were received by telephone, two by email, two by internet and one by facsimile.

The usual practice for the Ombudsman's office is to ensure that complainants have first utilised the internal complaint mechanisms of the agency that is the subject of the complaint. This approach is not appropriate in respect to Indigenous complainants in the NT, particularly those living in remote locations, because their access to any other avenues is so limited.

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<sup>1</sup> Daguragu, Kalkarindji, Lajamanu, Wallace Rockhole, Ampilatwatja, Angurugu, Milyakburra, Umbakumba and Papunya. Alice Springs Town camps – Karnte, Mt Nancy, Palmers, Hoppys, Hidden Valley, White Gate, Abbots Camp, Trucking Yards, Larapinta Valley, Warlpiri and Palmers.

In the Ombudsman's office report on the July-December 2009 period, we strongly recommended that agencies find ways to make information more accessible to people living in remote communities in the NT. We noted that this office too finds it challenging to provide information about its own complaint services outside of resource-intensive outreach visits. To address this, the office commenced work to develop an Indigenous Communication and Engagement Strategy in January 2010. The project incorporates research into the most effective communication messages and mechanisms to maximise efforts in the NT and across the whole office to reach Indigenous people who need access to an independent complaints service. The research is scheduled to be available in October 2010.

## **Engagement with government agencies and community organisations**

The office arranged formal liaison meetings in Darwin with FaHCSIA, Centrelink and the Department of Education, Employment and Workplace Relations (DEEWR) to provide feedback from the communities visited, pursue responses to complaints and discuss emerging issues which we had assessed as likely to be systemic. We appreciate the briefings these agencies and the NT Government staff of Remote Housing NT provided on specific programs of interest to the office.

Also in Darwin, the Fair Work Ombudsman and this office met in February to share information about employment related issues in remote communities and outreach strategies, and in February and April discussed health and ageing programs, complaint processes and referral mechanisms with staff from the Department of Health and Ageing (DoHA).

In Canberra, meetings were arranged to progress particularly complex complaint investigations and provide relevant feedback from visits to communities. These included the Department of Environment, Water, Heritage and the Arts, the Department of Health and Ageing, the Department of Broadband, Communications and the Digital Economy and the Attorney-General's Department, as well as the Department of Human Services, FaHCSIA and Centrelink.

We also consulted the Social Security Appeals Tribunal (SSAT) and the NT Ombudsman in relation to our investigation work and to discuss jurisdictional issues.

The Commonwealth and NT Ombudsman offices conducted a Community Round Table in Darwin attended by some 20 non-government organisations (NGOs) which work in the NT. This forum provided an opportunity to inform NGOs about the roles of each Ombudsman so that they can refer people or better access us if there are problems with the administrative decisions and actions of government.

Some of the issues raised with agencies include:

- concerns about the policy gap relating to people who pay rent to reside in a legacy house where there are no plans to upgrade the house or make it compliant with the residential tenancies legislation
- the quality of Income Management Account Statements
- problems identified in relation to the 'Bush Orders' program, including communication problems and language barriers affecting the ordering, confusion about who people should speak to if they experienced problems with their order, lack of access to phone, faxes and computers to make orders, not knowing what they are being charged for or how to make changes to orders, delivery and storage problems and increased electricity cost for community centres storing the food. We provided information about these observations to FaHCSIA for its consideration in transitioning from the Bush Orders program and for the purposes of its program evaluation.

We provided key agencies with a list of issues of ongoing interest to our office. Some of these are:

- the use of interpreters
- difficulty accessing Income Managed funds using the BasicsCard outside of the NT
- discrimination experienced by BasicsCard holders from merchants
- the Income Management (IM) priority payment list
- the impact of alcohol bans and desire for further information about changes and plans for local Alcohol Management Plans
- confusion surrounding the Strategic Indigenous Housing and Infrastructure Program (SIHIP) in communities
- safety and security issues in communities with limited services
- food security issues including access to food, pricing and community store governance
- a range of issues arising from the School Nutrition Program.

The Commonwealth Ombudsman's office is experiencing significant delays in receiving responses from some agencies about complaint investigations. While this is largely a product of the complexity of programs that cross levels of government, we are working with relevant agencies to achieve some improvements.

Most of the complaints made to the office are resolved informally without the need to use our formal powers or reach a firm view on whether an agency's conduct was defective. This reflects our emphasis on achieving remedies and improving public administration in general. However, there are instances when we reach a view that an administrative deficiency should be recorded against an agency. By drawing attention to such problems the office aims to ensure that they are addressed in a timely way. Each agency is given an opportunity to comment on a proposal to record administrative deficiency. In the six months from January to June 2010, there were seven cases where there were one or more proposals or recordings of administrative deficiency. The grounds included delay, inadequate reasons, human error and procedural deficiencies.

We often receive information that can assist agencies to better meet the objective of their respective programs. For instance, during the reporting period we received a complaint about the lack of, and need for, a women's safe house in a remote community. In response to our enquiries, further research into the community's needs was undertaken. The Minister subsequently decided to fund the women's safe house which is due to commence operations later this year.

### **Engagement with the public**

One investigation during the reporting period resulted in a report being published under the *Ombudsman Act 1976*. It related to an investigation into a failure to provide rights of review to the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT) for individuals subject to Income Management in the NT. It was prompted by a complaint from a husband and wife who sought exemption from the scheme and were unable to access rights of review. The full report is available at: [http://www.ombudsman.gov.au/files/FaHCSIA-Centrelink\\_Review-rights-income-managed-people-NT.pdf](http://www.ombudsman.gov.au/files/FaHCSIA-Centrelink_Review-rights-income-managed-people-NT.pdf) .

Six months after a report is published, the office reviews the progress of its recommendations. It was pleasing to see that the Secretary, FaHCSIA reported on his own

initiative on the implementation of the recommendations contained in the December 2009 Ombudsman's report about communication issues relating to the NTER Asbestos Surveys. The report is available at:  
[http://www.ombudsman.gov.au/files/nter\\_asbestos\\_surveys\\_communication\\_issues.pdf](http://www.ombudsman.gov.au/files/nter_asbestos_surveys_communication_issues.pdf) .

Although outside the reporting period, my office made submissions to external inquiries based on issues identified during the reporting period and covered in this report.

- The full submission to the Productivity Commission Inquiry – Caring for Older Australians is at <http://www.ombudsman.gov.au/docs/submissions/Submission%20-%20Inquiry%20into%20Caring%20for%20Older%20Australians.pdf>. A summary of the Indigenous issues raised in this submission is provided below under 'Aged Care'.
- We have also made a submission to the Senate Finance and Public Administration References Committee inquiry into the Reform of Australian Government Administration. The submission includes references to issues identified in our work on NTER programs, in particular, public services which are multi-jurisdictional or involve multiple agencies. It points to the need to avoid confusion for customers about which agency to approach to resolve a matter and which agency or tier of government has responsibility for programs or initiatives. The full submission is at <http://www.ombudsman.gov.au/docs/submissions/Submission%20on%20the%20Reform%20of%20Australian%20Government%20Administration.pdf>.

## Issues of significance during January-June 2010

An encouraging trend is developing where there appears to be less complaints arising from systemic problems than in the past. We attribute this to the improved responsiveness of some agencies. In particular, there seems to be a better relationship between communities and Centrelink than was evident from earlier feedback about the NTER roll out. Our current complaints indicate that people's focus is firmly set on housing.

### **Housing**

#### *Repairs and maintenance*

The absence of an effective system for recording, monitoring and finalising repairs and maintenance requests appeared to be the underlying issue in a number of complaints received during the reporting period. It is expected that this will be addressed during the July-December reporting period with the new arrangements that commenced 1 July 2010.

Consistent with almost all other government services to remote communities, there is a critical need for a more effective local information service so that residents are empowered to find out for themselves when their houses will be repaired. Similarly, residents should be advised that if they are not happy with the quality or other aspects of the service, they have the right to complain to the responsible agency, and if this is not satisfactory, to an independent complaint service, such as the Commonwealth Ombudsman.

Until this is implemented, community residents will continue to complain to this office about issues which would be more quickly resolved by an effective local response.

#### *Rent for 'legacy houses'*

Where people continue to live in houses that are 'beyond economic repair', especially when no other housing is available, we question whether it is fair and reasonable for governments – in the case of communities with 5 year leases, the Commonwealth Government is the landlord – to charge rent. The rent paid by some communities may be a poll tax which is payment for broader services rather than rent for a particular house, however the result is

that sub-standard housing can attract significant and disproportionate rental returns, especially given the quality of the accommodation and level of services available.

### ***Income management***

#### *Review rights*

As noted above, we released a public report in August 2010 about the inability of IM customers to exercise external review rights at the SSAT and the AAT. The report highlighted the broader consequences of the SSAT's decision and pointed to the need for strategic planning, monitoring and responses by FaHCSIA and Centrelink.<sup>2</sup>

#### *Merchant approvals – key service points*

Another area of IM-related complaints relates to merchant approvals. IM customers can face considerable difficulties where local merchants do not accept IM funds. In spite of this, one complainant who had already contacted the responsible agency on two occasions about a local petrol station was advised that nothing could be done to assist her. The next petrol station was 460 kilometres away. It was only after involvement by this office that the agency took further action and has since agreed that it could have taken a more proactive and problem solving approach to resolving this matter at the time. Following this complaint, more flexible alternatives have been approved should a similar situation arise.

#### *IM transfers and 'free calls'*

There have been some significant changes to IM during the reporting period ahead of the 1 July 2010 rollout across the NT. A welcome development is the introduction of a service enabling IM customers to transfer their IM funds onto their BasicsCards on weekends. This addresses an issue which has caused a steady stream of complaints to this office and feedback to the relevant agencies.

We reported in the July-December progress report that calls from remote communities to Centrelink about IM balances and transfers are charged at mobile phone rates. This is a cost impost which impacts disproportionately on people in remote communities where access to land lines is limited and the majority of people use mobile phones. It is felt by anyone who needs to call Centrelink for any reason, but in the case of IM, the additional cost is incurred in order for people to inquire about and gain access to their own money which has been quarantined by government. The 1800 'free call' number to find out IM balances is a voice automated call used only to provide a person with their IM balance. A separate call is required to a 13 number if the person wishes to make a transfer or find out anything else about their IM account.

### ***Aged Care***

Complaints received by this office suggest that the current aged care system for remote Indigenous communities does not adequately cater for the unique challenges faced by older people and carers in those communities, with the result that many older people's care needs are not being met. Continuing a theme which runs through almost all programs, there is uncertainty about the appropriate person or agency to approach about aged care needs: the shire, the health clinic or Commonwealth Government representatives stationed in the community. It is often difficult for complainants to navigate the aged care bureaucracy to determine their entitlements. This challenge is exacerbated for complainants who do not speak English, or who do not speak English as a first language. Complainants have also expressed concerns about how Government collects information regarding elderly health needs in Indigenous communities and speak of a failure to properly consult with communities.

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<sup>2</sup> *Review Rights for Income Managed People in the Northern Territory*, August 2010, Commonwealth Ombudsman's Report 10/2010.

### ***Accessibility of government to Aboriginal & Torres Strait Islander Australians***

As noted under 'Housing', in almost all government services to remote communities there is a critical need for a more effective local information service. Residents and communities need to be empowered to find answers to their questions about any government program or service that impacts them.

Similarly, residents should be advised that if they are not happy with the service or decisions taken, they have the right to seek a review, provide feedback or complain by contacting the responsible agency. They should be informed that if the matter is still not satisfactorily resolved, they have a right to an independent complaint service, such as the Commonwealth Ombudsman. Until this is implemented, community residents will continue to complain to this office about issues which would be more quickly and effectively resolved by the service provider, and without such a service it is very difficult for governments to pursue continuous improvement and improve outcomes for Indigenous Australians.

In saying this, this office and agencies we talk to are well aware of the reluctance of Indigenous people, especially in the remote NT, to complain. This places additional responsibility on us all to ensure that decisions are correct in the first instance.

### **Outlook**

Indigenous Australians in remote NT communities have the same information needs as other Australians. However they have very different and highly variable levels of access to mainstream methods for providing that information such as the internet, television and radio, mail services, telephone lines and mobile phone reception. In addition, the way they wish to engage with government is also diverse and complicated by language, culture and their confidence in, and experience of, governments over time.

As is evident in this report, communication issues are at the root of a significant proportion of complaints made to my office. In my view government agencies administering programs for Indigenous people in the NT have failed to make information about their programs genuinely accessible on demand and to offer an effective and appropriate complaints service. Agencies also need to underpin any complaints mechanism with a culture that values complaints, seeks feedback, meaningfully engages with people. Such mechanisms should be viewed as a valuable opportunity to broadly reflect upon and improve service delivery. This is a whole of government issue which needs immediate attention. Its solution will require coordination across agencies and all three tiers of government.

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Commonwealth Ombudsman  
10 September 2010