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OMBUDSMAN RESEARCH

Thank you to Professor McMillan for inviting me to speak here today. It is an honour to be presenting to you all. I have been asked to speak to my research which relates to ombudsman and look forward to any comments or suggestions you may have at the end of the session.

Introduction

As a law academic I have a longstanding interest in the ability or inability of the law and legal institutions to accommodate technological, social, economic and political change. Over a decade ago my interest in the institution of the ombudsman was sparked by the introduction and proliferation of the private industry ombudsman. At the time such innovation raised interesting legal issues such as:

- what the development of a private sector version of the ombudsman institution meant for the public/private divide?
- whether citizens were unfairly losing administrative rights of review upon their transformation into consumers?

These questions occupied me for some time until I reasoned that if there was such massive upheaval occurring in the private sector, then why wasn't the institution of the public ombudsman changing as well?

Of course, like all good research questions or maybe just all my research questions - this starting premise has turned out to be entirely wrong. Today I'd like to explain to you just how very wrong I was – public or government ombudsman have altered and are continuing to alter in response to a changing system of government.

The research I will describe briefly today is a quantitative study of the Commonwealth Ombudsman. I wish to flag that while the research outcomes focus on the Commonwealth

Ombudsman I believe that the outcomes and methodology will be pertinent for public ombudsman in general.

Today I will briefly cover three aspects of my research which may be of interest:

- (1) key aspects of my research methodology – a methodology which may be applied to most ombudsmen institutions and which can be carried out at almost no monetary cost;
- (2) identify a few select findings from this research; and
- (3) touch upon some proposals for future research.

1. The Methodology and the Quantitative Research – problems to overcome

The study is a quantitative study on the Commonwealth Ombudsman.¹ Specifically, the study uses a quantitative approach to test the following two assumptions concerning the operation of the Commonwealth Ombudsman:

1. that the Commonwealth Ombudsman is increasingly using its systemic investigatory function; and
2. that the systemic investigations role is linked to that of individual complaint handling.

To achieve this objective the study was designed to create two data sets: one for the formal reporting function of the Ombudsman and the other for the individual complaint handling function. The aim being to evaluate the select portion of the systemic investigations role to facilitate cross comparison with the individual complaint-handling function of the Australian Commonwealth Ombudsman over a 28 year period (from its establishment in 1977 til 2005).

As the study formed the basis of my doctoral dissertation it was implemented without funding or additional research help in the form of assistance. The benefits then are that this research is, as far as I am aware, unique in the literature on ombudsman and can be done at relatively small cost.

Essentially the study facilitates data analysis of four different variables:

1. The seven Ombudsman who have held office over this 28 year period;

¹ For an overview as to the methodology use to create this data see Anita Stuhmcke 'Changing Relations between Government and Citizen: Administrative Law and the Work of the Australian Commonwealth Ombudsman' (2008) *The Australian Journal of Public Administration* 67(3) 321-339.

2. Numbers and types of individual complaints;
3. Government agencies and departments;
4. Formal reports (systemic investigations).

The compilation of data sets on each of these aspects of the ombudsman institution facilitates comparison between ombudsman, individual complaints, agencies and formal reports as an aspect of systemic investigations or the duality of roles of ombudsman. For example from the data set any number of factors can be analysed:

- the performance of agencies in terms of individual complaint numbers;
- the performance of agencies in terms of formal investigations/reports;
- the emphasis placed by different ombudsman upon aspects of the operation of the Office;
- time taken to resolve the identified systemic issues;
- correlations between agency, systemic issue and individual complaints etc etc.

In the creation of the data set methodological various hurdles were identified and overcome. I will identify 2 problems to highlight how this was done.

Problem number one: Over the 28 year period the title and functions of a single agency may change numerous times. This is significant as complaint statistics and commentary in Annual Reports are on the basis of the department name at the time – this means that complaint statistics attributed to one department in any given year may be placed in a different department the following year. The solution was to standardise the agencies by nullifying any name and/or portfolio changes over time. So, for example complaints about payments for higher degree tertiary study are treated consistently over the 18-year period as belonging to the portfolio of Social Security even though in the early years of the Office such complaints are recorded against the education department.

The study classifies by complaint type and then applies that categorisation retrospectively, allowing comparison of like with like across the four areas. To overcome various department anomalies the study redistributes statistics into 8 key portfolios:

Social Security²

² As an example of agency name changes:
1977-1986: Dept of Social Security; Dept of Education; Dept of Employment & Industrial Relations
1987-1996: Dept of Social Security; DEET

Taxation
Telecommunications
Immigration
Australian Federal Police
Defence
Australian Capital Territory
Other

Problem number two: The individual complaint handling role of the Office has always been well-defined and statistically recorded. In contrast, the system-fixing role historically lacks clear terminology, definition and record-keeping. For example, before the 1990s the use of terminology which included either the expression 'system' or 'systemic' was not common. Instead the Office used 'norm' or 'normative' to describe this wider function of proactive administrative system improvement.

One of the central questions I wished to investigate is whether there is a link between systemic investigations and individual complaint numbers. So, for example do large numbers of individual complaints in an area drive the number of systemic investigations and over the longer term do such investigations result in reality in a reduced number of complaints.

To enable cross comparison of individual complaints with systemic investigations I had to identify quantifiable data with respect to systemic investigations, not an easy task. The solution was to find a filing cabinet at the bottom of the Commonwealth Ombudsman's Office much similarity here to me feeling like Indiana Jones or perhaps Princess Leah – which contained actual reports of formal investigations undertaken by the Commonwealth Ombudsman since the inception of the Office. While we can debate the merits of using formal reports as representative of systemic investigations it was at minimum a set of documents from which I could compile a usable data set. Using this material I identified variables and coded around 230 formal reports of the Commonwealth Ombudsman then compiled the data on individual complaints across the 28 years from the Annual Reports of the Office and could then allocate the data standardised the transformations in agencies into 8 portfolios over this period.

1997- 2005: Centrelink; Child Support Agency

2. Select research findings

In overview, while my research supports many of the traditional descriptors of the office of ombudsman as a ‘watchdog’ or ‘protector’;³ or ‘... a person who redresses the power imbalance’;⁴ a ‘man or woman who combines the functions of a mediator, reformer, and fighter’⁵ - the data supports the newer and lesser used descriptors of the institution, that it is:

- * flexible;
- * adaptable;
- * a standard setter;
- * a systemic quality improver of government administration; and
- * responsive to changes across the whole of government.

The data evidences a movement that many have identified as occurring - that the emphasis of the roles of ombudsman is shifting. Ombudsmen are increasingly using discretion to refer individual complainants back to the agencies they complain about and ensuring both standards of complaint handling and systemic deficiencies are addressed across the whole of government. The larger question which this raises that I will touch on but do not have time to discuss fully here today is whether these changes mean the institution is moving too far away from its original objectives – as it is critical that the institution maintains its relevance and public perception as an independent resolver of complaints by citizens about defective government administration.

I would like to just briefly touch on a few findings which confirm change and that require further research and investigation.

Finding 1: There is increased interest by the Commonwealth Ombudsman in systemic investigations

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- 3 A Maloney, ‘The Ombudsman Idea’ (1979) 13 *University of British Columbia Law Review* 380.
 - 4 Commonwealth Ombudsman, *Annual Report (1977–78)* citing ‘The Concept of Ombudsman’ in *The Ombudsman through the Looking Glass*, Proceedings of a Seminar at the Law School The Australia National University (1985) 214.
 - 5 A Maloney, ‘The Ombudsman as Mediator, Reformer, and Fighter?’ in Gerald E Caiden (ed) *International Handbook of the Ombudsman: Evolution and Present Function* (1983) 71.

This finding confirms a changing emphasis in the role of the Office. There are numerous data outcomes which evidence heightened interest in this area such as:

- (a) the number of formal reports⁶ issued is increasing;
- (b) the manner and time in which they are produced (the Office is getting faster, reports are more effectively monitored and published through the internet); and
- (c) there are increased mentions of terms such as 'systemics' or 'systemic investigations' in the Annual Reports.

Of course this finding confirms to a large extent the movement that we know is occurring across Australian Ombudsman more widely.⁷ While individual complaint investigation remains the primary focus of ombudsmen there is acknowledgment by the Commonwealth Ombudsman, the NSW Ombudsman and other state ombudsman such as the Queensland and Victorian Ombudsman that there is increasing focus upon additional roles in their operation.

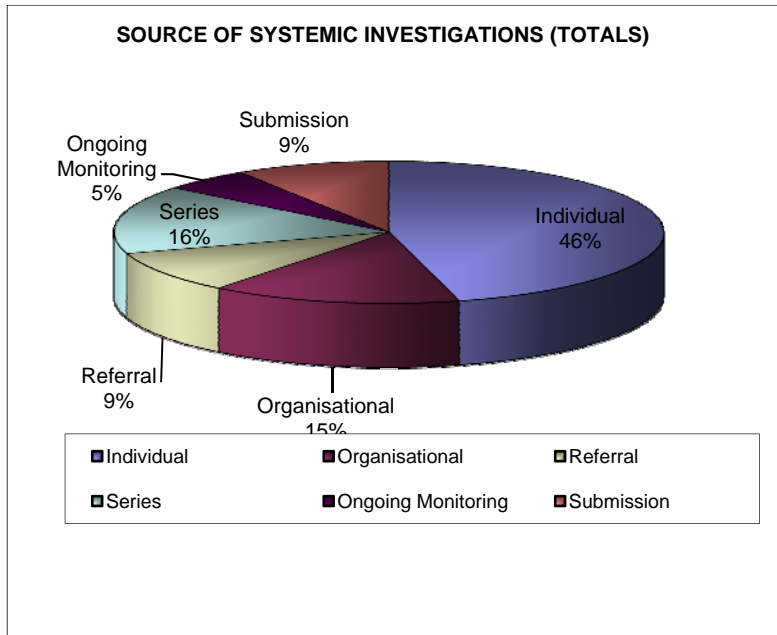
Individual complaint handling is being supplemented by audit and systemic roles and a diverse number of additional statutory roles especially in NSW and exemplified by the addition of the human rights mandate of the Victorian Ombudsman.

⁶ It is noted that formal reports may not be representative of systemic investigations and indeed are one small portion of an ombudsman's role.

⁷ Just as a side note here this finding highlights the adaptive and responsive nature of the institution. The marked increase in the number of formal reports/mentions of systemic investigations begins with Philippa Smith's term as Ombudsman in the 1990s, which coincides with a significant shift in Australian federal government policy. This change may be attributable to the Office strategically positioning itself to remain valuable to the Australian federal system of administrative review of government decision-making and to improve government complaint handling more generally. Apart from government policy, internal factors such as the strategic focus of individual Ombudsman and external factors beyond the control of the Office such as budget are critical to the development of the strategic direction of the Office.

Finding 2: A large proportion of the systemic investigations in the form of formal reports arise from individual complaints:

Source of systemic investigations by percentage



This finding confirms a direct link between the roles of the Office. Over the time period under study 46% of systemic investigations were triggered by individual complaints.

Of more current interest is that the data shows that since the 1990s (relevant to the three most recent Ombudsmen) there is less reliance upon individual complaints and increased emphasis upon organisational/agency/department referrals to trigger investigations. For example in the noughties the rate at which agencies triggered formal report investigations went from 0 to 30%. There has been a simultaneous decrease in the number of investigations triggered by individual complaints. Arguably this movement demonstrates the Office's willingness to determine its own agenda in relation to selecting systemic investigations.

Finding 3: Duration of formal report investigations - quicker and efficient

Over the period of the study the average time spent on each systemic investigation is around 20 months.

Average time of systemic investigation

Total systemic investigations in year	No. of reports — duration Known	% of reports — duration Known	No. of reports — duration unknown	% of reports — duration unknown	Total months (known)	Average time per investigation (known) — months
231	151	65%	80	35%	3034	20

Over the period of this study this average period of 20 months to complete an investigation decreased. Today the average under Professor John McMillan has been under 10 months. The data thus supports increasing efficiency in formal report investigations which, it is argued, reflects an increased emphasis in focus and resources upon their resolution.⁸

Average time of systemic investigation by Ombudsman

Ombudsman (finalised)	Total systemic investigations	No. of reports — duration Known	% of reports — known duration	No. of reports — duration unknown	% of reports — unknown duration	Total months (known)	Average time per investigation (known) — months
JM	20	14	70%	6	30%	134	10
RM	52	33	63%	19	37%	518	16
PS	77	47	61%	30	39%	820	17
AC	9	5	56%	4	44%	127	25
DP	8	3	38%	5	63%	80	27
GK	8	5	63%	3	38%	117	23
JR	57	44	77%	13	23%	1238	28
TOTALS	231	151		80		3034	20

⁸ Three reasons may be given for shorter investigations.

First, it reflects the increased emphasis upon applying resources towards systemic investigations by the Office. Historically, a lack of urgency was placed upon systemic investigations for, as noted by Professor Dennis Pearce, systemic inquiry in the earlier period of the Office often followed a completed individual complaint, this implies that a systemic investigation may be disconnected from an individual complaint, since the investigation is then at the discretion of the Office and there may be no immediate time pressure to conclude it.

Second, timeliness involves allocating discretionary use of resources. The Office is currently investigating a decreasing number of individual complaints and may therefore divert resources from this reactive role to the more proactive role and reprioritise systemic investigations through allocating more staff and funds to the investigations. The Office is comparatively better funded in the period of the incumbent Ombudsman.

Third, since the Office commenced operation in 1976 there is increasing emphasis within the wider dispute handling community on effective complaint resolution.

Finding 4: Systemic investigations within particular portfolios do not reduce individual complaints within those portfolios

The data shows no statistically significant relationship between numbers of individual complaints and the number of systemic investigations per portfolio. So for example, Social Security – the portfolio with 9% of systemic investigations over the total period in question received 47% of all individual complaints. The Australian Federal Police with 3% of all individual complaints received 22% of system investigations.

Number and percentage of individual finalised complaints and systemic investigations by portfolio

		Social Security	Taxation	Telecommunication	Immigration	Australian Federal Police	Defence	ACT	All	Other
Total systemic investigations	231	21	14	12	16	51	28	24	8	57
	%	9%	6%	5%	7%	22%	12%	10%	3%	25%
Total individual complaints finalised	390,735	182,221	43,628	49,614	21,264	13,255	23,749	9,711	0	47,292
	%	47%	11%	13%	5%	3%	6%	2%	0%	12%

This statistical test has been performed with time lags. This is to take into account the fact that a systemic investigation may not have an immediate impact upon reducing individual complaint numbers— especially as policy and/or legislative change may take years to process and implement. Time lags at one, two, three, four and then 10 year intervals reveal no impact between systemic investigations and individual complaints. While the highest interaction was identified at 10 years, the interaction was not statistically significant.

There are many reasons why this may be the case – the two powers essentially must target different aspects of administrative review. For example, reasons for the prima facie lack of correlation between the dual roles within portfolios may include:

- First, the role of systemic investigations in identifying and correcting problems proactively before they have arisen for individual complaint.

- Second, it suggests that the Office may be using its systemic function to improve public administration in areas where Australian citizens are disadvantaged. This occurs in areas such as immigration or indigenous issues or rural concerns.
- Third, the nature and function of systemic investigations may be affected more by external realities rather than by individual complaints. An example of this is the introduction of the external private industry Ombudsmen into telecommunications.
- Finally, large volumes of individual complaints do not mean there are systemic problems – there just may be portfolios such as Social Security where most individuals will be driven to complain as that is where large numbers of citizens have contact with government agencies.

3. Selected findings requiring future research

Data analysis reveals operational changes by the Commonwealth Ombudsman. One such the data shows is that the Commonwealth Ombudsman is increasing the use of discretion to refer large numbers of individual complainants away from its own complaint handling services and return them to the agencies they are complaining about.

Categories of complainants who find themselves in the ‘wrong place’ and are thus referred away from the Ombudsman are traditionally identified across Australian ombudsman Annual Reports as:

1. ‘out of jurisdiction’/request for information complainants; and
2. complainants who are ‘referred back’ to the agency.

Firstly, and this seems to be common across all Australian ombudsman, there is a significant number of out of jurisdiction or request for information complainants which an office will receive. For example, in 2008-2009 of the 45, 719 total approaches and complaints received by the Commonwealth Ombudsman 26, 307 (58%) were found to be outside jurisdiction.⁹ This was observed to be a 30% increase over the previous year in out of jurisdiction complaints and requests for information.¹⁰ Given an emerging trend across Australian ombudsman as to a growing number of ‘out of jurisdiction’ complaints straining already limited budgets¹¹ there is a need for comprehensive empirical investigation of these levels of out of jurisdiction complaints.¹²

⁹ Commonwealth Ombudsman, *Annual Report* (2008–09) at 13, 17.

¹⁰ Commonwealth Ombudsman, *Annual Report* (2008–09) at 13.

¹¹ For example in the 2008-2009 Annual Report of the Queensland Ombudsman it was noted that ‘[R]eferrals have increased 136% since 2005-2006’ and that ‘[W]ith the increasing number of complaint

This theme of a growing number of ‘out of jurisdiction’ complaints straining already limited budgets is repeated across most ombudsman. For example as noted by the Queensland Ombudsman in the 2008-2009 Annual Report, ‘Referrals have increased 136% since 2005-2006’ and that ‘With the increasing number of complaint resolution bodies being established, both in government and in the private sector, people are becoming confused about the correct agency to contact for assistance.’¹³

OUTSIDE JURISDICTION

Jurisdiction / Agency	No. of approaches to office	No. considered outside jurisdiction	%
Cth	45,719	26,307	58%
ACT	2,656		0%
NT	2,454	818	33%
NSW	32,994	7,027	21%
Qld	17,771	9,725	55%
SA	12,000		0%
Tas	2,991	1,738	58%
Vic	19,452	7,763	40%
WA	5,500	1,707	31%

The percentage of out of jurisdiction complaints varies across ombudsman and may also depend upon the manner in which statistics are kept. For example the comparatively low figure of 21% for the NSW Ombudsman arises as the NSW Ombudsman separates requests for information from out of jurisdiction complaints thus reducing the overall Out of Jurisdiction figure.

resolution bodies being established, both in government and in the private sector, people are becoming confused about the correct agency to contact for assistance.’ See Queensland Ombudsman, *Annual Report* (2008-2009) at 16.

¹² In one of the only recent studies, the Northern Territory Ombudsman provided data to track out of jurisdiction complaints. In 2008-2009 it was determined that within the Northern Territory 53% or 818 complaints were out of jurisdiction, the Annual Report notes that ‘[S]tatistics were kept for the first time regarding the inquiries that were out of jurisdiction. The results show that 24% were about employment issues and 14% related to consumer affairs issues.’ Northern Territory Ombudsman, *Annual Report* (2008-2009) at 21.

¹³ Queensland Ombudsman, *Annual Report* (2008-2009) at 16.

The **second** category of complainant referrals are those referred back to the agency they have complained about. As ombudsmen manage rising complaint numbers with finite resources together with improved complaint handling at an agency level their use of discretionary powers¹⁴ to refer complainants back to agencies is increasing.

In 2006–07 the Commonwealth Ombudsman advised individual complainants to take their concerns up with the relevant agency in the first instance in 60% of the matters within the Ombudsman’s jurisdiction.¹⁵ This equates to around 20 000 individual complainants being redirected and advised to resolve their complaint first at the agency level.¹⁶ This figure compares with that of other jurisdictions, for example in 2008-2009 the Queensland Ombudsman states that ‘[D]ue to our limited resources and the need to focus on complaints involving serious or systemic issues, we declined 76% of complaints received (2007-2008: 76%).¹⁷ This practice of referring complainants back to the source of the complaint is mirrored by private industry ombudsman.¹⁸

Percentage discretion not to investigate (Commonwealth Ombudsman)

YEAR	% DISCRETION NOT TO INVESTIGATE
2008/2009	73%
2007/2008	75%
2006/2007	78%
2005/2006	75%
2004/2005	73%
2003/2004	73%
2002/2003	70%
2001/2002	79%

¹⁴ All Australian ombudsmen have some discretionary power as to whether they will deal with an individual’s complaint see eg, *Commonwealth Ombudsman Act 1976* s 6.

¹⁵ The Commonwealth Ombudsman received a total of 33,322 approaches and complaints of which 4,251 were investigated (24%) Commonwealth Ombudsman, *Annual Report, Ombudsman’s Review*

¹⁶ This figure may be contrasted with a 7.5% rate in the use of discretion in the first Annual Report of the Office in 1978 which translates to 200 individual complainants being redirected to agencies rather than being dealt with at first instance by the Ombudsman. This percentage is derived by dividing the total number of complaints received 2656 (at page 5) by the number where discretion used - 199 complaints (at page 105): Commonwealth Ombudsman *Annual Report* (1977-78).

¹⁷ Queensland Ombudsman, *Annual Report 2008-2009*, 21

¹⁸ For example the Victorian Energy and Water Ombudsman (EWOV) categorises complaints into three levels – and will only investigate complaints under the third and final level following two or more contacts between the complainant and the provider, EWOV *Annual Report* (2005-2006) www.ewov.com.au at 25

2000/2001	79%
1999/2000	79%
1998/1999	67%
1997/1998	63%
1996/1997	55%
1995/1996	46%
1994/1995	47%
1993/1994	46%

A longitudinal comparison of the data reveals that over history there is a dramatic increase in the use of the discretionary powers to decline to deal with a within jurisdiction complainant. To take for example the period of 1993-2005 during which Philippa Smith, Ron McLeod and the current Ombudsman, Professor John McMillan, hold office. The discretion percentage not to investigate has increased from 46% in 1993/1994 to 73% in 2004/2005. This rate has remained steady, in 2005/2006 the discretion rate was 75%¹⁹, in 2006/2007 it was 78%²⁰ and in 2007/2008 it was 75%²¹ and in 2008/2009 it was 73%.²²

This trend is clearly different from that of the first four Ombudsman who held Office between 1977-1993. During this sixteen year period a total of 23% or 34,303 complainants were subject to the use of discretion.

The data therefore identifies a tripling in the use of discretion by the Office since inception.²³ The 16 year period from 1977-1993 has an overall percentage of 23% of complainants or 34,303 people being 'referred away' (this phrase includes complaints redirected back to an agency or referred to other complaint bodies) from the Office while the 12 year period between 1993 and 2005 reveals an overall percentage of 65% or 144,685 individuals making a complaint to the Office being subject to the exercise of discretion. The result being that this increasing use of discretion to turn away complaints results in a declining number of actual complaints being investigated.

¹⁹ Commonwealth Ombudsman, *Annual Report* (2005–06) at 23.

²⁰ Commonwealth Ombudsman, *Annual Report* (2005–06) at 2.

²¹ Commonwealth Ombudsman, *Annual Report* (2007–08) at 19. As noted above the data for the years from 2006 onwards is not included in tabular form due to changes in Office work practices.

²² Commonwealth Ombudsman, *Annual Report* (2008–09) at 15.

²³ Removal or aggregation of the data to take into account the four year difference between the time periods being compared does not significantly impact upon this finding.

Despite this large increase in the percentage of complainants who are referred away from the Office there is little statistical breakdown available in Annual Reports providing reasons why cases within jurisdiction are not pursued. In each Annual Report since 2000-2001 where statistics are offered to explain why complainants within jurisdiction are referred away anywhere between 40-70%²⁴ of the total within jurisdiction complainants which are referred back to agencies to raise their complaint at first instance. This high proportion of complainants referred by the Office back to complain to agencies at first instance is reinforced by statements by Ombudsman such as in the 2008-2009 Annual Report observing that the 'common reason for not investigating a complaint is that the person has not raised the complaint with the agency involved'.²⁵ Indeed the policy of the Office is that it is a complaint agency of 'last resort'²⁶ meaning that complainants should raise their issue of complaint with the agency they are complaining about before contacting the Office.

3. Proposals for Future Research

The aim of my research to date has been to add to the academic literature – both national and international - which is available on the institution of the Ombudsman. My hope is to heighten the profile of ombudsmen and raise awareness of the importance of the institution as an instrument of democratic accountability. On this point, I presently see an imbalance between the enormity of the task which ombudsmen largely successfully fulfil – and the limited amount of attention the institution receives from legal academics and other social, political, economic commentators.

For example, a quick search of all journal article titles published in 2009 to compare the coverage of the three main institutions of administrative review – courts and tribunals and ombudsman supports this imbalance. Firstly the primarily Australian legal database AGIS – the Attorney-Generals Information Service. This search reveals the number of:

- Articles with the word 'court' in the title – was 140 in 2009
- Articles with the word 'tribunal' in the title– was 12 in 2009
- Articles with the word 'ombudsman' in the title – was 1 in 2009

²⁴ See for example Commonwealth Ombudsman, *Annual Report* (2000–01) at 12 – 68%; Commonwealth Ombudsman, *Annual Report* (2001–02) at 16 – 67%; Commonwealth Ombudsman, *Annual Report* (2002–03) at 13 -69% ; Commonwealth Ombudsman, *Annual Report* (2003–04) – 43%; Commonwealth Ombudsman, *Annual Report* (2004–05) – 40%; Commonwealth Ombudsman, *Annual Report* (2008–09) at 17 -58%.

²⁵ Commonwealth Ombudsman, *Annual Report* (2008–09) at 17.

²⁶ Indeed, the reference to the Office as an agent of last resort — pushing complaints back to agencies — is used for the first time in the Annual Report (1996–97): Commonwealth Ombudsman, *Annual Report* (1996–97) at 3.

This phenomenon is not limited to Australia, a similar search of the second electronic database HeinOnline – an international collection of journals – found:

- Articles with the word ‘court’ in the title – was 192 in 2009
- Articles with the word ‘tribunal’ in the title– was 11 in 2009
- Articles with the word ‘ombudsman’ in the title – was 0 in 2009

On the one hand the paucity of relative commentary between these institutions – courts, tribunals and ombudsman – is not a surprise. Courts after all do preoccupy the legal scholar.

While the paucity of attention paid to ombudsmen in academic literature may be understood and explained it is nevertheless a tragedy given the impact, effectiveness and importance of the ombudsman institution across the system of administrative review. In my opinion it is difficult to forgive the almost complete absence of commentary on ombudsman given factors such as:

1. the longevity of the institution – with many Australian ombudsman offices now being over 30 years of age;
2. the number of grievances handled - for example the Commonwealth Ombudsman alone handles more grievances than the combined caseloads of the major Commonwealth tribunals and many more matters than courts²⁷; and
3. the ongoing expansion of jurisdiction of most Australian State and Territory ombudsman supported by successive Australian state and federal governments.²⁸ Here I would especially note the breadth and range of functions carried out by Mr Bruce Barbour the NSW Ombudsman and the recent addition of the Victorian Ombudsman to the ranks of human rights ombudsmen.

Future research on ombudsmen is therefore imperative. It appears from the previous work I have undertaken that there is an immediate need for research to target the mainstay of the ombudsman – the individual complainant.²⁹ As noted by Professor John McMillan ‘...the core

²⁷ 500,000 grievances handled over a twenty-five year period by the Office – a large number when compared to the number of Federal Court applications for administrative law matters being less than 10,000 (in the same period) and the combined administrative review caseload of the major Commonwealth tribunals since they were established being over 400,000 decisions see: Robin Creyke, ‘The Performance of Administrative Law in Protecting Rights’ in T Campbell, J Goldsworthy (eds) *Protecting Rights Without a Bill of Rights*, (England Ashgate) 2006, 101–36, 119.

²⁸ For example the Commonwealth Ombudsman now has seven roles: Commonwealth Ombudsman, ACT Ombudsman, Defence Force Ombudsman, Taxation Ombudsman, Immigration Ombudsman, Postal Industry Ombudsman, and Law Enforcement Ombudsman: Commonwealth Ombudsman, *Annual Report* (2005–06) at 1.

²⁹ It follows that the obvious risk of increasing rates of discretion in turning away complainants may give rise to the perception that Government and the public service, rather than the individual citizen, are the greatest beneficiaries of the Office’s investigations. The contest for ombudsman may no longer be one of how to react to demanded rights of the individual citizen against agencies but rather one of ensuring that it maintains the perception of its neutrality and therefore public confidence as the office increasingly takes up

activity of the office remains the handling of complaints and enquiries from members of the public about government administrative action.³⁰

The project which I plan to pursue aims to benefit both individual complainants and the operation of ombudsman offices - and thereby improve public administration and government accountability.

The project will map, evaluate and recommend strategies to improve the effective resolution of complaints across the Australian public sector. It will view complainants as three groups:

1. out of jurisdiction
2. within jurisdiction but referred back/away
3. those who do not complain.

In essence the project examines who are and what happens to complainants who find themselves in the 'wrong' place? And who are those who do not complain?

This project will build upon surveys which have been and are being undertaken by Australian ombudsmen into client referrals and complainants. At this stage I am, proposing that the project will make explicit complaint referral practices across all Australian jurisdictions and examine whether current modes of practice constrict the ability of existing and prospective complainants to have disputes resolved.

Conclusion

In conclusion I would very much like to thank Professor McMillan for the generosity he has shown me over the life of this research. The research from which I drew this conclusion essentially forms my doctoral dissertation – I am very proud that past and present Commonwealth Ombudsman comprise members of my doctoral panel - Professor McMillan and Professor Dennis Pearce and my chief supervisor being Professor Robyn Creyke – to whom I owe a well of debt. I am very grateful for the support that Office and the access I was given in terms of document access and input. Of course all errors remain my own.

the more interesting pursuit of issues of quality control in government policy. The battle for ombudsman as they are given wider roles and responsibilities may therefore be how to best manage an increasingly close relationship with government.

³⁰ Commonwealth Ombudsman, *Annual Report (2006-2007)* at 2.