

promoting good administration

Through its complaint handling and investigation work, the Ombudsman's office comes into contact with most aspects of Australian Government. We are well placed to spot problem areas in government decision making and the options for change. A distinct role of the Ombudsman, defined in our strategic plan for 2003–04, is to play a role in promoting good administration by 'contributing to public discussion on administrative law and public administration' and 'fostering good public administration that is accountable, lawful, fair, transparent and responsive'.

This chapter looks at some of the ways in which the Ombudsman has pursued these objectives during 2003–04. Particular themes that are taken up are submissions by the Ombudsman to external inquiries and reviews, own motion investigations conducted by the office, and the development of the Ombudsman's international program. Similar work undertaken by the office in giving addresses to conferences and seminars is listed in an appendix to this report.

'... fostering good public administration that is accountable, lawful, fair, transparent and responsive.'

SUBMISSIONS AND PARTICIPATION IN INQUIRIES

The Ombudsman's office is frequently invited to contribute to inquiries being conducted by parliamentary committees and executive agencies.

The submissions made to parliamentary committees are listed more fully in the 'Year in review' chapter. They included (in addition to the two submissions listed below) submissions on the Medicare safety net, Norfolk Island governance, and human rights education in the Pacific.

The contribution made to executive inquiries is sometimes by way of a formal submission: an example during the year was a submission to the Australian Law Reform Commission for its report *Keeping Secrets: the Protection of Classified and Security Sensitive Information*. More commonly, the contribution to executive inquiries has been less formal. An example is the comments and information provided during the year to the Inspector-General of Taxation, and to the Australian National Audit Office concerning its inquiries into aspects of the superannuation surcharge, the management of immigration detention facility contracts, and Freedom of Information administration. Two other projects to which the office provided assistance are described below concern reviews into forensic procedures and income tax self-assessment.

Senate Select Committee on Ministerial Discretion in Migration Matters

Our 2002–03 annual report discussed the importance of the Minister for Immigration's 'safety net' discretionary powers under the *Migration Act 1958*. The Minister is authorised on public interest grounds to grant a visa to a person who otherwise does not qualify for a visa. The Ombudsman made a submission to the Senate Select Committee on Ministerial Discretion in Migration Matters in August 2003. The Ombudsman does not have jurisdiction to investigate ministerial actions, and the submission therefore focused on the role of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) in providing assistance to the Minister, especially in the preparation of submissions for ministerial consideration.

The report of the committee in March 2004 contained a number of recommendations that reflected the input provided by the Ombudsman's office. One such recommendation was that DIMIA should establish a system for routinely auditing the

departmental submissions prepared for the Minister. The audit process should address areas previously identified by the Commonwealth Ombudsman as important and potentially problematic. Of particular concern was the need to improve departmental processes for handling cases, to ensure that claims are processed in a timely way and that case officers consider all the available material relevant to each case. The committee also recommended that the Ombudsman's office carry out an annual audit to gauge the adequacy of DIMIA compliance with the ministerial and administrative guidelines on the operation of the Minister's discretionary powers.

The Committee's full report can be viewed at: www.aph.gov.au/senate/committee/minmig_ctte/report/index.htm

The Ombudsman's submission to the inquiry is available at: www.aph.gov.au/senate/committee/minmig_ctte/submissions/sub28.doc

Senate Inquiry into the Effectiveness of Australia's Military Justice System

The Ombudsman provided written and oral submissions into the inquiry by the Senate Foreign Affairs, Defence and Trade Committee into the Effectiveness of Australia's Military Justice System. The issue has attracted public comment and some controversy, both as a result of the Committee's inquiry and more generally.

Our submission commenced by noting the role played by the Defence Force Ombudsman (DFO) in investigating complaints by members of the Australian Defence Force concerning personnel and grievance matters. The DFO cannot investigate matters in connection with a military discipline proceeding, but can investigate some administrative actions and inquiries occurring prior to commencement of a discipline proceeding. Examples of complaints investigated by the DFO are decisions on discharges, postings, performance assessment, formal warnings and promotions, as well as claims of harassment, victimisation and assault, and investigative practices employed by Defence personnel.

We drew attention to areas of difficulty that we had noted—principally, delay in the investigation

process occurring within Defence. Generally, the DFO will not commence investigation of a complaint until the Redress of Grievance (ROG) process is finalised. If there is considerable delay in that process, it compounds the difficulty faced by the DFO in providing administrative justice to a complainant. We raised with the Senate inquiry the possibility of initiating Ombudsman investigations within a specified period of the lodgment of a ROG, both to hasten the resolution of complaints and to provide a practical incentive for early Defence resolution of grievance matters.

'...planning was underway for a joint Ombudsman/Defence study into delays in the ROG process.'

Other concerns we took up with the committee were that investigators within Defence were not always adequately trained for the investigation task they perform, and that efficient investigation by the Ombudsman's office has been hampered in some cases by a tendency within Defence to seek legal advice unnecessarily. We put the view that the DFO role is a valuable one. It is our view that it is important, particularly in relation to an organisation such as Defence with a strong internal culture, to have a mechanism for independent and impartial investigation of personnel disputes and grievances.

Some of the issues raised in our submission were already the subject of discussion with Defence, and have since been taken up specifically with senior officers in Defence. At a later public hearing of the Senate Committee, the Chief of the Defence Force, General Cosgrove, announced that planning was underway for a joint Ombudsman/Defence study into delays in the ROG process.

The Ombudsman's submission to the Senate Committee is available at: www.aph.gov.au/senate/committee/fadt_ctte/miljustice/submissions/sub28.pdf

Review of forensic procedures—overseas incidents

The October 2002 bombings of nightclubs in Bali presented a significant challenge for Australia's disaster victim identification processes. Division 11A of Part 1D of the *Crimes Act 1914* (Cth) was inserted by the *Crimes Amendment Act 2002* as an

urgent response to the terrorist bombings. Division 11A facilitates, among other things, the matching of DNA profiles across jurisdictions to assist in victim identification in incidents which occur outside Australia and Norfolk Island.

The Minister for Justice and Customs appointed former National Crime Authority Chair, Mr Tom Sherman AO, to lead an independent review of the operation of Division 11A of the Act. The review is to be completed in 2004–05. The Ombudsman's office is represented on the committee conducting the review. The committee will consider the extent to which the provisions of Division 11A contributed to the identification of persons who died as a result of the Bali bombings and to the criminal investigation of those bombings; the effectiveness and deficiencies of Division 11A; problems encountered in the administration of Division 11A; and any issues relating to privacy or civil liberties.

Review of aspects of income tax self-assessment

Drawing from our complaint experience, the Ombudsman's office made a submission in response to a discussion paper issued by the Department of Treasury on the Review of Aspects of Income Tax Self Assessment. The self-assessment system is now an established feature of the income taxation system, but contains some elements of concern. The responsibility placed on individual taxpayers to complete all transactions necessary for assessing their liability to taxation will lead to occasional and possibly acrimonious disagreement between them and the Australian Taxation Office (ATO) as to how properly that responsibility has been discharged.

'The thrust of our submission ... was that there is a corresponding duty on the ATO ...'

The thrust of our submission to the Treasury Review was that there is a corresponding duty on the ATO to manage the self-assessment system in a manner that is responsive to the problems and uncertainties sometimes faced by taxpayers. We drew attention to the importance of the discretionary powers exercisable by the ATO in managing the problems that can arise in a self-assessment system. These

include discretionary powers to relax penalties and to approve arrangements for payment of unpaid tax. We also noted the improvements in administrative practice initiated by the ATO in recent years, which reflect a more developed understanding by the ATO of its role in administering a self-assessment system. These include a more active program by the ATO to make information available about arrangements considered to involve tax avoidance, the product ruling system, and ATO rulings and advice.

'During the year, reports were released on four own motion investigations.'

OWN MOTION INVESTIGATIONS

The Ombudsman can conduct an investigation as a result of a complaint or on his own motion (or initiative). During the year, reports were released on four own motion investigations. Two of the investigations were completed and provided to the relevant agency in 2002–03, and were reported in last year's annual report. They dealt with ATO complaint handling and complaint handling in the Job Network administered by the Department of Employment and Workplace Relations. The other two reports dealt with Child Support Agency (CSA) change of assessment decisions (described further below), and a review of the operational and corporate implications for the Australian Crime Commission arising from alleged corrupt activity by two former secondees (see Chapter 5, page 62). The four reports made 31 recommendations that were accepted by agencies.

Several own motion investigations currently being conducted are due to be completed in early 2004–05. Details of three investigations are set out below: under-aged people in the military, the administration of traffic infringement notices, and the use of coercive powers by the ATO. Another own motion investigation into the quality of Freedom of Information processing by Australian Government agencies is described in the 'Looking at the agencies—Freedom of Information complaints' section.

In 2003–04, the Ombudsman revised the system for publication of reports, including reports on own motion investigations. Reports that culminate

in a formal finding by the Ombudsman of agency deficiency are, as far as possible, published in full or in an abridged version on our website at www.ombudsman.gov.au. The reports are presented in a numbered series. Reports are not always made available, wholly or in part, because of statutory secrecy provisions or for reasons of privacy, confidentiality or privilege.

Child Support Agency's assessment decisions

In May 2004, the Ombudsman released a report of his investigation into the CSA's change of assessment decisions based on one or both parents' income, earning capacity, property or financial resources. This report looked at the administrative procedure for making a change of assessment to a person's child support payment. More than 1,000 decisions made over a six-month period were evaluated for their standard of decision making.

The Ombudsman made 12 recommendations, which were all accepted ...'

The Ombudsman found an acceptable quality of decision making in a majority of cases. Nevertheless, in 25% of the cases analysed the decisions were rated as not being reasonably open or available to the decision maker, not being the best possible decision or not being possible to categorise.

The report pointed to regional differences in the quality of decisions and the criteria applied by decision makers in assessing a parent's liability or entitlement. The Ombudsman made 12 recommendations, which were all accepted by the Department of Family and Community Services and the CSA. The recommendations included the need for the CSA to provide more guidance to decision makers and to develop training programs that address areas of weakness and inconsistency. The Ombudsman noted that the CSA had cooperated fully with the office in conducting the study and responding to the recommendations. The CSA showed a readiness to resolve problems promptly when they were identified in the course of the investigation.

The report is entitled *Child Support Agency change of assessment decisions—Administration of change of assessment decisions made on the basis of parents' income, earning capacity, property and financial resources* and is available on our website at www.ombudsman.gov.au.

Under-aged people in the military

An own motion investigation was initiated in 2003 into administrative matters relating to the Department of Defence's dealings with Australian Defence Force (ADF) personnel under the age of 18 years. The investigation is in response to several serious complaints that were received in recent years raising concerns about the adequacy of Defence's administration of such people. The purpose of the investigation is to determine whether:

- policies and procedures are in place to deal with key issues that arise in dealing with people under the age of 18 years
- there are mechanisms and procedures in place to ensure that these policies are understood by key staff, and that the policies are implemented and monitored
- there are mechanisms in place to handle complaints and to respond to any problems identified.

'... examining the treatment of ADF personnel under 18 years ... extensive site visits have been completed and interviews conducted.'

Issues being considered include:

- the legal status of the ADF-member relationship, and the ADF-parent relationship where the member is under 18 years (for example, *in loco parentis*, duty of care, United Nations convention and privacy issues)
- the advice provided to young people on how to deal with any concerns (on matters such as equity, harassment and complaints)
- how on-base living arrangements are set up, what guidelines are used to guard against inappropriate activity and to monitor and deal with it if it occurs, and the recreational and support services available

- identifying and assisting young people in crisis (arising from Defence or external circumstances)
- the involvement of parents where there are problems.

Extensive site visits have been completed and interviews conducted with Army, Navy and Air Force personnel (both supervisors and trainees) to gather information relevant to the investigation. It is expected that a draft report of the investigation in relation to ADF members will be provided to the Chief of the Defence Force late in 2004. While not specifically covering ADF cadets, the report should inform the ADF's consideration of how it deals with cadets.

Administration of Traffic Infringement Notices

For two years, Ombudsman staff have been working collaboratively with the Australian Federal Police (AFP) on a project to investigate the AFP's role in deciding whether disputed Traffic Infringement Notices issued in the Australian Capital Territory should be withdrawn by executive action, or whether the dispute should be resolved in court. The project was initiated because of the high level of complaints over several years about the AFP's traffic responsibility.

'The project was initiated because of the high level of complaints ...'

This has proven to be a complex area of administrative decision making, as the investigation deals with the difficult issue of the administrative resolution of legal liability where a judicial process is also available. The investigation also considers the adequacy of the internal administrative policies that structure this exercise of discretion to ensure consistency of decision making and effective complaint-handling procedures. It has been beneficial to run the project for a two-year period, and to map and address the range of issues that have led people to complain.

During the course of this investigation—and partially in response to it—the AFP has adopted new procedures for traffic disputes. The new procedures reflect a heightened appreciation of the principles of procedural fairness, and have resulted

in a significant reduction of complaints. We hope that agreement will be reached early in 2004–05 on a new policy to guide decision makers in traffic adjudication. We also expect that lessons learned from this investigation will be applied to other government agencies facing similar challenges in administrative decision making.

Australian Taxation Office coercive powers

We continued an own motion investigation, mentioned in last year's annual report, into a selected aspect of ATO's use of its entry and search powers. The investigation was in response to a recommendation by the Senate Standing Committee for the Scrutiny of Bills that the Commonwealth Ombudsman undertake a regular, random 'sample audit' of the ATO's use of these powers.

An initial audit of the ATO's use of access powers conducted during 2003–04 examined a sample of high-profile cases from the serious non-compliance and aggressive tax planning areas of ATO operations. The audit did not bring to notice any significant difficulty with the ATO's use of these powers. Consistent with the Standing Committee's recommendation that the Ombudsman conduct ongoing monitoring, a further own motion investigation will be conducted in 2004–05.

INTERNATIONAL COOPERATION AND REGIONAL SUPPORT

The institution of Ombudsman has spread rapidly throughout the world in the past two decades. Ombudsman offices are now established in over 100 countries, having crossed political, cultural and language barriers.

The office of the Commonwealth Ombudsman is part of a global network of bodies with the similar objective of promoting principles of administrative justice and good governance. By means of their independence in handling complaints against government, ombudsman offices can play a key role in monitoring the human rights performance of governments and providing a check on arbitrary or unfair actions by the state. They can also play a 'lighthouse' role in encouraging the development of standards, ensuring compliance with good governance principles and reforming public administration.

‘... development and training of Ombudsman staff in the Asia–Pacific region ... advice to neighbouring Ombudsman offices ... technical assistance and support.’

Compatible with this ethos, the Commonwealth Ombudsman’s office has an established program of providing assistance and mentoring to Ombudsman offices in the Asia–Pacific region. The program is funded in part by AusAID, in support of the Australian Government’s efforts to assist institutional capacity-building in neighbouring countries. The Commonwealth Ombudsman is well placed to contribute to the law and justice stream of that program by providing practical assistance and peer support to Ombudsman offices in neighbouring countries. The broader objective is to promote good governance, supported by democratic and accountable governmental institutions.

An established theme in this support program has been the development and training of Ombudsman staff in the Asia–Pacific region. Each year, our office organises workshops and courses in Australia, which are attended by Commonwealth Ombudsman staff, officers from other State, Territory and Australian Government departments, and by overseas Ombudsman officers. We have also enabled some overseas staff to work in our own office to gain practical experience in investigative techniques. On a less structured basis, we also provide advice to neighbouring Ombudsman offices on the development of investigation policies and procedures.

Two countries that have received institutional support are Indonesia and Thailand. We are currently managing two AusAID-funded

Government Sector Linkages programs to facilitate the exchange of specialist advice, training, technical assistance and support to the National Ombudsman Commission of Indonesia and the Thailand Ombudsman. These projects are scheduled for a three-year period. To date, we have:

- conducted project scoping visits to Indonesia and Thailand
- entered into major cooperative programs with the Ombudsmen of both countries
- supported the visits of senior officers from both countries to attend investigation training courses and work placements in our office
- supported Indonesian representation at the 21st Australasian and Pacific Ombudsmen’s Conference in Madang, Papua New Guinea
- provided in-country training and mentoring in Thailand and Indonesia.

Two visits to the Asia–Pacific region in May and June 2004 were undertaken for training and mentoring purposes. The Ombudsman visited Indonesia to provide the keynote addresses at two regional conferences organised by the National Ombudsman Commission. The Special Tax Adviser and Information Technology Director visited Thailand to conduct training sessions and liaise on complaint handling and mediation methods and information technology issues.

Feedback from Ombudsman organisations in the Asia–Pacific region suggests that our support is highly valued, and is strengthening the capacity of those organisations to play a role in improving government accountability and integrity.

We are in the process of broadening this support program, to provide advice and assistance to other Ombudsman institutions in the South Pacific region (notably Papua New Guinea,



The Commonwealth Ombudsman visited Yogyakarta and Medan in Indonesia to provide the keynote addresses at two regional conferences.

Vanuatu, Solomon Islands, Cook Islands, Fiji, Tonga and Samoa). We will once again be relying on AusAID funding for this purpose.

Another means of international cooperation has been to host senior-level delegations from several foreign offices, including:

- a six-member delegation from China's Ministry of Supervision
- an 11-member delegation from China's Ministry of Agriculture to discuss issues relating to supervision of corruption in the public service

- a delegation from the Japan National Conference of Tax to discuss the role of the Taxation Ombudsman and the nature of and handling of complaints about taxation matters.

We also provided information and/or advice to delegations and researchers from Fiji, Indonesia, Malaysia, Papua New Guinea, Thailand, Tonga, the United Kingdom's Department of Constitutional Affairs, the Macau Department of Administration and Justice, and the Commissioner of the Mauritius Independent Commission Against Corruption.



The Special Tax Adviser and IT Director in Thailand, June 2004. From left: Chalernsak Jantaratim (Deputy Secretary-General, Thailand Ombudsman); Philip Moss (Special Tax Adviser, Commonwealth Ombudsman); Poonsup Piya-Anant (Thailand Ombudsman); Gen. Teeradej Meepeen (Thailand Ombudsman); Peter Rankin (IT Director, Commonwealth Ombudsman); and Viyada Simasatien (Assistant Secretary-General, Thailand Ombudsman).

FEATURE

information technology team

The Information Technology (IT) Team is based in Canberra and comprises seven people. The Team is responsible for facilitating network and desktop electronic services, security and access controls to all offices nationally. It covers three essential operational areas: case management and information management; network/systems administration; and help desk support.

The complaints management system is the office's core business application, supporting the workflow of information and management of data pertinent to investigations. Two case management officers configure and control this application. The Network Administrator manages the systems aspects of the IT environment, including networking and servers. This includes database systems and security configuration and control. The help desk is responsible for initial staff introduction and training, desktop support and asset management. The IT Director manages the aspects of strategic planning, budget planning, project management and contracts management for the IT services for the office.

The IT Team works closely with the investigation and management areas of the office to ensure appropriate planning and delivery of services. This includes facilitating



reporting and trend analysis. The Team coordinates market testing and analysis to ensure appropriate service delivery and value for money according to functional requirements for management of information and service delivery.

Significant functionality enhancements are currently underway to improve IT services for the office. These include improvements in management of web services, information management and complaints management systems.

Further information in Chapter 10 (pp. 111–112).