

The Commonwealth Ombudsman has been receiving complaints about the administrative actions and decisions of Australian Government agencies for thirty years. It has been a period of significant change—in government, in the complaints received by the office, and in how those complaints are handled and resolved. This chapter notes thirty changes over the period that illustrate the changing relationship between people and government, and the Ombudsman's role in that relationship.

A new system of administrative law

The office of Commonwealth Ombudsman was created as part of a comprehensive reform of Australian administrative law in the 1970s. Previously there were limited means for ordinary Australians to obtain independent review of government administrative actions and decisions. A new approach to administrative law was proposed in four reports—the report of the Commonwealth Administrative Review Committee (the Kerr Committee, named after its chair Sir John Kerr), two reports of the Committee on Administrative Discretions (the Bland Committee, named after its chair Sir Henry Bland), and the report of the Committee of Review of Prerogative Writ Procedures (the Ellicott Committee, named after its chair Mr R J Ellicott).

The administrative law reform package comprised three main planks:

- the *Administrative Decisions (Judicial Review) Act 1977*, reforming and codifying the system for judicial review of administrative action by the Federal Court of Australia, including a requirement for reasons to be given on request
- the *Administrative Appeals Tribunal Act 1975*, establishing both a new tribunal to undertake merit review of selected administrative decisions, and an Administrative Review Council (ARC) to advise the Government on administrative law reform
- the *Ombudsman Act 1976*, establishing the office of Commonwealth Ombudsman to investigate complaints from the public about Australian Government agencies and to undertake own motion investigations.

Two other key elements of the administrative law system—the *Freedom of Information Act 1982* (FOI Act) and the *Privacy Act 1988*—were enacted later. Other subsequent changes include the creation of specialist administrative tribunals, and the development of internal review and complaint systems.

This new system of Australian administrative law has largely stood the test of time. Parts of it have been copied or studied closely in other Australian jurisdictions and internationally.

Growth in Commonwealth Ombudsman work

When the office opened on 1 July 1977, it comprised the Ombudsman and five staff. One hundred and seventy complaints had already been lodged. Within two years the numbers had grown to 42 staff and over 7,500 complaints and enquiries annually. Regional offices or agency arrangements were established in all state and territory capital cities. Information about how to make a complaint was published in 21 community languages.

This national office structure has remained in place, and been a source of strength. The office has expanded to nearly 150 staff, dealing with around 33,000 complaints and enquiries annually. The Ombudsman has acquired additional functions in areas as diverse as law enforcement, immigration and freedom of information.



Canberra office staff

Evolution of the Ombudsman institution in Australia

Western Australia was the first jurisdiction in Australia to establish an office of Ombudsman in 1971—called the Parliamentary Commissioner for Administrative Investigations. The Commonwealth Ombudsman was the sixth Ombudsman to be established. There is now an Ombudsman office in each state, the Northern Territory and the Australian Capital Territory (an office currently held by the Commonwealth Ombudsman). Across Australia, the public sector Ombudsmen receive in excess of 50,000 complaints about government each year (plus many other approaches and enquiries).

The institution of ombudsman has also grown in strength in the private sector. Industry Ombudsman offices now handle complaints about telecommunications, banking and financial services, energy and water, private health insurance, public transport and postal services. This oversight role is underpinned in some instances by legislation that obliges commercial bodies to accede to the jurisdiction of the industry Ombudsman.

Together, Australian Ombudsman offices—public sector and industry—handle upward of 170,000 complaints from the public each year, in addition to many other approaches and enquiries. They provide an accessible complaint service to all members of the public.

Changes in Ombudsman responsibilities occurred over time. For example, prior to the creation of the Telecommunications Industry Ombudsman (TIO) in 1993, complaints about Telecom (then a government instrumentality) accounted for around one-fifth of all complaints to the Commonwealth Ombudsman—about 3,000 in 1992–93. The TIO was also given jurisdiction over Telecom (later Telstra), and now has jurisdiction over 1,200 other telecommunications and internet service providers, handling over 85,000 complaints each year.

Specialist Ombudsman roles

Over time the Commonwealth Ombudsman has gained additional specialist Ombudsman roles. The first, created by amending legislation in 1983, was Defence Force

Ombudsman—a role that includes jurisdiction over employment-related matters in the Australian Defence Force. Other specialist roles since conferred on the Commonwealth Ombudsman are Taxation Ombudsman (1995), Immigration Ombudsman (2005), Postal Industry Ombudsman (2006) and Law Enforcement Ombudsman (2006). A current proposal before Parliament is to confer a new role of Access Card Ombudsman.

The Commonwealth Ombudsman is well placed to discharge those specialist Ombudsman roles. The national structure and size of the office means that a specialist function can be discharged across Australia with limited extra staff. The office can also adapt easily to a new specialist function. We employ staff with a diversity of skills, maintain a strong training program, operate a sophisticated complaint management system, can move staff quickly to functional areas of temporary need, and can draw on our long and broad experience to develop new functions. A recent example was the way we quickly took on the new statutory responsibility of reviewing the circumstances of people held in immigration detention for two years or more.

In essence, the Ombudsman office has repositioned itself as a generalist agency hosting a cluster of specialities. While dealing with the general problems that people experience in all areas of government, the office discharges a role that requires specialist understanding and expertise in selected areas of government that fall under the spotlight of public accountability.

Jurisdiction over government service providers

The corporatisation, privatisation and contracting out of government functions and service delivery has transformed the landscape of government. A complex array of government, private and not-for-profit organisations can jointly be parties to a government transaction with an individual.

This change impacted on the jurisdiction of the Ombudsman, which was defined in the Ombudsman Act as extending to action taken, or deemed to have been taken, by government

departments and agencies. Both the ARC in 1998 and the Joint Committee of Public Accounts and Audit in 2000 recommended legislative change to extend the Ombudsman's jurisdiction to apply to government functions across the public/private divide. Following an amendment to the Ombudsman Act in 2005, the office now has jurisdiction over Commonwealth service providers—that is, non-government bodies that are contracted to provide goods and services to the public on behalf of the Australian Government.

Inspection of law enforcement and agency records

A major new function the office acquired in 1988 was to inspect the records of law enforcement agencies relating to telecommunications interception, and to report to the Attorney-General. This function has since been extended to cover inspection of records relating to stored communications, controlled operations and the use of surveillance devices. The number of enforcement agencies that have access to those intrusive powers has increased.

The Ombudsman inspection role means activities that by nature are secret and unknown to most people are subject to regular independent oversight. Parliament and the community can be reassured that law enforcement agencies exercise those powers lawfully and with propriety.

The Ombudsman role of inspecting agency records has been extended to other areas. On an own motion basis, the office has examined agency records to evaluate such matters as freedom of information administration and child support change of assessment.

Administrative audits of this kind can assess agency compliance with core administrative law values of legality, rationality, fairness and transparency. A new task of the office, in the role of Law Enforcement Ombudsman, is to undertake an annual audit of Australian Federal Police (AFP) complaint handling. In the role of Immigration Ombudsman, the office is implementing a program of regular inspection and monitoring of immigration detention arrangements and compliance activity. Another current proposal made by a

Parliamentary committee is for the Ombudsman to undertake periodic compliance audits of quarantine investigations.

Playing a role in an age of terrorism

Parliament's response to terrorism included special mention of the Ombudsman's independent oversight role. The Ombudsman is to be notified if a person is taken into custody under a preventative detention order, in response to a perceived or imminent terrorist threat. The Ombudsman is to be given a copy of the initial preventative detention order, and the person detained must be advised of their right to complain to the Ombudsman. Similarly, a person detained by police for questioning by the Australian Security Intelligence Organisation (ASIO) is to be informed of their right to complain to the Ombudsman about the actions of the AFP.

The oversight role of ASIO is undertaken by a different statutory office, the Inspector-General of Intelligence and Security (IGIS). The IGIS or his staff sit in on the first day of every questioning detention session by ASIO; and the IGIS has a compliance audit role in relation to ASIO records that is similar to the Ombudsman's role in relation to law enforcement records. The Ombudsman and the IGIS have signed a memorandum of understanding and established administrative protocols to facilitate cooperation and integration in discharging their oversight of policing and national security agencies.

Adapting to new functions in government

The office has had to adapt to substantial changes in the functions and structure of government. For example, the change in family patterns and expectations has given rise to a Child Support Agency (CSA) that administers complex laws controlling the financial obligations of parents. Social security benefits impose complex tests and obligations on recipients, and are delivered through a variety of mechanisms in the public and private sector.

Government regulation is now more intensive in many areas that generate complaints, such as companies and securities regulation,

counter-terrorism, environmental protection and, most recently, health and social support in Indigenous communities.

Another change is that government now relies more on executive rather than statutory power to underpin programs as diverse as the management of immigration detention centres, payment of lost redundancy entitlements, work referral for job seekers, and provision of disaster relief. The Ombudsman is the main administrative law agency with a general jurisdiction covering the administration of executive programs.

The changing programs and priorities in government can also throw up new issues for the office. For example, there was a sharp increase in complaints in the late 1990s following Australian Taxation Office (ATO) action in relation to mass-marketed investment schemes, and later the introduction of the Goods and Services Tax. We managed these changes by centralising the handling of taxation scheme complaints in a specialist Tax Team. The challenges facing the office at that time were to become familiar with new taxation legislation, conduct some large-scale investigations, and inform the public of their right to complain if problems arose.

Responding to complexity in government

Government rules, structures and programs have also grown in complexity over the last thirty years. For example, the ATO has approximately 22,000 employees administering nearly 10,000 pages of taxation legislation embodying the complexity that has developed in working arrangements, business structures, financial arrangements, government incentives, and support programs. Centrelink has over 26,000 employees, has more than 6.5 million customers and records more than five billion electronic customer transactions each year, paying benefits, collecting debts from people who were overpaid, evaluating people's family arrangements, assessing people's job skills, and storing personal information.

The majority of the complaints dealt with by the Ombudsman are now about the ATO, Australia Post, Centrelink, the CSA and the

Department of Immigration and Citizenship (DIAC). Many arise from complex laws administered by those agencies that are not well understood by government clients, nor at times by the administrators. The complexity is compounded if multiple agencies, government and non-government, play a role in administering a program.

The prime focus of the office in dealing with an individual complaint is always to find a practical solution to the complainant's problem or grievance. We also have an eye to improvements that can be made to administrative systems that are large, complex and technical.

The right to complain

Thirty years of Ombudsman complaint handling (longer at state level) has been accompanied by the emergence of a 'right to complain'. The notion has become embedded in Australian law and practice that people have a right to complain about government and business, to an independent agency, without hindrance or reprisal, and to have their complaint resolved on its merits according to the applicable rules and the evidence. Ombudsman brochures now speak to people of their 'right to complain'.

Public awareness of this right to complain has strengthened. Surveys commissioned by the Commonwealth Ombudsman in 2006 and 2007 indicate that around three quarters of those surveyed were aware of the role of Ombudsman offices. This compares with only half of those surveyed in a similar survey in the early 1990s. In the latest survey 'the Ombudsman' was the most frequently nominated agency to turn to with a complaint about government.

Making the office accessible to the public

A key step in making the office accessible to the public was to accept oral complaints. An amendment to the Ombudsman Act in 1983 confirmed this established practice. This enabled complaints to be dealt with in an informal and timely manner, without the need in most cases to invoke the formal investigation processes specified in the Act.



Adelaide office staff



Perth office staff



Melbourne office staff



Brisbane office staff



Darwin representative



Sydney office staff

A substantial majority of the complaints to the office are received orally—about 80% in 2007.

Technology changes have seen a steady rise in the number of complaints made electronically. In 2006–07 11% of approaches and complaints were received by email or the online complaint form on the Ombudsman website. Plans are afoot to keep abreast of newer developments in communications, by trialling the lodgement of complaints by SMS.

Helping people deal with problems in government and business

The Public Contact Team established in the office in 2006 has been able to respond to a different challenge that people face in resolving problems. The increased complexity both in government and in the arrangements for delivering services to the public means that many people do not know where to turn when a problem arises.

The number of complaints and approaches to the Commonwealth Ombudsman increased to over 33,000 in the past year—a rise of 18%. Nearly half those approaches consisted of requests for information or matters that were outside jurisdiction—an increase of 51% from the previous year. Those calling the Public Contact Team sometimes knew that their complaint might not be a matter for the Commonwealth Ombudsman, yet approached the office to find out where they should go or what they needed to do to register their concerns about a government action.

Growth of internal complaint-handling systems

Complaint handling was not a well-developed function in government at the time the Ombudsman commenced operation. Few agencies had a publicised internal process for handling complaints from the public, and there were no service-wide benchmarks for measuring client satisfaction with government service delivery.

Most agencies now have a visible and accessible internal complaint-handling process. Examples in some of the larger agencies are the Customer Relations Units in Centrelink, ATO Complaints in the ATO, the Fairness and

Resolution Branch in Defence, and Professional Standards in the AFP.

The Ombudsman has strongly supported the development of professional complaint handling in government. In the mid-1990s the office undertook a survey of complaint handling in Australian Government agencies that led to the publication in 1997 of a *Good Practice Guide to Effective Complaint Handling*. An updated guide will be published later in 2007.

Ombudsman focus on good complaint handling

The improvement in agency complaint handling has enabled the Ombudsman's office to change the way it conducts business. Unless there is a special reason to the contrary, complainants are advised to first use the agency complaint procedure before lodging a complaint with the Ombudsman's office. The office can decline to investigate a complaint under s 6 of the Ombudsman Act if a complainant has not taken this step. We decide not to investigate around 70% of complaints, in most cases referring a person to the agency complaint unit, compared to 20% or less in the early years of the office.

This change in practice has been beneficial. Agency complaint mechanisms now handle considerably more complaints each year than the Ombudsman's office, and can usually do so quickly and helpfully. This has enabled us to concentrate on more serious or complex complaints, and to conduct own motion investigations into possible problem areas in public administration.

This change in practice relies on agencies handling complaints effectively. The Ombudsman's office works closely with agencies—through seminars, and formal and informal consultation—to encourage professional complaint handling that complies with best-practice standards (such as the Australian Standard on Complaint Handling). This is supplemented by own motion reviews of complaint-handling systems—for example, in the ATO, the Job Network, Centrelink, the CSA, the Migration Agents Registration Authority, airports and the Australian Defence Force (jointly with Defence).

Growth of service charters

A related change is that agencies (as required by government) have developed charters that are a public statement of service delivery commitments to the community. The Ombudsman's office has actively encouraged and monitored this trend.

Charters are important when treated by agency managers and staff as a public commitment by the agency of the principles and service standards it will observe. In an accessible document, the community is told what to expect and where to complain when things go wrong. As part of a complaint investigation we frequently examine whether an agency has complied with the principles and commitments stated in its charter.

An effective service charter will also be complemented by a robust complaint handling and feedback mechanism that is integrated with program monitoring, evaluation and development in the agency.

An added reason why the Ombudsman's office has supported the development of charters is that they complement the administrative law standards that an agency must not breach if it is to act lawfully. Charters state positively what an agency will do to ensure good administrative behaviour.

Development of agency liaison arrangements

The growth in government activity and complaints to the Ombudsman made it important for the office to have convenient arrangements in place with agencies for handling complaints. An amendment to s 8 of the Ombudsman Act in 1983 authorised the Ombudsman to make an arrangement with the principal officer of an agency about the manner by which the Ombudsman would inform the agency that a complaint is to be investigated. Prior to that, the Ombudsman was required to notify both the principal officer and the Minister before each investigation commenced.

This amendment underpinned our ability to deal with complaints in a timely and efficient manner, at an appropriate level of formality.

Contact arrangements of different kinds are in place with many agencies. For some agencies, all complaints are managed initially through a central area, while for others there is a range of different contact points—for example, based on location or the nature of a complaint.

The office also deals with agencies at different levels, ranging from investigation officer level up to the Ombudsman. A matter may be escalated if there is a need to deal at a higher level with a sensitive issue, resolve a disagreement or consult about an intricate matter. Other liaison procedures with agencies include regular meetings, periodic reports on complaint issues, participation in agency training, and consultation during the formulation of agency administrative guidelines and policy documents.

Regular liaison with agencies can help us understand new policies and programs and other changes that could impact on complaint workloads. For our part, we can give agencies an early warning of possible problems, and provide advice on specialist aspects of complaint handling.

Reliance on formal investigation powers

The Ombudsman Act, as enacted in 1976, spelt out the formal investigation procedures and powers required by the office. Later changes to the Act have both modified and strengthened them.

A new s 7A, inserted in 1983, authorised the office to make a preliminary inquiry of an agency before deciding to investigate a complaint. This provided an alternative to the formal duty of the office to notify an agency that a complaint was being investigated and of the details of the investigation.

The office has extensive formal powers to conduct investigations, including powers to summons people to provide evidence and documents, to administer oaths to witnesses, and to enter premises. Use of those coercive powers is not normally necessary; agencies usually provide information or documents upon request, and only require a formal notice to make it certain that all the protections of the Ombudsman Act apply to the agency.

Over time there was a growing concern in some agencies that the voluntary provision of documents to the Ombudsman might breach laws to protect privacy, confidentiality and secrecy. An amendment to the Act in 2005 resolved this doubt by stating that the protections in the Act apply to information provided both voluntarily and in response to a formal demand by the Ombudsman.

In 2004 the Prime Minister gave consent to a project to improve and modernise the framework in the Ombudsman Act for administrative investigation. A report to the Prime Minister proposing a new Ombudsman Act was made in 2006 and is under consideration in government.

Reaching the public

Connecting with the public, especially with communities that are socially marginalised, has always been a challenge facing the office.

The Ombudsman has always had an active outreach program to reach both the community and 'gatekeepers'—community leaders and organisations that are a local source of information and advice. The scope of the outreach program has varied with the resources available over the years, but the challenge remains the same—to communicate with existing and emerging target audiences.

Since 2004 the main outreach focus has been on rural and regional communities; Aboriginal and Torres Strait Islander people, communities and organisations; and younger people. Similar target groups have been identified by other Ombudsman organisations.

In 2005–06 we participated in the 'Speak Up' initiative with other members of the Australian and New Zealand Ombudsman Association, aimed at young people. A postcard was distributed to cafes, tertiary institutions and similar outlets. The results were mixed, though encouraging, and demonstrated the challenge facing complaint agencies to convey their relevance to a younger audience. The answer may partly lie in the creative use of technology and specialist media to engage with younger audiences through their preferred means of communication.

A new Indigenous Unit was established in the office in 2007 to better understand and address issues facing Indigenous communities in dealing with government.

Difficult complainants

A joint project among Ombudsman offices, initiated in 2006 by the NSW Ombudsman office, is looking at difficult and unreasonable conduct by complainants. This has been recognised as a growing problem for Ombudsman and similar agencies.

Ombudsman offices must be accessible to all members of the community, and must listen to any complaint. The problems that people have with government are infinitely varied, and new problems arise as government itself evolves. It is to be expected that some complainants will be persistent, even emotional, in pursuing a personal grievance against government.

Yet this exposes Ombudsman offices to a pattern of engagement with some complainants that can be inefficient and debilitating. Some complainants, for example, can be obsessive, very demanding, overly persistent, rude or aggressive. Far more time can be spent on handling some individual complaints than is warranted, at the expense of dealing with other complaints and issues.

The joint Ombudsman project is developing and trialling management strategies for people who exhibit unreasonable conduct. A central objective has been to develop special training courses and manuals for investigation staff.

Concluding an investigation

For many years the office described the outcome of a complaint investigation as 'resolved substantially in complainant's favour', 'resolved partially in complainant's favour' or 'resolved in agency's favour'. This was altered in 1994 to 'substantial remedy for complainant', 'partial remedy for complainant' and 'unsubstantiated or no remedy required'. Another change later in the 1990s adopted the new terms 'arguable agency defect', 'no apparent agency defect' and 'agency defect not determined'.

There was a reporting change in 2006 to two new statistical categories. One category, described below in 'providing a practical remedy', lists the remedies provided to complainants by the Ombudsman's office. The other category, described more fully in Chapter 5—*Challenges in complaint handling*, lists sixteen categories of 'administrative deficiency' that can be recorded against an agency. The diversity of errors includes human error, legal error, factual error, unreasonable delay, unreasonable agency action, inadequate staff training, and resource deficiency.

These twin categories capture the dual focus of an Ombudsman investigation. One focus is on finding a practical remedy that will resolve a problem experienced by a person in their dealings with a government agency. The other focus is on noting deficiencies in agency conduct that may warrant further consideration, both by the agency and by the Ombudsman's office in own motion investigations into systemic problems in public administration.

Providing a practical remedy

As problems and complaints change, so too must the way that an Ombudsman's office assists people. Many complaints to the Ombudsman now reflect the difficulties experienced by people in dealing with government, arising from the complexity of legislation and government programs. A common complaint issue is that a person is perplexed by an adverse decision, does not understand what is required to obtain a government benefit, or has misunderstood the advice given to them by an agency. Frustration at perceived delay by government in making a decision is another frequent complaint.

It can be pointless or difficult in that setting to focus on whether the complaint is to be resolved in the complainant's or the agency's favour. The more pressing concern is to resolve a person's grievance and to provide a remedy, if appropriate. The Ombudsman remedies that are best attuned to problems of that nature are a clearer explanation of an agency decision, an apology, expediting an agency decision, recommending the payment of administrative

compensation, or arranging a meeting between a complainant and an agency to resolve a dispute.

Many complainants to the Ombudsman have, of necessity, an ongoing relationship with an agency—for example, as a taxpayer, Centrelink customer, postal user, or member of the Australian Defence Force. This reinforces the need for a practical focus in complaint handling, to ensure that the continuing relationship between the complainant and the agency is functional and constructive.

Apologies as a remedy for government error

Complaints to the Ombudsman often stem from simple but unwarranted agency errors—such as delay, misleading advice, inexplicable reasons, lost paperwork and discourtesy. Often the most appropriate and accepted remedy for this default is an explanation or an apology.

Ombudsman offices have given added emphasis over time to the role that apologies can play in addressing grievances. An apology is a common measure of respect in society, and should be applied just as readily in interactions between the public and public administrators. Apologies can contribute to civilising the system of government and making it attuned to its accountability and responsibility to the public.

The office sometimes makes an explicit recommendation to an agency to apologise to a person who has been inconvenienced or wronged by agency action or inaction. The office also draws the attention of agencies to statements made in service charters that the agency will apologise for its mistakes.

Compensation for defective administration

The Commonwealth Ombudsman played a key role in the development of a non-statutory administrative scheme for paying compensation to members of the public. It is called the Compensation for Detriment caused by Defective Administration (CDDA) scheme and was adopted by government in 1995.

The CDDA scheme was a watershed development. For the first time it enabled agencies to compensate members of the public for detriment arising from poor agency administration, without the need to establish a legal liability to compensate. Circumstances in which compensation is paid include where a person has suffered loss caused by incorrect agency advice or an unreasonable administrative failure.

The CDDA scheme also provides that a recommendation or suggestion by the Ombudsman is a sufficient basis for compensation to be paid, even though a case does not quite fit within the scheme. This is an important tool that is used by the office to prompt agencies to find a satisfactory remedy to address a grievance.

Litigation against the Ombudsman

The office of Ombudsman is established by statute and is subject to the same legal controls and remedies as other government agencies. Both complainants and agencies can institute judicial review proceedings against the Ombudsman to seek a ruling on the legality of steps in an investigation.

Litigation against Ombudsmen has been more common in the states, particularly in the early years. For example, a few actions were commenced against the Victorian Ombudsman in the 1970s to challenge the jurisdiction of the Ombudsman to investigate complaints relating to prisons and legal proceedings.

An example of an action brought against the Commonwealth Ombudsman was in 1995. The former Aboriginal and Torres Strait Islander Commission challenged in the Federal Court a proposed Ombudsman report into the appointment of consultants. The Court held that the Ombudsman had acted beyond power in the way that some conclusions were expressed in the draft report, but otherwise did not question the authority of the Ombudsman to investigate and report on the complaint.

There have been a handful of actions in later years by complainants challenging decisions of the Ombudsman not to investigate complaints. The actions have all been dismissed by the

Federal Court and the Federal Magistrates Court, which have drawn attention to the scope of the Ombudsman's discretion to decide what to investigate and how to conduct an investigation. There have also been occasional proceedings by complainants instituted in the Administrative Appeals Tribunal about decisions made under the FOI Act. Those actions have also been unsuccessful in substance.

Research projects

Another avenue taken by the office to improve public administration is to participate in research projects into prominent issues in government. An example given earlier is the joint Ombudsman project into difficult complainant behaviour.

Two other research projects are jointly being conducted with university researchers, supported by funding from the Australian Research Council. One is a national research project into the management of whistleblowers, *Whistling While They Work: Internal Witness Management in the Australian Public Sector*, described in Chapter 6—*Promoting good administration*. Other participants in this project include state Ombudsmen and anti-corruption agencies.

Another project in which the office is playing a lead role is looking at the dilemmas faced by governments in dealing with non-citizens who are not eligible to remain in a country, but there is doubt as to whether they can be removed successfully without significant risk to their human rights or health. This project may collaborate with similar research being undertaken in other countries.

The Commonwealth Ombudsman is also an ex officio member of the Administrative Review Council, which advises the government on administrative law reform. The office has actively contributed to much of the research and publications of the Council, on topics such as the scope of judicial review, the structure of administrative tribunals, providing reasons for decisions, freedom of information legislation, and principles of good decision making.

The Ombudsman's place in the structure of government

The office of Ombudsman sits in an unusual position in the constitutional structure of government. The Ombudsman is an independent statutory officer, with a function of reviewing the actions of other executive agencies. Yet the Ombudsman is often described as being part of the executive arm of government.

Some Commonwealth Ombudsmen have questioned whether the Ombudsman should be treated instead as an officer of the Parliament—a status given to Ombudsmen in many other countries. Another option discussed more recently is to treat the Ombudsman as part of a new grouping in government, that includes other independent accountability agencies such as auditors-general, administrative tribunals, inspectors-general, anti-corruption commissions, privacy commissioners and human rights commissioners. One way this proposal was put in a 2004 address by Chief Justice Spigelman of the NSW Supreme Court, was to propose 'an integrity branch of government as a fourth branch, equivalent to the legislative, executive and judicial branches'.

Proposals of that kind acknowledge the extensive framework of oversight agencies established largely in the last thirty years. Neither the structure of government nor the role of the Ombudsman is static.

Liaison with other oversight agencies

Many other oversight bodies with an accountability and integrity function have been established more recently than the office of the Ombudsman. Examples include the office of the Inspector-General of Intelligence and Security (established in 1986), the Human Rights and Equal Opportunity Commission (1986), the Office of Privacy Commissioner (1988), Inspector-General of Taxation (2003), Inspector-General of the Australian Defence Force (2005), and the Australian Commission for Law Enforcement Integrity (2006).

The functions of those agencies interact in different ways with that of the Ombudsman. Complaints can raise issues that come within

the jurisdiction of more than one agency. A tradition has developed of close consultation and cooperation with other oversight agencies. This enhances the work of all agencies and avoids unnecessary duplication of effort. It also underpins the steady emergence of a sound framework of integrity organisations at the national level in Australia.

Connecting with Parliament

The Ombudsman Act provides a formal link to the Parliament in s 17, which enables the Ombudsman to report to the Parliament when a report or recommendation is not accepted by an agency. Only two such parliamentary reports have been made, in 1985 and 1986. The view expressed since by some Ombudsmen is that Parliament is either too busy or not equipped to deal with an Ombudsman report. The lack of a special Parliamentary committee to receive Ombudsman reports is part of that difficulty.

Successive Ombudsmen have instead placed emphasis on developing other links to the Parliament. One approach is to make submissions and to appear before Parliamentary committee inquiries. Committees generally welcome the Ombudsman's independence and insights, gained from dealing annually with thousands of complaints across all areas of government. Submissions and appearances have been made over the past five years on matters as diverse as immigration visa processing, mental health in detention centres, military justice, governance in the Pacific region, counter-terrorism and security legislation, family benefit payments, and conferral of coercive powers on government officials.

A major activity in the Ombudsman outreach program is to consult with parliamentary electorate offices in rural and regional Australia. Parliamentarians and the Ombudsman perform the same role of receiving complaints from the community, though the Ombudsman has a greater investigation capacity. This arises from the formal powers in the Ombudsman Act, the specialist teams, and the greater resources of the office to conduct major and complex investigations. These points are emphasised in

contact with parliamentarians, who are invited to approach the Ombudsman with any constituent or other complaint.

The Ombudsman is also required by statute to report to the Parliament on some matters. In addition to an annual report, the Ombudsman is required to provide special reports in two areas: a report on the Ombudsman's inspection of the records kept by enforcement agencies concerning their use of intrusive covert powers such as surveillance devices; and a report on the circumstances of any person held in immigration detention for two years or more. These reports keep the Parliament informed of government activities in sensitive areas that require independent scrutiny.

Ombudsman associations

Internationally the Ombudsman model has spread widely. In 1970 fewer than 20 jurisdictions had an Ombudsman. Now over 120 countries have an office established by one name or another. The establishment of a large number of Ombudsmen offices is a global trend that crosses political, cultural and language barriers.

The International Ombudsman Institute (IOI) was established in 1978 and is a worldwide organisation of public sector Ombudsmen. The Commonwealth Ombudsman's office has had a close association with the IOI. For example, the office hosted the Fourth International Ombudsman Conference in 1988, with representatives of 69 ombudsman offices from 36 countries attending; and a previous Commonwealth Ombudsman, Mr Ron McLeod, was Vice-President of the Australasian and Pacific region of the IOI.

A similar level of cooperation now exists in Australia between public sector and industry Ombudsman offices. They have jointly established the Australian and New Zealand Ombudsman Association, which has been active in sharing information among offices on

topics such as learning and development, outreach, internal review of decisions, and benchmarking Ombudsman investigation work.

There is also regional cooperation among Ombudsman offices, including through a Pacific Ombudsman Network coordinated by the Commonwealth Ombudsman. The cooperative efforts, described more fully in Chapter 6—*Promoting good administration*, include staff exchanges, participation in the training programs of other offices, and legal and information technology advice.

Seven Ombudsmen

The Ombudsman is appointed by the Governor-General for a period of up to seven years. The first Ombudsman, Professor Richardson, held a seven-year term, while later Ombudsmen have served terms ranging from one year to five years.

Lawyers have dominated in appointment as Ombudsman, but not exclusively. The backgrounds of the seven Commonwealth Ombudsmen are illustrative: three were legal academics from the Australian National University Law School (Professors Jack Richardson, Dennis Pearce and John McMillan); one a former First Parliamentary Counsel (Mr Geoffrey Kolts); another a major law firm partner (Mr Alan Cameron); one a consumer affairs advocate and consultant (Ms Philippa Smith); and one a former public servant and Inspector-General of Intelligence and Security (Mr Ron McLeod).

Each Ombudsman has brought a particular focus to the office, and helped it to grow to its position of strength. This has been complemented by having staff with diverse qualifications, skills and experience. Currently Ombudsman staff include people with backgrounds in areas such as law, science, nursing, teaching, small business and disability advocacy.