

Thirty Years of Complaint Handling – What have we learnt?

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The office of the Commonwealth Ombudsman has been handling complaints from the public for thirty years. Over half a million complaints have been investigated and dispatched during that period, covering all areas of government. Some complaint issues have remained constant throughout the period. New issues and problems continually emerge as well, reflecting the substantial changes over time in the complexity and responsibilities of government.

Thirty years of complaint handling provides a good vantage point from which to see both the problems that arise within government, and the need for complaint handling systems to deal with those problems. That is the theme for the opening session of this conference to mark the thirtieth anniversary of the office of the Commonwealth Ombudsman. It will be presented as ten lessons about complaint handling that emerge from thirty years of listening to what the public has to say about government.

1. Complaints are a fact of life

Problems occur in every program and in every system, no matter how well designed or how efficient. That is so for many reasons:

- People in organisations make mistakes: they misfile documents, record facts incorrectly, send letters to the wrong address – even bring the wrong body home, or misstate the address at which a SIM card was found!
- The programs administered by government agencies are nowadays complex, and apply to circumstances and human behaviour that simply cannot be predicted any more accurately than we can predict the weather – the phrase ‘unintended consequence’ is uttered frequently across government.

- Every program has rules, and for every rule there is an aggrieved person who falls just on the other side of the rule, or in a crack between the rules of different programs.

Every system gives rise to unanticipated problems that are a source of grievance and complaint. A prime example is that the introduction of a new computer program in an organisation will usually be accompanied by a surge in complaints, notwithstanding the certainty that computers can provide through accurate programming.

The inevitability of problems means that it is essential to establish a system for handling complaints and for client relations, even before problems are first reported. That was the lesson of the Sydney Olympics in 2000, which had planned an event to perfection, but had not anticipated the need for a complaints procedure until the ticketing problem first erupted as a minor crisis. Only then did the organisers establish a complaints unit comprising four staff, and a ticketing customer service team.

This was also the lesson from the 'Doctor Death' inquiry in Queensland concerning deaths occurring through medical malpractice at the Bundaberg Hospital. The Queensland Government Health Department did not have in place at the critical time a standard complaints handling process for hospitals that could deal with complaints made both internally and externally about medical malpractice in hospitals.

Agencies often say to me – '*Our objective is to improve our performance to a level that we don't hear from the Ombudsman anymore*'. To which I respond, '*There's a train wreck coming your way!*'

2. Complaints provide a window on systemic problems

Complaint problems are sometimes one-off and exceptional, but as often they are not unique and point to a recurring difficulty in an agency program. If staff misunderstood a legislative or policy rule in one case, it is likely the rule was misapplied in other similar cases. Equally, if misleading or defective reasons were given to one client, it is likely that other clients were treated as poorly.

That lesson emerged tellingly from the immigration detention cases that were recently investigated by my office.¹ Put simply, the individual cases of Cornelia Rau and Vivian Alvarez sharply portrayed deeper problems that needed to be addressed. The Government responded by referring another 247 cases to my office, which led to eight further reports showing that the problems were systemic and worrying. In short, the two individual cases of Rau and Alvarez were more powerful in portraying the problems to be addressed, than twenty years of intensive immigration litigation, and countless inquiries and reports by parliamentary committees and other bodies.

The same can be witnessed in other areas of government. A parliamentary inquiry into a single customs case, the Midford Shirts case, provided the stimulus to substantial reform of customs administration. The botched training exercise by ASIS officers at the Sheraton Hotel in Melbourne in 1983 fed into legislative and administrative reform of security intelligence arrangements and the creation of the Inspector-General of Intelligence and Security. Currently in Canada there is deep debate about security intelligence arrangements and the role of the Royal Mounted Police, arising from a report on one case, in which a Canadian citizen, Maher Arar, was detained by American authorities on false information provided by Canadian police, following which he was removed to Syria, detained for nearly a year, and interrogated and tortured.

¹ See Commonwealth Ombudsman, *Lessons for public administration: Ombudsman investigation of referred immigration cases*, Report No 11/2007. References for some of the other examples in this paper are also given in that report.

The implication is that agencies should view complaints as a valuable source of intelligence on how effectively the agency is performing. One of the most self-defeating responses we hear constantly from agencies is that *'We made tens of thousands of decisions, and there were only five complaints. The system is clearly working very well, so why all the fuss and distortion about a few defective decisions.'*

That is a sure way of blinding oneself to problems within that can grow and cause a lasting stain on the integrity of the organisation.

3. Complaints can stimulate organisational improvement

The Secretary of the Department of Immigration, Andrew Metcalfe, recently observed that the Rau and Alvarez cases were *'the major catalyst for comprehensive business and cultural change in the department'*.² The reforms extended to data management, case management, record keeping, internal audit, client service, stakeholder engagement, training, governance arrangements, cultural values, compliance operations and immigration detention.

There are many other examples of the same phenomenon. The entire Military Justice system was recently restructured following some complaints that led to a Senate inquiry. The Taxation Office credits an Ombudsman report on complaint handling in the agency as a stimulus for creating a new and impressive system for handling tax inquiries and complaints. The Department of Employment made important changes to the GEERS system for compensation for employment redundancy, following an Ombudsman analysis of a handful of complaints about the system. In the ACT, a few complaints about the priority allocation of public housing caused ACT Housing to put in place a better system for allocating priority and reviewing requests.

Positive organisational change of that kind will not occur unless an agency has arrangements in place to analyse complaints and undertake 'root cause analysis'.³ While the prime focus in complaint handling must be to provide a remedy to a complainant, that is not the only task. A skilled complaint handling unit will examine whether a complaint has significance beyond its own facts. There is a systemic lesson to be found in most complaints.

Agencies must likewise adopt an open-minded attitude in their dealings with external complaint agencies, such as the Ombudsman. Their message, however unwelcome, represents the view of someone else looking objectively at the agency's performance. Failure to at least engage in a constructive dialogue with the messenger of unwelcome news is to close one's mind to an alternative view. Therein lies danger.

4. Complaints must be taken seriously by the leaders of an organisation

An organisation will not be responsive to complaints and to complaint agencies unless the leadership group in the organisation sends the right message to staff. A defensive or dismissive attitude to complaints by agency leaders will soon develop into an impregnable barrier to the agency learning from its mistakes. Similarly, if a complaint unit is parked at the side of an organisation and treated as peripheral to core business, its messages will be sidelined.

The internal complaint and Ombudsman liaison units in an agency must report directly to a senior officer. There must be clear reporting lines from the complaint unit to the

² Department of Immigration and Citizenship, 'Palmer Report – two years of progress – the Secretary's introduction', *Information Sheet 1*, June 2007.

³ Bill Dee, in an address to the Commonwealth Ombudsman Thirtieth Anniversary Conference.

management of an organisation. Briefings from the complaint unit on trends and individual problems must be a regular item on the management agenda. The complaint unit must also be properly resourced to do its work.

This was a major lesson for both American and Australian military authorities arising from the Abu Ghraib incident in Iraq. It was found that internal communication channels were too cumbersome and burdensome and hampered unwelcome messages getting through to senior officers who could act on them. Queensland Health learnt the same lesson from the Dr Death inquiry: staff reports about medical malpractice were being blocked and not getting through to senior officers. When that happens, staff will be more likely to blow the whistle publicly to alert others to the problems within.

Another downside when complaints to an agency are not reported to its leadership group is that members of the public quickly discern that their views do not matter. They see the agency complaint procedures as a means of blocking comment and opinion from outside the organisation. Public antagonism to the agency can quickly develop.

5. Complaint handling is suitable for all areas of business and government

Every Ombudsman office is told from time to time by an agency that the issue being complained about requires expert technical knowledge and is only properly understood by specialists in the agency. By implication, neither the complainant nor the Ombudsman's office is well-placed to offer criticism of the agency's actions.

That myth has now been shattered by our experience of complaint handling over the last thirty years. External oversight and complaint handling is as relevant, for example, to policing and defence, as it is to social services and taxation. Indeed, experience has illustrated that disciplined forces that have a strong internal culture can benefit a great deal by exposure to a generalist or civilian complaint agency. It is a reminder that all agencies in government are expected to be accountable, transparent and prepared to explain and defend their actions. This is reflected in my own office in two of the specialist titles it holds, of Defence Force Ombudsman and Law Enforcement Ombudsman.

Experience has also demonstrated that the complaint handling principles that apply in the public sector can apply as suitably to the private sector. There is a strong alliance in Australia between public sector and industry Ombudsmen, because of the similar function they discharge and philosophy they espouse. The existence both of an Australian and an International Standard on Complaint Handling⁴ are a further illustration of the similar expectations that apply universally to business and government.

Another point we have learnt over thirty years is that many of the issues that give rise to complaints are generic and not related to the specialist functions of government and business. Common causes of complaint are delay, human error, poor communication, confusing oral advice, and debt recovery disputes. Those problems are best resolved by inquiring if there has been a departure from principles of good decision making that apply equally to government and business. That inquiry is best undertaken by an oversight body such as an Ombudsman that has a jurisdiction either across government or in an industry sector.

⁴ Australian Standard AS ISO 10002–2006 – *Customer Satisfaction – Guidelines for Complaint Handling in Organisations*.

6. Complaint handling is a specialist task

Every complaint handler soon learns that if a complaint is not handled well, it will give rise to another complaint – and possibly another after that! Indeed, it is easy to handle a complaint badly, and cause a complainant to shift their focus from the topic of the complaint to the performance of the complaint agency.

Ombudsman and other offices have thus learnt that complaint and investigation staff must be specially selected and properly trained, and that complaint handling must be subject to constant supervision and quality assurance. There is also an increasing reliance by Ombudsman and similar offices on technology and data management systems to track and analyse complaints.

Different types of complaints may need different skills. An example is that corruption investigation requires special and different skills to administrative investigation. Both can be done within the same agency, but if so, different expertise and systems must be used.

Other initiatives adopted by Ombudsman offices around Australia portray the increasing sophistication and specialisation that is now a feature of complaint handling. Examples, from the NSW Ombudsman's office, are its recent fifty page publication on 'Apologies', and its equally extensive training package on handling difficult complainants. An example of a different kind from the WA Ombudsman office is the distillation of the principles – the six P's – that guide the office: Parliamentary Commissioner Act (their legislation), procedural fairness, proportionality, public interest, proper language, practical outcomes.

7. Good complaint handling can defuse a crisis

Conversely, bad complaint handling can escalate a crisis.

Many complaints have substance, but not all. Some complaints are trivial, some are wrong-headed, others are insoluble or confused. But one thing they all have in common is that they express a grievance – they contain an emotive element.

The person making the complaint believes that there is a wrong that should be corrected. They would like it resolved sooner rather than later. There is an immediacy in the grievance and the desire for a remedy.

This means that the way a complaint is handled will be as important as the outcome of any investigation. Indeed, it can almost be stated as a truth, that the time taken to resolve a complaint will be inversely proportional to the chance of a satisfactory resolution.

The converse is also true. Good complaint handling can turn a major distress into a minor glitch. Hence the adage: some complaints turn into inquiries, some inquiries turn into complaints.

8. Complaint work transforms and improves government

A comparison between government today and thirty years earlier is enlightening. Government agencies are now more responsive to queries and complaints, they have service charters and internal complaint and review procedures, there are performance standards for measuring effectiveness and integrity within agencies, and there is greater transparency in decision making.

Admittedly there will always be flaws and problems that blemish the public service, but it can I think be said that government is better as a consequence of being exposed for thirty years to complaints to Ombudsman and similar offices. Industry Ombudsman

and complaints schemes are having the same positive effect on service delivery and responsiveness in the private sector.

It is now realistic to speak of the public having a 'right to complain'. Though that right is easily taken for granted, its significance should not be understated. The right to complain against government and big business, to seek answers and to question authority, is a cornerstone right in a democratic system.

9. The price of failure is high

The mistakes of an organisation are remembered for many years – indeed, far longer than its good deeds. All the hard work and positive achievements of an organisation can be overshadowed by one or two mistakes that gain public notoriety.

Witness the names and examples given earlier in this talk – Cornelia Rau, Abu Ghraib, the Sheraton Hotel incident. Witness other mistakes in our system of law and government that have become etched on our historical consciousness – Lindy Chamberlain, as regards the reliability of expert evidence; Children Overboard, as to internal communication of information; and, currently in Western Australia, Andrew Mallard, as to police interview techniques.

Public confidence in a system can be undermined by one or two incidents of faulty behaviour. For example, all it took for many people to harbour suspicion about airport baggage handling arrangements in Australia was one or two publicised security breaches or misbehaviour incidents in airports. An occasional information privacy breach in an agency will similarly cause many people to doubt the security of personal information held by the agency. One or two reported incidents of faulty speed cameras can equally cause an abiding distrust among drivers.

Complaints cannot, of course, prevent mistakes. But they are an important part of the system for preventing or minimising damaging mistakes.

10. We can all do better

My own office has thirty years experience in handling complaints; some other Ombudsman offices have even more. We have come a long way and seen many improvements. Yet there are challenges ahead and there are areas for improvement.

In complaint handling forums we commonly discuss issues of common concern, such as timeliness in complaint handling, completion of major projects, dealing with difficult complainants, streamlining the complaint system, benchmarking, and using our limited resources more strategically.

Others raise different issues that should concern us, such as avoiding duplication and overlap in external complaint handling arrangements. Connecting with the public, especially with communities that are socially marginalised, is another continuing challenge.

On these and other matters we have much to learn from each other.