



**Submission by the
Commonwealth Ombudsman**

**REFORM OF AUSTRALIAN
GOVERNMENT ADMINISTRATION**

**SENATE COMMITTEE ON FINANCE AND PUBLIC
ADMINISTRATION**

Submission by the Acting Commonwealth Ombudsman, Ron Brent

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INTRODUCTION AND SUMMARY

On 24 June 2010 the Senate referred to the Senate Finance and Public Administration Committee the *Ahead of the Game Blueprint for the Reform of Australian Government Administration* issued by the Advisory Group on Reform of Australian Government Administration in March 2010.

The Blueprint, accepted by the Government in May 2010, sets an ambitious agenda for the reform of the Australian Public Service (APS) with a focus on improving outcomes for citizens through greater integration of services, developing the long term strategic and leadership capability of the APS and introducing new accountability measures such as the introduction of cross-portfolio outcomes and agency capability reviews.

The Blueprint recommends improved data collection to help build a better picture of the performance of the APS and to drive the APS to transform itself into a self-improving organisation that is forward looking with a strong culture of evaluation and innovation.

The Committee has been asked to review the Blueprint, including examining the means and costs of implementing the recommendations, the possible amendments to the Public Service Act and identifying and considering related matters not covered in the review.

BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

In 2009-10 the Ombudsman received 37,468 approaches from members of the public seeking to make a complaint or an inquiry. Whilst the primary function of the Ombudsman remains to receive and investigate complaints about government agencies, over the years, the role has broadened to encompass the improvement of public administration. The independent examination of government administration through the investigation of individual complaints as well as broader, systemic issues, gives the Ombudsman a unique perspective on the workings of the APS.

We welcome this opportunity to contribute to the Committee's inquiry.

RESPONSE TO TERMS OF REFERENCE

The Ombudsman strongly supports the development of measures aimed at delivering better services for citizens and creating a more open government. We also endorse the recommendations contained in the Blueprint focused on improving the performance of the public service.

However, in moving to the model set out in the Blueprint, there are some barriers and challenges that should be considered and may require greater focus from the Government.

Governance and accountability

The current siloed governance and accountability arrangements for Australian government agencies may be a major barrier to effective and accountable citizen-centric and whole of government delivery of programs and outcomes. Agencies, which for example work on joint initiatives, are usually required to report solely on their own portfolio responsibilities and within their own governance structures. They report in the context of their specific agency budgets and Parliamentary cycles. These existing governance frameworks tend to discourage officials and agencies from developing and implementing innovative solutions which require cooperative arrangements between agencies.

Where creative or innovative solutions are developed through agencies working together to deliver key outcomes, it is important that governance and accountability arrangements do not add unnecessary complexity and delay in implementing the outcomes sought by governments.

Greater consideration needs to be given to the appropriateness of existing governance and accountability arrangements when joined-up government solutions are being developed and implemented.

The rollout of Indigenous housing programs, in the Northern Territory provides a current example of joined-up service delivery involving three levels of government as well as contracted service providers. In many ways such programs aim to be citizen centric focusing on the needs of Indigenous individuals and communities. Such a focus often involves an integration of programs and joint decision making by the Australian and NT governments. In our experience when members of the public seek to challenge a decision or request information about such joined up programs there is often a lack of clarity about which agency to approach to resolve the matter. A similar confusion about areas of responsibility sometimes exists in the agencies involved.

Our experience suggests that there needs to be more clarity around which agency or tier of government has responsibility for particular parts of programs or initiatives. Those responsibilities need to also be clearly articulated and made public. At the service delivery level, agency staff need to have a clear understanding of their responsibilities and delegations. Consideration should also be given to what specific skills, knowledge and attributes may be required of APS staff to operate effectively in delivering a cross-agency program. A model similar to the role Government Business Managers and Indigenous Engagement officers play in the delivery of joined up Indigenous programs should be further developed. Such positions enable staff to have certain responsibilities across multiple agencies. They are often an important contact point for members of the public to access programs, get information and seek redress to issues of concern.

Reporting arrangements for cross-agency programs and initiatives should also clearly reflect the roles and responsibilities of each agency.

A simplified approach to oversight and complaint handling

One important measure of accountability in the APS is the existence of effective oversight and complaints mechanisms. The challenge is to maintain effective oversight in relation to the delivery of programs that involve multiple agencies over different tiers of government working together to achieve particular outcomes. The onus should not be on members of the public to know the specific agencies responsible for each component of these joined up programs, in order to seek redress or to complain. In such circumstances providing a one-stop-shop for people to complain, have matters investigated and issues resolved is important. This could be done through different ombudsman offices with specific jurisdictional coverage working cooperatively. The Commonwealth Ombudsman's office and the Northern Territory Ombudsman developed a Memorandum of Understanding (MOU) in order to effectively address complaints relating to programs involving the three tiers of government working together (such as Indigenous housing programs in the Northern Territory). The MOU enables greater cooperation between the offices including joint outreach, more effective referrals, joint investigations and sharing of information.

However, the Blueprint's agenda for simplifying Australian Government services, having joined up solutions and being citizen centric could also be advanced by using the opportunity for a more significant reform. The establishment of the Coordinator General for Remote Indigenous Services is an example of recent legislation empowering an oversight body to work across the three tiers of government. In a similar approach consideration could be given to the Commonwealth Ombudsman expanding its powers to investigate matters of administrative action that cut across the three tiers of government. More specifically this expanded model of oversight could apply where there is direct Australian government funding of programs and the issues relate to the delivery of cross-agency government programs, administration and service delivery.

With a national network of offices and direct complaint handling experience, the Commonwealth Ombudsman is uniquely placed to undertake a role of oversight and investigation into administration of programs and services delivered by Australian government agencies jointly with other levels of government. Expanding the role of the Commonwealth Ombudsman to cover cross-agency government programs would also provide greater clarity to both citizens receiving those services as well the agencies involved. It reinforces a citizen centric approach to accountability and complaint handling.

Transparency and more open government

Citizens' trust and confidence in open government could also be enhanced through building a stronger culture in Australian government agencies of promoting the right of citizens to complain.

Agencies should be encouraged to more effectively draw on the wealth of information already available to them in the form of client feedback and complaints to review and improve programs and service delivery. Australian government agencies should ensure that appropriate priority, resources and management scrutiny is given to resolving individual and systemic issues that arise from complaints.

In addition, supporting and properly resourcing strong, efficient and independent oversight agencies such as the Ombudsman and the Australian National Audit Office (ANAO) is a critical component of an accountable and transparent governance framework.

Conducting citizen surveys on broad ranging subjects across all levels of government would no doubt elicit valuable information. Surveys can be a useful tool but they are also likely to be an expensive way of seeking information that may already be available. In a tight fiscal environment, priority may need to be given to better using existing mechanisms and sources of information to evaluate and improve programs and service delivery.

Each year, Australian government agencies and the Ombudsman receive thousands of complaints and approaches from members of the public. Complaints are inherently driven by the citizen – they reflect the genuine concerns, views and attitudes of people directly affected by government administration. Patterns in issues arising out of complaints are also a very good indicator of potential systemic problems that agencies need to examine.

While Australian government agencies typically have processes or systems for receiving and dealing with complaints, greater focus should be given to developing adequate mechanisms for analysing the information gained and drawing out issues or complaint trends that could drive improvement. Complaints and customer feedback provide agencies with a great opportunity for business improvement.

The strategies identified in the Blueprint for improving policy formulation and implementation as well as performance management could be expanded to include a stronger focus on learning from feedback, complaints and administrative review. The broad range of information already available but possibly not adequately utilized includes:

- client satisfaction surveys regularly run by Australian government agencies
- internal complaint handling by agencies
- representations made to agencies by Members of Parliament
- decisions made by courts and various merits review tribunals
- complaint information, suggestions and formal recommendations made by the Commonwealth Ombudsman
- reviews, reports and Better Practice guides put out by the ANAO and the Commonwealth Ombudsman.

In assessing the issues arising from such sources, agencies should go beyond simply analysing the statistical data and engage in a qualitative evaluation that genuinely addresses the substantive issues. Information drawn from a proper analysis of complaint trends and tribunal decisions should assist agencies in developing better policies, improving program delivery and strategically address issues for the longer term.

Consideration could also be given to requiring agencies to report annually on their responses to and implementation of formal recommendations made by the Ombudsman.

Strengthening the APS

We support the proposal to revise the APS values to a smaller and more meaningful set that will more clearly articulate the core expectations on the public service.

We also support initiatives aimed at building the leadership capability of the APS. Effective leadership will be critical to the success of the reforms proposed in the Blueprint, particularly in regard to the delivery of cross-agency programs and initiatives. Senior leaders who model the APS values through their behaviour are essential to a high performing public service. Properly resourcing leadership training and development in the APS will assist in building a capable, collaborative and effective Senior Executive Service. The Career Development and Assessment Centre run by Australian Public Service Commission is an excellent model for building and developing the leadership capability of senior managers in the APS.

Use of automated processes in service delivery

Advances in Information Technology have led to an expansion in the use of automated decision-making systems by Australian Government agencies. The Blueprint advocates a stronger focus on automated and simplified business processes.

The increased use of Information Technology in service delivery is unavoidable and has clear benefits to both agencies and their clients. Automated decision-making systems can assist in delivering greater consistency, transparency, accuracy and cost-efficiency. However, the limitations of technology must also be taken into account when automated systems are developed, introduced or evaluated.

Fundamentally, automated decision-making systems must uphold the administrative law values of lawfulness, fairness, rationality, openness and efficiency.

In 2007 the Ombudsman in conjunction with the Australian Government Information Management Office, the ANAO and the Office of the Privacy Commissioner published a Better Practice Guide on Automated Assistance in Administrative Decision-Making (AAADM). The Better Practice Guide sets out checklist points to assist agencies engaged in designing and implementing automated systems and in ongoing assurance processes. Importantly the AAADM Better Practice Guide sets out how administrative law principles should be applied to the use of technology in government decision making and service delivery. The key principles set out in the AAADM Better Practice Guide should be considered when implementing the recommendations of the Blueprint. This includes adherence to the following principles:

- the underlying rules contained in the system should accurately capture the relevant legislative and policy provisions as well as the relevant procedures
- the rules in the system should also be readily understandable and publicly available
- the system should be designed with disclosure and external scrutiny in mind
- matters of judgment or discretion should be carefully considered to ensure that there is no inappropriate restrictive modelling of such rules and that they are capable of scrutiny and review

- the system should have the capability to automatically generate an audit trail of the decision-making path. This capability should be able to be used to generate reasons for the decision and be available for external scrutiny
- appropriate governance arrangements need to be in place for the development of such systems to ensure that policy and program owners are key decision makers and that business outcomes are clearly defined and realised.

Finally, consideration must be given to the possible benefits as well as limitations of technology in delivering services to groups or communities with particular needs, vulnerabilities or other special characteristics, such as geographical location.