

# Improving administration—the impact and role of the Commonwealth Ombudsman

A speech by Commonwealth and ACT Ombudsman Allan Asher  
to the **Institute of Public Administration of Australia – ACT Division** forum  
*Gotcha! or Improving Administration? The impact of oversight and review agencies*

Tuesday, 23 August 2011

**Forum theme:** Do Commonwealth Government oversight and review agencies exist to catch out departments and agencies or is their main purpose and impact the gradual improvement of public administration? Or is there a bit of both?

Thank you, George [Masri, forum chair].

I'd like to begin by acknowledging the Ngunnawal people, who are the traditional owners of the land on which we are gathered this morning.

The question this forum poses is an important one because it goes to the heart of certain misconceptions about what the integrity and oversight sector does.

As Ombudsman, my core role is to help governments improve public administration through:

- fair and transparent operations
- plain – jargon-free – language
- seamless, customer-centred service delivery, and
- socially inclusive services.

## Helping agencies improve

Some agencies take the view that a negative report from the Ombudsman's office must be avoided at all costs. But this is not productive. What I would like to explore today is how to change that view.

It is sometimes possible to see systemic errors and their implications for the public from within an agency, but not always. It is even more difficult to take a whole-of-government point of view.

The reality is that no agency is perfect, including my own, but by virtue of the work that we do, my office is well positioned to identify where problems in other agencies lie.

It is hard for us to get drunk on power because we have so little of it. The Ombudsman has no power to force an agency to change a decision or provide a better service. Rather, the Ombudsman relies on working with agencies to resolve problems, and most Ombudsman recommendations are accepted by agencies.

We have nothing to gain by producing negative reports. We don't have targets. The reality is that we don't have the resources. So my personal preference would be to produce no reports, to investigate far fewer complaints.

We have an overarching perspective that enables us to spot gaps.

A recent example that drew some media attention may be very familiar to those of you who work in this building. I refer, of course, to my investigation into the administration by the Department of Education, Employment and Workplace Relations of the School Chaplaincy Program. In my report<sup>1</sup>, I noted the lack of precision in the way the Department runs this admittedly complex program and a need for improvement in its management and oversight. Among my recommendations were that the Department should:

- consider giving guidance to schools and education authorities on how best to obtain parental consent for participation in the program
- review the code of conduct to provide clarity on what actions could be considered to be in breach of the requirement that chaplains not proselytise, and to clarify this with the public
- amend the program guidelines to define the terms 'chaplain' and 'pastoral care', and mandate a minimum qualification for the position of chaplain
- implement more robust mechanisms to capture and manage complaints
- work towards a review of funding agreements to ensure: consistency; that all key participants are accountable; and that the protection of children and parental rights is central to the administration of the program.

That report shows how a little distance from a program can provide the necessary perspective, particularly when the program crosses jurisdictional boundaries and is implemented by non-agency organisations, in this case schools.

The Ombudsman's office focuses on identifying whether there has been a problem and how it might be resolved as quickly as possible, not on apportioning 'blame' to individual officers.

We recognise that in some cases it can be difficult and even confronting for agency staff to deal with such issues, whether or not the allegations are well-founded. And we are aware that an adverse report from my office also creates more work. It is a disruption to business as usual. But we want the relationship to be constructive.

As the theme of this forum suggests, it is not about collaring miscreants, it is about providing a service. And it is fundamentally our view that that service is not simply for the benefit of the public at the expense of agencies, or vice versa, but both.

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<sup>1</sup> *Department of Education, Employment and Workplace Relations: Administration of the School Chaplaincy Program*, July 2011 – [http://www.ombudsman.gov.au/files/commonwealth\\_ombudsman\\_chaplaincy\\_report\\_06\\_11.pdf](http://www.ombudsman.gov.au/files/commonwealth_ombudsman_chaplaincy_report_06_11.pdf)

As you know, we are impartial; we do not advocate on behalf of the public. We do not believe that every complaint can or should be remedied. In fact, the majority of our complaint investigations find that the agency has acted fairly, reasonably and lawfully, and that no further action by the agency is warranted.

In the minority of cases where we do find that an agency could have provided a better level of service to the complainant, we try to recommend practical measures the agency can use to improve its service delivery. We rarely seek to blame anyone for poor outcomes and prefer not to embarrass agencies with negative reports, especially where the agency is trying to be responsive to matters arising from complaints.

And we are open to ideas on how to make it constructive. To this end, we often work informally with agencies by providing recommendations well before a report is produced. And we always look for ways to remedy complaints before escalating them.

As an oversight agency as well as a complaint-handling body, our role in improving public administration is enshrined in our legislation. We are responsible for:

- fostering good complaint handling in Australian Government agencies
- highlighting problems in public administration through complaint handling, own motion investigations and reporting
- contributing to public discussion on administrative law and public administration
- focusing attention on the adverse impact government administration can have on individuals, and
- promoting open government.

Our priority is improving public administration, not justifying our existence or raising our public profile at the expense of the agencies about which we comment.

If you've ever attended Toastmasters meetings, you'll know how much emphasis is placed on providing feedback that is genuinely constructive. After someone speaks, others are invited to provide feedback. This is always done using the simple formula – praise, criticism, praise. The art of providing this feedback is almost as difficult to master as the art of poised and effective public speaking, but it is important because unalloyed criticism, constructive or otherwise, rarely goes down well. And if it isn't well received, it is unlikely to be acted upon.

This is why I bridle at the 'Gotcha!' idea. We are not in the business of catching out agencies. Our approach is cooperative and non-adversarial wherever possible. To paraphrase PG Wodehouse's butler Jeeves, we must cater to the psychology of the individual agency.

## **The value of feedback**

The reality is that my office is the least of an agency's problems. A catastrophic failure of service delivery, where people are badly compromised, is an agency's worst case scenario. And if it isn't, it should be. The Ombudsman's early intervention is crucial, and many agencies recognise this and welcome it.

Agencies should embrace all feedback, whether from my office, the Australian National Audit Office, tribunal decisions, letters from Members of Parliament or direct from the public. I never tire of saying this, and I believe it's true, complaints from members of the public are rivers of gold – a strategic resource that is entirely free of charge. A healthy bureaucracy welcomes all this input and smart administrators recognise its value.

One way in which agencies can make this happen is to shift their attitude towards complaints themselves. Many within the private sector still view their complaints areas as punishment details for errant executives rather than a strategic resource. Increasingly, the result of this approach is that these businesses are the first to go out of business. There's no such inducement for senior officers in the public sector, but perhaps there ought to be.

This means making it easy for people to make complaints and ensuring that complaint-handling processes are not only set up to effectively resolve issues for individuals but to help identify systemic administrative problems as, or ideally before, they arise.

Running an agency effectively is difficult. When implementing complex policy, public servants find themselves pulled in several directions – political, financial, and personal career considerations all compete for attention with the needs of end-users. It is easy for the good intentions of a program to get lost in the implementation, and it is hugely valuable to have someone standing to one side whose job it is to point out problems and propose solutions.

## **Government communication**

Many of the complaints we receive about government agencies arise from poor communication. Partly I suspect because many agencies see the way they communicate as a side issue to the services they provide, whereas the two are inextricably linked or indeed the same thing.

Some common examples of poor, or even lazy, communication include:

- computer-generated form letters, or letters that cut and paste great tracts of impenetrable legislation, or refer to websites to which their clients may not have access
- sending people too much correspondence, or too little, or none at all
- call centre staff who don't have enough information themselves, or don't have the authority to make proper decisions

- failing to provide key information, such as the right to review, and how to complain
- writing in bureaucratese rather than plain language, using jargon, acronyms and abbreviations
- failing to provide simple explanations for people with cognitive impairment
- taking an officious tone
- not providing translations or interpreters, and
- having no single point of contact, so that people have to repeat their concerns over and over again.

Poor communication is overwhelmingly the main source of complaints to my office from Indigenous people in the Northern Territory, where our outreach programs currently operate. For instance, there is often confusion about how people are affected by government programs, due to insufficient communication, or communication that is too high level, or has been over-simplified to the point of excluding important information, or doesn't explain how government initiatives will affect lives.

A report<sup>2</sup> my office published in April this year followed a series of complaints about interpreters not being used when they should have been, either because they were not available, or because they were not deemed necessary.

One case study used in the report relates to the Strategic Indigenous Housing and Infrastructure Program, which is jointly run by the Northern Territory Government and the Department of Families, Housing, Community Services and Indigenous Affairs.

A resident of a remote Indigenous community complained to my office that Northern Territory Government staff and building contractors had not used interpreters when they met with residents to discuss housing plans in that community.

As a result, some residents did not understand the nature of the work that was planned, where they would live while work was being done, and whether they would be re-allocated the same house when the work had been completed.

We raised this with the Department and I'm pleased to say that in response they organised two meetings attended by an Indigenous language interpreter at which the housing program and other housing-related matters were properly explained. The complainant later told us that the community felt this addressed the issue.

Communicating with people who are socially excluded or vulnerable can be particularly challenging for frontline agencies such as Centrelink. It should be said that those of my staff who deal with Centrelink are of the view that it has a culture geared towards improving service delivery to the disadvantaged, and it's encouraging to see that its 10-year service

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<sup>2</sup> *Talking in Language: Indigenous language interpreters and government communication*, April 2011  
[http://www.ombudsman.gov.au/files/Talking\\_in\\_Language-Indigenous\\_Interpreters\\_REPORT-05-2011.pdf](http://www.ombudsman.gov.au/files/Talking_in_Language-Indigenous_Interpreters_REPORT-05-2011.pdf)

delivery reform plan places a strong emphasis on this. In March this year we accepted an invitation from Centrelink to work together on the design and review of their new internal review process. This is a positive development – an opportunity for my office to collaborate with Centrelink and, I hope, break down the tired perspective that the Ombudsman is just the oversighting ‘big brother’.<sup>3</sup>

However, by virtue of Centrelink’s size and the sheer number of its customers, problems do arise. Among these are:

- a failure to provide reasons for decisions
- a flurry of letters sent to customers that sometimes contain conflicting information
- not tailoring communication to individual circumstances, such as hearing, vision or cognitive impairment.

In September last year, my office published a report<sup>4</sup> looking at how three agencies involved in social security deal with clients with mental illnesses.

In one case study, a Mr E complained to my office that despite first contacting Centrelink to enquire about claiming a Disability Support Pension in 2006, he was not granted payment until 2008. Mr E had lodged a claim for compensation from Centrelink for this loss of entitlement, but his claim was refused. Following an investigation, we asked Centrelink to reconsider Mr E’s claim on the basis that, despite being told Mr E had a mental illness and was clearly having difficulty with the claim process, Centrelink staff did not try to help him complete his claim. Centrelink accepted our view and agreed to pay Mr E compensation equivalent to his lost entitlement.

Our investigation showed it is clear that the agencies involved do focus, wherever possible, on providing discretion for staff to adjust to the requirements of customers who require flexibility as a result of a mental illness. However, the report recommended:

- greater consideration of a customer’s barriers to communication
- more training for staff to identify customers with a mental illness
- encouraging customers to disclose a mental illness
- better recording of information about a customer’s illness or barriers to engagement.

The problem that this example illustrates is that poor communication creates a wall between agencies and the people they serve. So we must sweep away this obfuscation. Helping governments do this by seeking to change the culture of poor communication is one of the things my office will be looking at over the next three to five years.

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<sup>3</sup> *Centrelink: Right to Review – having choices, making choices*, March 2011 – [http://www.ombudsman.gov.au/files/centrelink\\_the\\_right\\_of\\_review\\_having\\_choices\\_making\\_choices.pdf](http://www.ombudsman.gov.au/files/centrelink_the_right_of_review_having_choices_making_choices.pdf)

<sup>4</sup> *Falling through the cracks – Centrelink, DEEWR and FAHCSIA: Engaging with customers with a mental illness in the social security system*, September 2010 – [http://www.ombudsman.gov.au/files/Falling-through-cracks\\_customers-with-mental-illness.pdf](http://www.ombudsman.gov.au/files/Falling-through-cracks_customers-with-mental-illness.pdf)

I am in discussion with the Plain English Foundation on what measures are required to make this happen, and I have written to the Prime Minister suggesting we meet to discuss such a long-term, service-wide plan.

### **Customer-centred service**

It is vital that there is a unified, consistent approach across government. This is of particular importance when someone must deal with more than one agency in relation to a particular issue. It is in these instances that people fall through the gaps.

All tiers of government must work cooperatively, including in partnership with the business and community sectors, to achieve improved outcomes for vulnerable and disadvantaged Australians – just as the work of agencies within each tier must be seamless.

Of particular importance to any agency aiming to focus better on the needs of people is *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*<sup>5</sup>, which can be summed up as: talk to the people in ways they understand and communicate between themselves, get their views and feed them back into better performance.

*Ahead of the Game* reinforces the need for greater flexibility, collaboration and innovation by governments if the challenges they face in delivering more citizen-centric outcomes for the Australian community are to be met. In my view, this especially applies to National Funding Agreements and National Partnership Agreements that come under the Council of Australian Government's reforms.

Among the recommendations of *Ahead of the Game* are that service delivery be simplified to make access to government services more convenient through automation, integration and better information sharing. Over time, this would lead to:

- a 'tell us once' approach
- a service delivery portal that guides citizens through interaction with government, and
- physical locations where citizens can access multiple services.

This would be grounded in a view of policy and service delivery that places the interests of citizens first.

Services and programs should be accessible to all, and feedback mechanisms should be easily and widely accessible. Knowledge of the intricacies of Australian Government service delivery arrangements should not be a prerequisite for members of the public to provide feedback on, or complain about, the programs they receive. The avenues of complaint and the information provided should be in simple language, available through a variety of

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<sup>5</sup> Advisory Group on Reform of Australian Government Administration, March 2010, [http://www.dpmc.gov.au/publications/aga\\_reform/aga\\_reform\\_blueprint/index.cfm](http://www.dpmc.gov.au/publications/aga_reform/aga_reform_blueprint/index.cfm)

mechanisms and widely understood. These mechanisms should be approachable, simple and responsive to circumstances.

A key issue I would also like to highlight is the importance of providing reasons for administrative decision making. This formed part of a submission my office recently made in response to the Administrative Review Council's consultation paper on Judicial Review in Australia.

A common cause of complaints made to my office is the adequacy of reasons provided by agencies.

Often an agency may make a decision that is perfectly appropriate, just badly explained. Even when the agency does not alter its decision, a proper explanation can reduce a person's concerns and reassure them that the correct process was followed and their views taken into consideration. Sometimes a lengthy complaint process can be remedied with a simple apology.

It's my view that statements of reasons should always be in writing, set out in plain language, and include the relevant facts and material considerations that the decision-maker relied upon in making the final decision. Statements of reasons should also provide relevant information about rights of review, including internal review and statutory review mechanisms, where applicable.

To fulfil these individual responsibilities, and better perform our bread-and-butter work of investigating and remedying complaints, my office will be seeking to forge stronger, long-term partnerships with other integrity agencies to help better define our combined role as the fourth branch of government and give us more bite.

This approach will be particularly important in helping to tackle government corruption, which, given the somewhat disjointed arrangements currently in place in Australia, still tends to find its way through the cracks.

Improving social inclusion and service delivery as a whole are colossal tasks. Effecting the cultural change within single agencies is hard enough, but doing so across government can seem daunting – harder, certainly, than talking about it here this morning.

But in a country facing significant social, economic and environmental issues over coming decades, the consequences of not doing so are dire. For any and all agencies, it means going back to first principles and asking:

- Are we placing the needs and wellbeing of the Australian community first, and does our service delivery reflect this in terms of improving social inclusion?
- Are we communicating with people in a clear, accessible manner?



- And do we have effective complaint-handling processes that enable us to learn from our mistakes and improve service outcomes?

## **Social inclusion**

The Australian Government has defined a socially inclusive society as one in which all Australians feel valued and has the opportunity to participate fully<sup>6</sup>. This means ensuring that people who are currently marginalised become fully engaged – people such as newly arrived immigrants, the elderly, people with disabilities, mental illness or problems with addiction, many Indigenous people as well as whistle-blowers, children, the illiterate, those who are impoverished, particularly the homeless, and many others.

Of particular concern are those who are newly socially excluded – for instance, the recently unemployed or homeless, immigration detainees or newly arrived and vulnerable immigrants – who are less likely to be aware of their opportunities to have a voice.

It is heartening that the phrase ‘social inclusion’ is cropping up more often in government and public sector discussion, and in initiatives such as the National Compact<sup>7</sup>, which seeks to strengthen relations between Government and the not-for-profit sector. My office is in the process of signing up to the Compact and I very much look forward to us taking part.

One of the reasons some people don’t make contact with us, or fully engage with other government agencies, is lack of access. This is particularly true of socially marginalised people in remote areas. How do you contact an agency, including my office, if you don’t have a landline, or if the local payphone doesn’t work? Perhaps you have a mobile phone, but not enough credit to make calls to 1800 and 1300 numbers, which are only free or charged at a local rate if you’re using a landline. That is the irony – it is often the most disadvantaged people who do not have landlines but are most in need of free-phone services.

I highlighted my concerns about this issue in a letter to Chris Chapman, Chairman of the Australian Communications and Media Authority, in April this year. The Authority’s own research has found that the number of people without a landline is increasing; indeed, 14 per cent of the population are mobile-only users<sup>8</sup>. There has also been a decrease in the number of payphones available to the public<sup>9</sup>.

One complainant to my office found himself in the somewhat absurd position of calling Centrelink to advise them of his income so that he would receive his fortnightly payment. His

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<sup>6</sup> *A Stronger, Fairer Australia*, summary brochure published by the Social Inclusion Unit, Department of the Prime Minister and Cabinet, 2009

<sup>7</sup> [www.nationalcompact.gov.au](http://www.nationalcompact.gov.au)

<sup>8</sup> ACMA, 2009-2010 *Communications Report 2 – Take-up and use of voice services by Australian Consumers*, pp 4, 14, 22

<sup>9</sup> *Ibid*, p77

pre-paid credit ran out before he had completed the call and he did not have enough money to top it up. This required him to miss a day of classes to visit the Centrelink office in person.

Now, there's online of course, but only around half the population has functional access to the internet. This digital divide must always be borne in mind when an agency seeks to engage meaningfully with its more marginalised clients. And of course not all agency websites are equally accessible.

It should also be remembered that a website, even an accessible one, is no panacea in itself. Online should complement, not displace, other communication channels.

So at the heart of any attempt to improve social inclusion is effective, two-way communication between agencies and all members of the community. In other words, enabling the voiceless to find their voice, and listening to what people say when they do speak up. It's crucial that government departments and oversight agencies take this approach because it is fundamental to any claim a government can make about its level of accountability.

## **Conclusion**

Some of these issues will be the subject of further discussion at the Commonwealth Ombudsman National Conference to be held here in Canberra on 8 and 9 November. You can find out more about the conference on the Commonwealth Ombudsman website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

To sum up, it is not my policy to nit-pick. It is my job, as Ombudsman, to foster fair, open and just dealings between government and citizens by:

- cooperating with agencies
- spotting emerging problems and helping agencies fix them as early as possible
- identifying and helping to remove the root causes of complaints
- helping agencies to improve how they communicate, and focus more on the needs of customers, particularly those in need.

In other words, more prevention, less cure.

In conclusion, there is a clear distinction between 'catching out' an agency and highlighting issues to an agency with a view to improving how that agency performs.

If improving public administration is not our primary objective, then we have lost sight of what we're here to do.

Thank you.

Ends.