

## **Opening Statement – Commonwealth Ombudsman Allan Asher Additional Estimates, 17 October 2011**

Prior to my last appearance before this Committee in the May Budget Estimates, I provided suggested questions to Senator Sarah Hanson-Young. This was an error of judgement, a mistake, for which I apologise to the Committee.

I wish to explain my actions in the context of my concerns about the financial situation of my office and the absence of a specialist Parliamentary Committee through which the Ombudsman's performance can be assessed or concerns heard.

The Ombudsman has responsibility for the oversight of around 250 Commonwealth departments and agencies but without the capacity in the current budget system to ensure that resources for my office are at an appropriate level. In my view, the mechanisms available to me for drawing the attention of the Parliament, as opposed to the Government, to our financial situation were limited.

I was not called to appear before this Committee in October last year or, initially, in May 2011. While I attended in February 2011, I was sent away without appearing. Former Ombudsman Professor John McMillan estimated he thought he was called to appear before the Committee at about 18-month intervals.

### **Ombudsman budget**

One of the key priorities for the Ombudsman's Office relates to complaint handling and oversight of the immigration detention network. My investigations had revealed serious problems with the administration of those centres. There were improvements that could, and can still be made to the lives of thousands of people – improvements that could be made through the efforts of my office in conjunction with those of the Immigration Department. But my office needs appropriate funds to do it.

In 2010-11, the Ombudsman's office received 2,137 approaches and complaints about immigration matters, a 34 per cent increase on the previous year.

By Statute my office is required to review and report to the Immigration Minister and to the Parliament on the circumstances of immigration detainees held for more than two years. In addition we have an arrangement with the government to undertake similar reviews for detainees after 12 and 18 months.

Funding provided to my office for our work in relation to Irregular Maritime Arrivals was agreed in 2008, at a time when there were an expected 100 arrivals a year. Currently there are 4,762 Irregular Maritime Arrivals in immigration detention. More than 3,200 detainees have been in immigration detention for more than six months, making a case-by-case assessment of such long-term detainees an increasingly impossible task.

It was in this context that I sought an invitation to appear before the May Budget Estimates hearing via Senator Hanson-Young. The questions raised by the Senator were neither partisan nor political, but I acknowledge they were not written in normal public service language. They were about me airing concerns I had already raised with the Government that, without adequate funding, the good work that my office was doing to improve the conditions of detainees and implement government policy could not continue as it had.

I am concerned about the trajectory of our budget and our ability to continue to deliver quality complaint-handling services. Across the whole office, complaints have increased by almost 38 per cent over the past five years and, if we do not get additional funds for measures such as the Northern Territory Emergency Response and the Irregular Maritime Arrivals work, we will cease the associated functions and activities.

We have been producing some good work and positive benefits in these areas, both for complainants and for agencies, with our Indigenous Unit finalising 299 complaints in 2010-11 alone.

Last financial year we also received 3,123 approaches and complaints about Australia Post, representing a 19 per cent increase on the 2,626 complaints received in 2009-10. In the September 2011 quarter, we received 994 complaints about Australia Post, up 37 per cent on the same quarter last year. If this trend continues, we could expect to receive more than 4,000 complaints alone during the current financial year. This is another function for which we have sought additional funds through the normal Budget process without success.

Although the Office has received additional funding for new functions, such as the new role of Overseas Students Ombudsman, Norfolk Island, and to prepare for new Public Interest Disclosure laws, we have been unsuccessful in approaches to government for additional resources for underfunded areas of our work.

### **Commonwealth Ombudsman's performance in 2010-11**

In the past year, my office has investigated 4,468 separate complaints, recommending one or more remedies to agencies in more than 79 per cent of these cases. This is 8 per cent more than the previous year.

Increasingly, we contribute to the consideration of policy approaches by virtue of submissions to Parliamentary inquiries and by undertaking investigations into systemic problems in agencies or the administration of schemes.

In 2010-11 we made submissions to eight parliamentary inquiries, 11 submissions to other reviews and published 13 investigation reports with 80 recommendations – of which 90 per cent were accepted in full and 9 per cent partially – for improvements to the administration of government policies.

These were across a broad range of initiatives, including the Chaplaincy program; the right to review by Centrelink customers; the use of interpreters for Indigenous Australians; oversight of detention facilities on Christmas Island; administration of coercive powers in passenger processing by Customs officers; tax file number compromises; how agencies engage with people suffering from a mental illness; review rights for people under income management; and access to 1800 and 1300 telephone numbers.

We also reported to the Parliament on our oversight of law enforcement agencies in our inspections role. We inspect the records of law enforcement and other enforcement agencies in relation to the use of covert powers, including telecommunications interceptions, stored communications, surveillance devices and police controlled operations.

My office has identified issues in a wide range of operational and service delivery systems, and helped government agencies to establish and improve their own complaint-handling mechanisms. Exposure of flaws has resulted in improvements to government administration and the services provided to Australians.

In the year ahead, we are firmly focused on the important priorities of assisting government agencies to achieve greater social inclusion, better customer-focused engagement, and increased good governance and public sector integrity. And we will be working with agencies to implement better use of plain language in their communication with the public.

## **Ombudsman oversight**

Not many people fully appreciate the fact that the Ombudsman's office is not a government department, but an independent statutory office pursuant to the *Ombudsman Act 1976*. That is, we are independent from the rest of the government.

This is a notion that is difficult for people to understand when my office sits within the executive. It raises questions about our independence and the process for decisions about our resources being made by the very departments that we examine.

In doing the job properly, times will and have arisen where the Ombudsman will be critical of government proposals, the way it deals with citizens and the way it implements programs and administers policies.

The Ombudsman has helped hundreds of thousands of people directly, and millions more indirectly by assisting them in their dealings with government and by helping government improve its service to the community.

While the majority of our work is undertaken in a constructive and collaborative manner with government and government agencies, we will not always agree. The office of the Ombudsman is independent so that we can provide this frank feedback and advice on how to improve administration of government policy.

The statutory independence of the Ombudsman is at once a blessing and a curse. While ensuring the Ombudsman is free from undue pressures from within the Government, it also means that the Ombudsman has no ready access to departmental or ministerial support.

The former Ombudsman, Professor Dennis Pearce, wrote about this dilemma on another occasion when the Ombudsman was making most unwelcome newspaper headlines – see *Papers on Parliament No. 7 March 1990 – The Commonwealth Ombudsman: present operation and future developments*.

However, these issues have not been examined since the *Review of the Office of the Commonwealth Ombudsman: A report from the Senate Standing Committee on Finance and Public Administration, December 1991*.

If we want to continue to be able to provide independent advice without regular funding dilemmas and controversy, we need to think seriously about the placement of the Ombudsman's Office as an Officer of Parliament or, at the very least, establish a Parliamentary Committee to oversight the Ombudsman and to whom the Ombudsman can report.

My actions before the May Budget Estimates hearing were not orthodox and the controversy was largely of my own making. Again, I apologise for this error of judgement.

I am suggesting that there needs to be a revisiting of the way the Ombudsman is oversighted and funding is administered, to ensure that the independence of the office is unfettered.

This is fundamental to ensuring good governance and public sector integrity.

I would now like to table my statement to the Committee. I welcome your questions.