

## MINDING THE PEOPLE'S MINDER

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To have an Ombudsman makes a government look good. To underfund the office ensures that it is not too troublesome. After three years as Commonwealth Ombudsman I realised that no matter how strong a case for increased resource was put by the Ombudsman's Office, nothing would be forthcoming from those who manage the Commonwealth's money. Why should the Executive finance a body that is going to call it to account as a result of complaints from members of the public affected by the Executive's decisions? Governments like to point to the fact that an independent person is available to review their decisions but they do not want that review body to be too powerful or too well known lest citizens be inclined to take frequent advantage of the office.

It seemed to me that the only way that the government could be obliged to acknowledge that the Ombudsman was not being funded sufficiently to carry out its statutory obligations would be for an independent body to review the operation of the Ombudsman and make recommendations to the government accordingly. I suggested to the then Prime Minister, Mr Hawke, that a Senate Committee might undertake this task but was a little apprehensive when the matter was referred to the Senate Standing Committee on Finance and Public Administration. That Committee has not always been gentle with the agencies whose activities it has reviewed, and it

has generally strongly supported notions of a leaner public service run in accordance with the many managerialist tenets.

At the outset it did appear that the Committee felt that it was capable of applying the razor to the Ombudsman's office. However, as the collection of evidence proceeded, it became apparent that the Committee was becoming steadily more sympathetic to the office, and the Report that it finally issued is a remarkable endorsement of both the need for an Ombudsman and the contribution already made by the Commonwealth Ombudsman. Such criticisms of performance as are contained in the Report stem from the very reason why the inquiry was established in the first place - inadequate resourcing of the office to carry out its statutory function.

The Report presents a challenge to the Government, but before considering this it is worth noting some of the major recommendations.

The ABC has long frustrated efforts by the Ombudsman to deal with complaints by individuals and organizations that they have been misrepresented on ABC programmes. The ABC has asserted that complaints of this kind do not fall within the Ombudsman's jurisdiction. The Committee was of the view that persons should be able to seek review of the ABC's actions and recommended that legislation be enacted to make it clear that the Ombudsman does have jurisdiction.

There is at present something of a gap in the Ombudsman's jurisdiction to deal with employment related grievances. While the office may investigate some pre-and post-employment related matters, such as decisions made in relation to superannuation and compensation, grievances arising from action taken during the course of a person's employment must be taken to the Merit

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Protection Review Agency (MPRA). Not all government authorities are covered by the MPRA. For example Australia Post, Telecom and the Australian National University do not come within its aegis, and employees of these agencies have no ability to seek external review of grievances arising in the course of their employment. The Committee proposes that the MPRA's grievance function be transferred to the Commonwealth Ombudsman (together with the resources that are devoted to this function). The promotions appeal functions would, however, remain with the MPRA. (This would leave it with so little work that it is more than likely that it would be absorbed into another body.)

The recommendation of the Committee is ambiguous as to whether or not all complaints relating to employment decisions of Commonwealth authorities should be dealt with by the Ombudsman or only those presently reviewable by the MPRA. The reasoning supporting the transfer of the MPRA's jurisdiction would suggest that the wider function should be entrusted to the Ombudsman also. The Ombudsman, in the capacity of Defence Force Ombudsman, presently deals with the full range of employment grievances that may be raised by Defence Force personnel.

The benefit of having one Ombudsman deal with all complaints against government authorities is endorsed by the Committee's suggesting that the function of the Telecommunications Ombudsman that is to come into being with the changes in the telecommunications industry should be carried out by a specialist unit within the office of the Commonwealth Ombudsman. The Committee also recommends that other specialist Ombudsman functions should be performed within the office of the Commonwealth Ombudsman. The proliferation of Ombudsman type offices to receive citizens' complaints presents a problem of recognition for members of the public. This recommendation takes advantage of the fact that the Commonwealth Ombudsman has offices in each State and experienced persons within those offices. It also goes far

towards preventing what is a major problem for specialist review offices - being 'captured' by the organisation that they are established to review.

The Committee rejected the long held view that being subject to an Ombudsman unfairly prejudiced government corporations that are in competition with the private sector. Evidence presented to the Committee indicated that government business enterprises recognised that there was value to their operation in Ombudsman review. The upshot was a recommendation that government companies and all other government bodies be treated as within the Ombudsman's jurisdiction unless specifically excluded for good reason. This fits in with the moves in some private sectors such as banking and insurance to establish Ombudsman review bodies.

Other matters that it was suggested should be brought within the Ombudsman's jurisdiction included the administrative actions of the parliamentary departments and of court and tribunal registries.

The Committee did not propose the removal of any jurisdiction of substance from the Ombudsman, but it did make a most significant recommendation in relation to the Ombudsman's jurisdiction to investigate complaints against the Australian Federal Police. This has probably been the most unsatisfactory aspect of the Ombudsman's performance. The difficulties have stemmed from the lack of resources available to the Ombudsman to independently investigate matters that have initially been investigated by the Internal Investigation Division of the AFP. The Report notes that the Ombudsman has been able to carry out only one full investigation of a police complaint and has been obliged simply to oversight investigations performed by the police themselves. The Committee said that this state of affairs should continue and throws down the gauntlet to the government by recommending that either the Ombudsman be adequately resourced or the jurisdiction relating to

the investigation of complaints against the police be removed from the Ombudsman's jurisdiction. The Committee does not make any suggestion as to who might then take over the police complaints function.

The Committee was satisfied that the existence of the Ombudsman's office was not known to all members of the community, particularly those in the low income or disadvantaged groups. The Committee was strongly of the view that it was necessary for the Ombudsman to engage in more extensive promotion campaigns but acknowledged that this could only be done if adequate resources were provided to the office.

The Committee encouraged the Ombudsman to engage in reviews of activities of agencies that would improve the performance of the agency overall. It said that the Ombudsman's role should not be seen as limited to resolution of particular complaints. Efforts should be made to ensure that the reason why the complaint arose in the first place is addressed by the decision making agency. It was somewhat surprising that the Committee wrote in these terms as it is in fact the function that the Ombudsman already carries out. This was acknowledged by the heads of the major departments such as Social Security and Immigration Local Government and Ethnic Affairs who stated that Ombudsman identification of deficiencies in performance was a significant tool in their management of their Departments. The Committee did, however, make a very useful suggestion in proposing that there be established a special investigation unit within the Ombudsman's office that would be responsible for investigating major complaints. It has proved impossible for the office to conduct such investigations except at the cost of not dealing with a very large number of individual complaints.

There are many other recommendations contained in the Committee's Report, but those set out above give an adequate taste of the general endorsement given to the office. The test now will be to see whether the newly appointed head of the Department of the Prime Minister and

Cabinet, Dr Michael Keating, will be able to move away from his Finance background and look at the broader issues that being head of Prime Minister's Department entails. Dr Keating showed no particular affection for the office of Ombudsman when he was head of the Department of Finance. Strong administrative review systems do not fit readily within the managerialist principles that he espoused so vigorously when in that position. The amount involved in turning the Commonwealth Ombudsman's office around from one which is able to carry out a limited role competently to one that can be relied upon to carry out its statutory function properly would be of the order of \$1M. This is a minimal sum necessary to achieve the functions that the Senate Committee recognises that the office should be performing. However, the extra resources that the Committee proposes should be allocated to the Ombudsman's office will not be forthcoming unless Dr Keating is willing to support their availability.