



Submission by the Commonwealth Ombudsman

ACCESS TO JUSTICE ARRANGEMENTS

PRODUCTIVITY COMMISSION DRAFT REPORT
APRIL 2014

Submission by the Commonwealth Ombudsman, Mr Colin Neave AM
June 2014

1 INTRODUCTION

The Office of the Commonwealth Ombudsman (OCO) welcomes the opportunity to comment on the draft report published by the Productivity Commission in April 2014, and in particular the draft recommendations in *Chapter 9: Ombudsman and other complaint mechanisms*.

We note and support the Commission's definition, for the purposes of its inquiry, of 'access to justice': making it easier for people to resolve their disputes.

2 CHAPTER 9: OMBUDSMAN AND OTHER COMPLAINT MECHANISMS

The draft report focuses on the work of Parliamentary and industry Ombudsmen in dealing with complaints. However, Ombudsmen also undertake significant amounts of work that seeks to identify and address patterns, trends and systemic issues that underlie complaints. For example, the Commonwealth Ombudsman can carry out 'own motion' investigations into Commonwealth administration which may be prompted by a pattern of complaints or from the Ombudsman's own observations of the conduct of public administration. This work contributes to access to justice by assisting to resolve existing complaints and preventing complaints arising in the future. The report would benefit from recognising and exploring the impact of this facet of the work of Ombudsmen.

3 CHAPTER 9: DRAFT RECOMMENDATIONS

Draft recommendation 9.1:

Governments and industry should raise the profile of ombudsman services in Australia. This should include:

- *more prominent publishing of which ombudsmen are available and what matters they deal with*
- *the requirement on service providers to inform consumers about avenues for dispute resolution*
- *information being made available to providers of referral and legal assistance services.*

The OCO supports measures to enhance public awareness of Ombudsmen services.

Draft recommendation 9.2:

Governments should rationalise the ombudsman services they fund to improve the efficiency of these services, especially by reducing unnecessary costs.

The OCO sits alongside many government-funded complaint services that have similar functions to the OCO, including human rights commissioners, health complaints and taxation inspection bodies, and fair trading and consumer affairs offices.

The draft report tends to conflate bodies that meet the essential characteristics of an Ombudsman, with other complaint handling bodies. It is important to recognise that not all complaints handling bodies are part of the Ombudsman community. That said, there is no real constraint to more complaints handling functions being located within Ombudsman offices; the Ombudsman model has proved itself to be extremely adaptable to a range of roles.

Similarly, there is scope for greater consolidation of Ombudsman offices within each level of government. This was recognised at the Commonwealth level by the recent Commission of Audit.

The OCO agrees in principle that certain Ombudsmen and complaint handling services could be rationalised, and would be happy to participate in discussions to this end.

Draft recommendation 9.3:

In order to promote the effectiveness of government ombudsmen:

- *government agencies should be required to contribute to the cost of complaints lodged against them*
- *ombudsmen should report annually any systemic issues they have identified that lead to unnecessary disputes with government agencies, and how those agencies have responded*
- *government ombudsman should be subject to performance benchmarking.*

The draft report recognises that Ombudsman services are free of charge, but not costless, and that cost of resolving complaints can vary between Ombudsman offices and types of complaints.

The OCO supports in principle the adoption of pricing mechanisms to promote efficient complaint handling by government agencies and Ombudsmen. Agencies that contribute to the cost of resolving complaints made about them would have better incentive to improve the standard of their services and internal complaints handling.

However, it should be noted that such pricing mechanisms will not remove the need for government Ombudsman to be adequately resourced to perform their functions. Investment in functions such as systemic investigations, inspections and agency oversight is critical to the Ombudsman role and to reducing complaints over the longer term, but are not necessarily attributable to particular agencies

Draft recommendation 9.4:

Governments should review funding for ombudsmen and complaints bodies to ensure that, where government funding is provided, it is appropriate. The review should also consider if some kind of industry payment would also be warranted in particular cases.

The OCO notes this recommendation and would be happy to participate in a review of funding for Ombudsmen and complaints bodies.