

Office of the Ombudsman and Health Complaints Commissioner

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Submissions of the Tasmanian Ombudsman Productivity Commission Draft Report

Access to Justice Arrangements

The Tasmanian Ombudsman is also the Energy Ombudsman, the Health Complaints Commissioner and the external review entity under the *Right to Information Act 2009*. The Office of the Ombudsman and Health Complaints Commissioner is independent of any government department, and is funded by way of a separate appropriation from the consolidated fund. The Energy Ombudsman jurisdiction, however, is funded by the Tasmanian energy entities. Thus the office performs not only the role of a traditional parliamentary ombudsman, but is also in part an industry ombudsman.

Care needs to be taken not to conflate the roles of the parliamentary ombudsman and that of the industry ombudsman. The role and function of the parliamentary ombudsman is as described in the submissions made by the Victorian Ombudsman, that is: to enquire into or investigate the administrative actions of public authorities. In doing so, the ombudsman's primary concern is the good administration of government. The essential criteria of an ombudsman have been described by ANZOA, and are referred to in the draft report. I endorse the comments made by the Chair of ANZOA as to the use of the term *ombudsman* contained in ANZOA's submissions to the Commission of 21 May 2014, and as noted by the Commonwealth Ombudsman in his submissions, it is important to recognise the distinction between ombudsmen and other complaint handling organisations.

Significantly, the parliamentary ombudsman is not an advocate for individual complainants, agencies or interest groups; impartiality and objectivity are hallmarks of the office. When making enquiries or investigating, the ombudsman is not necessarily seeking the outcome that the complainant wants, but is more concerned with good government administration generally – the process is inquisitorial rather than adversarial. As has been noted by others, the ombudsman does not require a complaint before instigating an investigation, but can do so on his or her own motion. To that extent, the parliamentary ombudsman does not always provide access to justice for the individual but rather is concerned with ensuring that government is administered in a manner that is just and fair to all citizens.

Industry ombudsmen, on the other hand, as well as having the ability in some instances to investigate systemic issues, do press the case of the individual complainant to achieve a personalised outcome for that complainant, whether it be in relation to a disputed charge or the provision of particular services. Much of the content of Chapter 9 of the draft report is perhaps more concerned with the performance of industry ombudsmen than parliamentary ombudsmen.

Having said that, the parliamentary ombudsman does provide a valuable conduit between the citizen and government, and an avenue for the airing of grievances and disputes and their

resolution. He or she is often able to achieve outcomes for citizens that they have not been able to achieve for themselves.

The services of the Ombudsman are free, easily accessible and open to all people personally aggrieved by the administration of government. The powers of the Ombudsman on investigation are considerable.

As the draft report notes, mechanisms that deal with issues in a proportional manner are necessary for the delivery of access to justice, and ombudsmen provide such a mechanism. As has been observed:

Good administration and the promotion of human dignity must be found in humble places, in low order disputes. If good government cannot be promoted here, in its impact on the lives of living people, it will not be found in more dramatic confrontations. If the habit of good government, based on reasons and openness spreads, it provides social glue at times of stress.¹

The draft report cites the example of a dispute over a \$32.00 train ticket, and while the ombudsman might not always be able to resolve an individual ticket holder's grievance, he or she can look at the fairness, reasonableness and legality of ticket pricing and ticketing systems generally to ensure that all train users are treated justly.

A significant number of the complaints made to ombudsmen do involve comparatively minor matters, but it is not only in small disputes that the ombudsman provides a service. In this regard I refer to the case studies detailed in the submissions to the Commission from the Victorian Ombudsman dated May 2014, and also to the reports of investigations published by my office, which are available on our web site at www.ombudsman.tas.gov.au. These demonstrate that an ombudsman can deal effectively with large and complex issues, ranging across every aspect of the administration of government.

As the ANZOA submissions also point out, the ombudsman plays an important role in educating agencies and stakeholders about the process of complaint and complaint handling.

Turning to the Commission's recommendations:

- 9.1 I agree that governments and industry should raise the profile of ombudsman services.
- 9.2 In relation to the recommendation that governments should rationalise the ombudsman services they fund to improve the efficiency of these services, especially by reducing unnecessary costs, this has already happened in Tasmania and works well. I support the recommendation. I also agree with the Victorian Ombudsman that there should be a more coherent complaint handling system.
- 9.3 In relation to the recommendation that agencies should be required to contribute to the costs of processing complaints lodged against them, I agree with the Victorian Ombudsman that this is not an appropriate framework for public services for the reasons enunciated in her submissions. Again, a clear distinction needs to be drawn between the role and functions of an independent parliamentary ombudsman and those of industry funded ombudsmen.

¹ The Rt Hon Dame Sian Elias, Chief Justice of New Zealand, in an address to the Australian and New Zealand Ombudsman Association entitled *Life Beyond Liberty*, 6 May 2010.

Parliamentary ombudsmen are required to report annually to parliament and their reports already refer to systemic issues that have been identified and dealt with.

As for benchmarking, while I support the recommendation in principle, it is a matter that needs to be approached with caution. The Victorian Ombudsman has noted the difficulties in establishing benchmarks, given (amongst other things) the differences in jurisdiction between the various state and commonwealth ombudsmen, and in her submissions to the Commission of 25 April 2014, Professor Anita Stuhmcke of the University of Technology Sydney highlights the difficulties inherent in assessing the performance of ombudsman offices.

- 9.4 I support without qualification the recommendation that the funding for ombudsman offices should be appropriate; ombudsmen can only provide an effective service if they are properly funded and resourced.

I have also been asked to provide feedback on the estimates of the costs of carrying out the functions of the ombudsman made by the Commission, and the costs of undertaking systemic reviews.

This is not an easy exercise in the case of the Office of the Tasmanian Ombudsman given the broad range of functions it performs. (As well as the various roles referred to above, the office also hosts and coordinates the Prison and Mental Health Official Visitors schemes.) Being a multi-jurisdictional office of the size that it is, it incurs costs unrelated to the complaint handling duties of the ombudsman jurisdiction, and staff are sometimes required to work across jurisdictions. All this makes the estimation of costs specific to complaints difficult.

Based on the number of approaches to the office (excluding Right to Information matters), counting each approach as a "case", and the number of FTEs allocated to each complaint handling jurisdiction, I estimate the following to be the cost of resolving in jurisdiction complaints:

Ombudsman	\$340.00
Health	\$940.00
Energy	\$617.00

Current budget restrictions mean that the office is unable to conduct any major own motion enquiries into systemic issues at the present time.

In any event, such enquiries can vary greatly in complexity and scope, making a reliable estimate of cost elusive.

Richard Connock
Acting Ombudsman & Health Complaints Commissioner

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