

Mr Adrian Nippres
(08) 8226 8687

HR 2.1

Senator Marise Payne
Chair
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
CANBERRA ACT 2600

19 December 2002

Dear Senator Payne

RE: Submission to the Enquiry into Human Rights and Good Governance Education in the Asia Pacific Region.

Human Rights issues are often central to Ombudsman investigations especially when addressing complaints about public prisons, mental health facilities, housing, education and child protection matters. It is also of importance to the public interest that Ombudsman investigations use suitable opportunities provided by complaints about the public sector, to educate agencies about systemic issues which, when appropriately addressed, will lead to improvements in the governance within the community they serve. This Office has been active in promoting good governance by way of ensuring that accessible complaint handling systems exist to allow appropriate access to aggrieved clients. Whenever complaints are made to this Office, the investigation includes an examination of the state or local government administration to test whether or not it is both fair in its application and transparent in the decision making process.

In advancing Human Rights and Good Governance Education in the Asia Pacific Region, or any other region for that matter, it is the view of this Office that the principles which underpin good Ombudsman investigations are highly relevant to achieving these important goals.

Background Information regarding the Office of the South Australian State Ombudsman

The State Ombudsman was established 30 years ago as an officer of the South Australian Parliament and has responsibility for investigating alleged maladministration within government departments, statutory authorities and local authorities (councils). The primary purpose of the Ombudsman is to investigate individual complaints. However the *Ombudsman Act, 1972*, ("the Act") confers certain own initiative investigation powers (see section 13 of the Act). Recent legislation passed by the South Australian Parliament will allow the Ombudsman to conduct audits of agencies within his jurisdiction to ensure that government is providing appropriate levels of service to the South Australian Community.

In addition, the Ombudsman currently has the responsibility for investigating complaints arising from the provision of public health services and the responsibility for conducting external reviews for Freedom of Information applications.

Effective Ombudsman Investigations

The four essential elements of a well functioning Ombudsman's Office are independence, operational and procedural flexibility, credibility and accessibility.

Independence is a fundamental principle of effective Ombudsmanship. There are several criteria for independence. In this State the Ombudsman is independent of the government of the day, independent of any agencies within the Ombudsman's jurisdiction and free of any political influence. The Ombudsman is not a Public Service employee (section 11 of the Act). Pursuant to the provisions of section 9 of the Act, I may delegate, and in fact do delegate, a number of significant powers and functions to the Deputy Ombudsman and my investigative staff. It is my view that the Office of the Ombudsman has and should be seen to have commensurate level of independence when exercising any powers on behalf of the Ombudsman.

I think it to be perverse if the Ombudsman or any senior member of staff exercising any of the serious functions or powers of the Ombudsman were to have or to show, political preference or be the subject of political influence from outside the Ombudsman Office. This independence must be not only in connection with any particular matter of complaint, but also preclude involvement in the formulation of any policy of the government or the opposition party. All the activities of the Ombudsman are governed entirely by the provisions of the legislation itself. The Ombudsman has no other identity other than the statutory identity with the role and functions and process specifically provided for by Parliament.

Complementary to the matter of independence, is the impartiality of the Ombudsman and all members of the Ombudsman Office. Personal integrity must be beyond doubt; and the Ombudsman must have the courage to use his independence to view matters before him in a critical light and to express criticism when such criticism is warranted, regardless of whom it may offend.

It is imperative if the Ombudsman wishes to conduct timely and valued investigations that there be operational and procedural flexibility. Section 18 of the Act allows for the Ombudsman and his delegates, to determine the procedure in relation to any given investigation, including the manner in which information is obtained, either in verbal or written form. This is complemented by the ability for the Ombudsman to have the powers of a Royal Commission when conducting an investigation, ensuring unrestricted access to persons and documentation relevant to an investigation. These statutory provisions allow the Ombudsman to be flexible in his investigative processes, tailoring the procedure used to the specific circumstances of the matters to be investigated. It is of considerable importance that any complaint handling agency which seeks to assist a person in the exercise of a human rights issue, has such powers as to ensure that the investigation can get to the core of the issue without delay or obfuscation caused by an inability to have access to the required information and/or witnesses.

The influence of the Ombudsman in cases of official criticism is due not only to the thoroughness of any investigation and lucidity of reasoning but also the personal authority

and therefore credibility of the Ombudsman. The authority is established in the way the Ombudsman performs his duties, and is not dictated by personal motives, interests, hope of securing favours, preference for or antagonism towards any policy of any political party. In this context the Ombudsman and his Office must be absolutely conscientious. Confidence in the Office and its effectiveness are the twin pillars upon which the Ombudsman's authority rests, and confidence would be undermined if the Ombudsman was, or was seen to be, lacking in independence or impartiality.

Facilitating accessibility to potential users is a matter to which this Office has devoted considerable effort during recent years. Public accessibility is partly treated by the Act. There is no form, writing or formality required for any member of the public to approach the Ombudsman. Fresh public contacts are established by telephone (in excess of 100 fresh public contacts per week), spontaneous visits to the office (10 to 20 per week) or email (average of 15 per week) and fax and letters (50-60 per week).

To provide access to administrative justice for the people of regional South Australia I have established a network of Justices of the Peace and community leaders from indigenous and other multicultural community groups to provide information and advice. Justices also refer complaints to the Office of the Ombudsman for investigation. Although the staff and physical resources of this Office are located centrally in Adelaide, the regional access opportunities have been enlarged through the growing network of justice referral delegates, referred to as the Justice Access Referral Program. To ensure effective delivery of this program the office of the Ombudsman developed and conducted customised training programs for the identified people. Guidelines have also been developed to ensure uniformity of approach. Regional and wider community accessibility is itself the subject of an independent strategic review of the Justice Access Referral Program, which was completed during November 2001 and reported on in my 17th report to the SA Parliament, a copy of which I enclose for your consideration.

It is essential in the development of appropriate access mechanisms for effective human rights complaint handling, to consider the impact local languages, education levels and cultural issues will have on complainants' capacity and desire to access such a service. These themes were explored at a recent conference attended by Mr Adrian Nippres of my Office, which was organised by the University of Asia and the Pacific, and hosted by the University of Adelaide and the South Australian Office of Multicultural Affairs. The conference papers could be obtained from Ms Joy De Leo, Director of the Office of Multicultural Affairs on 08 8226 1957 or Professor George Jerzy Smolicz, Director - Centre for Intercultural Studies and Multicultural Education at Adelaide University on 8303 5831.

During recent years this Office has initiated several significant enquiries into Human Rights issues.

The first of these arose in November 1996 when I became aware of published reports which raised concerns about the impact of the sharing of cells by prisoners at the Adelaide Remand Centre (referred to as "Doubling Up"). The extensive investigation conducted by this Office was based on interviews held with prisoners, Correctional Services Officers and allied professionals in all of the South Australian Correctional facilities, along with responses received from various levels of prison management and senior Department for Correctional Services Officers. The reports prepared and resolutions effected as a result of my own initiative enquiry are enclosed as Appendix A.

More recently, I conducted a specific enquiry into the mental health system in South Australia, regarding the use of restraints (commonly referred to as shackling). I deemed the matters under consideration to be of sufficient public interest to investigate on a systemic basis, taking evidence from a number of consumer and health provider sources. I include a full version of my final report as Appendix B for your perusal.

Please do not hesitate to contact Mr Nippres on his above direct telephone number should you wish to clarify any matters pertaining to this submission. I would be most willing to expand upon the broad outline provided in this submission by addressing any other specific issue raised by your committee of enquiry, either orally or in writing.

Yours sincerely

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OMBUDSMAN

Appendix A

Appendix B