



**Submission by the
Commonwealth Ombudsman**

**INQUIRY INTO NATIONAL
REGISTRATION AND
ACCREDITATION SCHEME FOR
DOCTORS AND OTHER HEALTH
WORKERS**

Submission to the Senate Community Affairs Committee by the
Commonwealth Ombudsman, Prof. John McMillan

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Introduction and summary

The Commonwealth Ombudsman forms part of a structure devised by the Commonwealth Government to ensure efficient and effective public administration. A key feature of the Ombudsman's oversight function is the ability to conduct independent review of complaints about Australian Government agencies.

This submission addresses point (d) of the Inquiry's terms of reference by providing general commentary on complaints mechanisms and more specifically in relation to health accreditation.

The proposed National Registration and Accreditation Scheme will pose a unique challenge in devising an effective complaints mechanism. The new structure will take over the current functions of numerous Commonwealth, State and Territory boards. Designing a unified complaints mechanism that can apply to decisions made and actions taken within the Scheme will present both legislative and practical challenges. Decisions made within the scheme will be of a kind that can affect the occupation, livelihood and reputation of health practitioners. It is therefore important that an effective complaints mechanism is designed that can adequately deal with problems and complaints that can be expected to arise.

This submission notes the importance of complaints handling, and the main issues that need to be addressed in designing a complaints system.

Background

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

Over the past 32 years, the Commonwealth Ombudsman's office has developed extensive expertise in the handling of complaints about a wide range of issues, including the examination of administrative, tendering, program and service delivery policies, procedures, standards and implementation. Arising out of this work, we also identify many systemic issues (which are raised with agencies) and conduct own motion investigations.

In addition to our general complaint handling role, over the past five years the office has been given by government a growing number of additional responsibilities. The Ombudsman's office now undertakes regular inspections and audits of a range of Australian Government facilities and programs, conducts regular case reviews, produces and publishes specific reports for Ministers (some of which are tabled in the Commonwealth Parliament) and embarks upon a range of community outreach and

engagement activities. We also produce and publish activities reports about our complaints and inspections in key areas.

Over the past few years, the government has also extended the jurisdiction of the Ombudsman's office to cover a range of non-government entities, including service providers contracted to government, and a number of private sector postal providers.

Response to Terms of Reference

Importance of complaint handling

The existence, history and workload of the Commonwealth Ombudsman suggests that there is much to be gained from the existence of an external, independent and credible complaints mechanism in any area of administration where there is a potential effect on rights.

The *Better Practice Guide to Complaint Handling* recently published by this office outlines the importance to an organisation of establishing a system for effective complaint resolution. In the first place, complaint handling enables minor issues to be resolved quickly, with minimal formality and at no cost to the complainant. Larger and more complex matters can often be resolved without the need for the complex and expensive processes of litigation that may not address or resolve all aspects of a dispute. Agencies also find it helpful to have a set of independent eyes on the quality of their work from time to time, and it is not uncommon that they welcome the Ombudsman's involvement in dealing with unusually persistent or difficult clients.

A complaint mechanism can address all aspects of decision making – the legality of decisions, the process by which they are made, and the merits of individual decisions, at least where a decision is manifestly unreasonable or devoid of apparent justification. This can be a more comprehensive review than is available in other court or tribunal processes.

Most importantly, a complaint mechanism provides those affected by decisions with the assurance that they can approach an independent agency outside the original process to look at the way the agency acted. The complaint body does not, in any meaningful sense, act on behalf of the complainant, but ensures that the agency gave proper consideration to the complainant's case. When a complaint body decides not to be critical of an agency decision, the decision may still be disappointing to the complainant, but he or she may be more inclined to accept that it was made fairly and for a proper purpose.

In the case of the Commonwealth Ombudsman, the office has the advantage of lengthy experience in the complaint issues that can arise across practically every area of administration. By knowing what is done successfully in one agency or program, it can encourage others with similar functions to adopt similar processes. A significant example is that the Ombudsman has learnt over time that agencies with substantial client bases and important interactions with clients will do better if they have high quality internal complaint management systems that can use in-house expertise and feed back directly into agency processes.

Designing a complaint mechanism

We believe that a strong and effective complaints handling framework is an essential component of improved transparency, more rigorous quality assurance and a well

functioning regulatory and accreditation structure. A complaint mechanism applying to the proposed Scheme will need to operate at two levels – internal and external.

It is now expected of all agencies that make decisions and deliver services to the public, that the agency has established a robust internal system for complaint handling. The essential principles that should be captured in a complaint system are outlined in this office's *Best Practice Guide to Complaint Handling*, and in Australian Standard AS ISO 10002-2006 'Customer satisfaction – guidelines for complaints handling in organisations'.

An additional consideration that is likely to arise is that, depending on the final model for the Scheme, there could be multiple agencies around Australia involved in making decisions and dealing with health practitioners and the public. A particular risk, where there are multiple agencies involved in delivering a service, is that people wishing to lodge a complaint can be confused about where to turn, can be shuffled from one agency to another, or even fall through the cracks of the system. This danger needs to be addressed in designing the complaint system. The steps that can be taken to avoid these problems are outlined in a recent Ombudsman Fact Sheet, *Complaint Handling: Multiple Agencies*.

It is also important that there is an external agency to which members of the public can turn with an unresolved complaint against an agency. It is important that there is an Ombudsman or similar independent complaint agency that can:

- receive and investigate complaints from people affected by the accreditation scheme¹
- encourage those administering the scheme to develop good quality complaint and information handling processes
- conduct occasional systemic investigations to ensure that the accreditation body is handling specific areas of its role effectively
- carry out statutory inspections on the way the accreditation body has used powers that are capable of being characterised as intrusive or unfair.

The oversight body should be able to report to those responsible for the accreditation scheme (including its Minister) and to the Parliament. It should be able to make public statements on matters relevant to its functions.

A number of options could be considered for enabling complaints about Scheme decisions and actions to be considered by an Ombudsman's office. Broadly, these are to create a new Ombudsman office for this purpose, to confer jurisdiction on an existing office (such as the Commonwealth Ombudsman) or to confer jurisdiction upon existing Commonwealth and State Ombudsman offices in relation to complaints arising within their own government jurisdiction.

This choice can be affected by constitutional, legal and policy considerations that may be raised in other submissions to the Senate Committee. Subject to the absence of legal constraints, the Commonwealth Ombudsman's office is of the view it would

¹ Including practitioners, would-be practitioners and people seeking regulatory intervention in relation to practitioners

be well-placed to discharge the Ombudsman oversight role in relation to complaints against Scheme decisions and actions.

The office has considerable experience over 32 years in dealing with all issues in government. Like other Ombudsman offices, we have considerable experience in handling individual complaints, conducting own motion investigations, and discharging other means of oversight such as inspections, auditing, and monitoring. Recent examples² of own motion reports published in March 2009 deal with community polling by Australia Post on changes to postal services, assessment of claims for disability support pension from people with acute or terminal illness, re-raising of tax debts by the Australian Taxation Office, and use of interpreters by the Australian Federal Police, Centrelink, the Department of Employment, Education and Workplace Relations and the Department of Immigration and Citizenship. These own motion inquiries can be effective in improving the quality of administration, and helping agencies to improve service, ensure integrity and reduce the number of complaints that might otherwise be expected.

The office also has adequate investigative powers to enable it to request or require information it needs from any person or body. This could include those administering the accreditation scheme, those who seek accreditation, those who contribute to decision-making within the scheme and any other person who may have an interest. The Ombudsman Act also requires the office to observe procedural fairness before taking steps that may adversely affect any person.

Added to our expertise, one of the main benefits of using an existing national office is that it makes use of an already existing national office network (spread across seven locations), reducing the need to replicate costly administrative infrastructure. Our Office's State Office structure allow ombudsman functions to be easily and rapidly undertaken at any organisation across the country, as well as maintaining ongoing contact with local communities, consumers groups and providers.

² A more complete list, and text of the public versions of reports and statements, appears on the Ombudsman's website, www.ombudsman.gov.au