Cataloguing-in-publication data supplied by the State Library of the Northern Territory.

Eadie, Robert, 1938-  

Occasional papers ; no. 33  
ISBN 0 7245 0669 1  
ISSN 0817-2927

2. Ombudsman – Northern Territory.  
i. State Library of the Northern Territory.  
ii. Title  
iii. Series (Occasional papers (State Library of the Northern Territory) ; no. 33)

351.91

(The views expressed in this publication do not necessarily represent those of the publisher)
OCCASIONAL PAPERS

2. The History of the Catholic Church in the Northern Territory, by Bishop John Patrick O'Loughlin. (1986)
15. (Withdrawn)
18. They of the Never Never, by Peter Forrest. (1990)


27. Rebuilding the Beacon: Point Smith, Port Essington, by Frank Flynn. (1992)


29. The Northern Territory Coast, by John Knight. (1992)


INTRODUCTION

This is the text of a talk given by Robert Eadie in the State Library's 'Under the Banyan Tree' series of lunchtime entertainments on 6 June, 1990.

Robert Eadie was at the time the Territory's Ombudsman, and it is the Territory's loss that he has since retired. Not only did he perform his duties with efficiency and compassion, but he succeeded in humanising a role that has always been shrouded in deep mystery, at least as far as the man (and woman) in the street is concerned.

This talk was one of the best received of all the 1990 Banyan Tree lectures, and we have pleasure in presenting it now to a wider audience.
INTRODUCTION

At the outset I should explain that in my job I wear three 'hats': as Northern Territory Ombudsman, as agent for the Commonwealth Ombudsman, and also as agent for the Defence Force Ombudsman. This talk will concentrate mainly on my functions as Northern Territory Ombudsman, but a good deal of what I have to say applies to my other roles as well.

WHAT IS AN OMBUDSMAN?

First of all, what is an Ombudsman?

The word 'Ombudsman' is inclined to be a bit of a tongue twister, especially when said in a Scots accent. But it is hard to think of a more suitable title. At least it is probably better known to most Australians than the Queensland and Western Australian equivalent of Parliamentary Commissioners for Investigations. And it is getting even better known as a result of its use in areas outside the government bureaucracy. For example, there is now a Banking Ombudsman in Australia.

And what is the essential nature of the job?

There has been a good deal of debate in some quarters about the nature of the Ombudsman's role. 'Ombudsman' is a Swedish word meaning representative or agent, but it seems to me that I am more like an independent arbitrator or umpire charged with the task of trying to resolve disputes between members of the public and government agencies.

How am I appointed?

I am appointed by the Administrator on the recommendation of the Legislative Assembly.

OMBUDSMAN'S MAIN OBJECTIVES AND FUNCTIONS

What are the Ombudsman's main objectives? In other words, what, essentially, is he there for?

There has been much philosophizing about this. However, I believe my basic objective is to try to provide a means of dealing with complaints arising from defective administrative action (or inaction) by government departments and authorities, which is –

- accessible,
- inexpensive,
- informal, and
- efficient.
(Incidentally, for the sake of brevity I will tend to refer to government departments and authorities by the shorthand term 'government agencies').

As a distinguished American Professor* put it –

'... the spirit of the institution is to encourage people with legitimate grievances against officialdom to come forward with their complaints and to see that officialdom takes their complaints seriously and moves swiftly to rectify any wrongdoing.'

But that does not mean – and I stress this – that I am acting as the advocate of the complainant. My job is to carry out an independent and objective investigation of the facts and arrive at an impartial judgement on which I can base what I would like to think will be sensible recommendations.

The distinction between the role of an advocate and my role as Ombudsman can perhaps be illustrated by the story about the lawyer who was acting for the wife in a property dispute arising out of divorce proceedings. One day the lawyer asks his client to come and see him in his office.

'Well, Mrs. Robinson,' he said, 'I have finally arrived at a settlement with your husband which I feel is eminently fair to both of you.'

'Fair to both of us!' said the wife indignantly. 'I could have done that for myself! Why do you think I hired a lawyer?'

Although my basic objective is concerned with the resolution of complaints, I believe, like most other Ombudsmen, that I also have a wider objective. This objective is to assist in improving the quality of public administration and to help enhance public confidence in it. I think it is an important objective and I am sure you will agree.

And what, then, does the Ombudsman actually do?

My main function is to investigate complaints about the administrative actions of government agencies – and either to resolve them by agreement, if I can, or if I cannot, (and I think the complainant has a legitimate grievance) to make recommendations as to ways in which that grievance can be put right.

What is a complaint about 'administrative action'?

The key expression 'administrative action' is actually much wider in scope than it seems. It covers a multitude of sins of both commission and omission, including a decision to do or not to do something, the making of a recommendation and delay in reaching a decision, a fairly common ground for complaint. On the other hand, it does not include matters purely of a policy nature.

* Professor Gerald Caiden of the University of Southern California, at the Fourth International Ombudsman Conference, Canberra, October 1988.
What general exceptions are there to the range of matters I can investigate?

There are some general exceptions to the matters I can investigate. Three examples worth mentioning are –

- matters forming part of the judicial process (but not, I hasten to add, purely administrative actions of court officials)
- generally speaking, employment issues (although there are some matters in the employment field that I can look into)
- decisions taken by Ministers personally (but I can investigate the recommendation on which a Minister’s decision is based).

As well, I have only very limited power to investigate matters in respect of which the person complaining to me has, or had, a right of appeal to a tribunal or a remedy by way of proceedings in a court of law. It is only in fairly special circumstances that I am able to investigate matters in this category.

What matters may I decline to investigate?

There are also matters that I may decline to investigate.

As a rule, I will decline to investigate a complaint if the complainant has not taken the matter up first of all with the government agency concerned. This can be justified on two grounds:

- it is only reasonable to give the agency the opportunity to put things right itself before involving the Ombudsman
- it avoids unnecessary demands on the limited resources of the Ombudsman’s office.

Other circumstances in which I may decline to entertain a complaint include –

- where the matter complained about is trivial
- where the person complaining has insufficient interest in the subject matter of the complaint
- where there has been undue delay in making the complaint (a period of 12 months is used as a convenient rule of thumb for this purpose).

OTHER FUNCTIONS

I would like to say a few brief words in passing about two other aspects of my functions:

- Complaints about the Northern Territory Police Force
- Complaints about Commonwealth Government departments and agencies.
Complaints about the N.T. Police Force

The first point to stress here is that, in relation to the activities of the N.T. Police Force, I am not restricted to handling complaints about 'administrative action'; I can deal with complaints about literally any action of members of the Police Force related to the exercise of their duties or functions.

A great deal of what I am going to say in the remainder of my talk applies to police complaints as well. However, there are certain differences, particularly in the way in which police complaints are investigated.

Commonwealth complaints

As agent for the Commonwealth Ombudsman, Professor Dennis Pearce, I am able to receive and handle complaints about the administrative action of Commonwealth government departments and agencies – such as the Department of Social Security, the Department of Immigration, Local Government and Ethnic Affairs (DILGEA for short), Australia Post and Telecom. The procedure for handling those complaints is roughly similar to that which I follow as regards complaints against N.T. Government departments and agencies.

Also, as agent for Professor Pearce in his capacity as Defence Force Ombudsman, I can receive complaints from members and former members of the Defence Force about administrative action relating to or arising from their service. Complaints in this category are generally referred to Professor Pearce's office in Canberra if they cannot be resolved fairly quickly on an informal basis here in the Northern Territory.

HOW DO COMPLAINTS COME TO MY ATTENTION?

Who can make a complaint to the Ombudsman?

In the Northern Territory (unlike, e.g. the U.K.) there is direct access to the Ombudsman; complaints do not have to be made through a Member of Parliament. In this jurisdiction any person or body can make a complaint to me, and in appropriate cases one person can make a complaint on another person's behalf.

But bear in mind, as already mentioned, that I will not normally entertain a complaint if the person complaining to me has not already taken the matter up with the government agency concerned.

Are there any other ways in which an investigation by the Ombudsman can be initiated?

There are two other ways in which an investigation by the Ombudsman can be initiated:

. First of all, the Legislative Assembly or a committee of the Assembly can refer a matter to me for investigation

. Secondly, I may conduct an investigation into a matter 'on my own motion', in other words on my own initiative.
WHAT IS MY AIM IN CARRYING OUT AN INVESTIGATION?

What criteria do I have in mind when I carry out an investigation?

In carrying out my investigation or enquiries, I must have my eyes fixed on certain criteria set out in the Ombudsman Act. These form the basis for any findings of 'defective administration' I may eventually make in relation to the complaint in question.

In practice I find it helpful to ask myself three questions if I am investigating a matter of some complexity –

  First: was the action legally correct?
  - where there is significant doubt about the legality of the agency's action I might well ask the agency to get an opinion from the Department of Law.

  Second: was the action arrived at in a fair and proper way?
  - or at least were the prescribed procedures followed?
    - in other words, was the action taken in accordance with 'due process'?
    - if the procedures laid down seem unfair I can look at that aspect too, though I cannot always succeed in having the rules changed (particularly where they reflect Government policy).

  Third: was the action reasonable?
  - which is not the same thing as saying: was it the action that I personally would have taken in the circumstances?

The word I tend to use most of all in coming to a finding of defective administration is that the action in question was 'unreasonable'.

INVESTIGATIONS AND ENQUIRIES: HOW THE OMBUDSMAN GOES ABOUT HIS JOB

I will not bore you with the details of how I carry out my investigations and enquiries. However, three points should be mentioned.

The first point is that if I decide to conduct a formal investigation I have at my disposal very wide – almost unlimited – powers, backed by criminal sanctions, to summon witnesses, require the production of documents and enter premises. For example, I have the power to enter at any time any premises occupied by an agency and to inspect such premises and anything in or on them.

It is very rare for me to have to exercise these fairly draconian powers. The vast bulk of the complaints made against agencies are resolved much less formally, and usually in a spirit of co-operation. However, the powers are there if I do have to use them.
The second point is that where my provisional findings reflect adversely on the agency concerned, I will invariably seek its comments before completing my report or advising the complainant of my findings. Also, if there is any question of an adverse comment being made in my report about any particular person I must take steps to allow that person an opportunity of being heard before completing my report.

The final point is that my investigations must be carried out in private. This is in line with the strict rules of confidentiality that are a key feature of the role of the Ombudsman.

**ACTION OPEN TO OMBUDSMAN IF COMPLAINT UPHeld**

What happens if I think the complaint is justified?

If I think a complaint is justified I will usually try to resolve the matter informally. If this is not feasible, I will write to the Chief Executive concerned recommending that appropriate action be taken by his agency. If a full-blown formal investigation has been carried out, I will also send a copy of my report to the Minister responsible for the agency. If the agency does not give effect to my recommendation I can require the Minister to lay my report before the Legislative Assembly. At that stage, I can then take steps to ensure that my report and recommendations are given a good 'airing' in the media.

**WHY HAVE AN OMBUDSMAN?**

Both lawyers and laymen sometimes ask the question: what is the real practical point of having an Ombudsman at all? Could not equally effective (or better) results be achieved through access to courts and tribunals, coupled perhaps with an improved internal review system in government agencies?

Indeed, Brian Jinks goes much further than this in his article 'The Ombudsman's Dilemma' in the February 1990 issue of 'Directions in Government' and suggests that Ombudsmen in Australia have failed in their basic role (as he would see it) of giving a simple, speedy and cheap form of redress to citizens. He appears to believe that an effective internal review or 'complaint management' system would be a better and more cost-effective answer.

I think there is probably little doubt that, if what is needed in a particular case is a final, and legally enforceable decision, resort to a court or a tribunal may well be the preferable course to adopt. It will probably also be the better course where the outcome hinges on the resolution of some difficult and disputed legal issue or an assessment of the credibility of witnesses. But I would submit that in the great bulk of cases the Ombudsman does in fact provide an effective means of resolving complaints against government agencies cheaply, informally and quickly.

Professor Dennis Pearce (the present Commonwealth Ombudsman) in his book on Commonwealth administrative law, instances five situations where the Ombudsman may be able to provide a remedy that would be difficult to achieve in a court or tribunal. These situations are –

- where what the complainant is really seeking is an explanation of the departmental action, perhaps coupled with an apology
- where the complaint is about delay in dealing with some matter
where the amount involved does not warrant the costs of bringing an application before a court or tribunal

where the complainant cannot afford the time to spend in pursuing an action or does not have the temperament or capacity to look after his interest properly

where the action complained about has been taken in accordance with the provisions of the relevant legislation but is nevertheless unfair in its effect on the complainant.

Statistics

It is worth while looking briefly at the statistics. In the past year over 1,800 approaches were made to my office by people complaining of some grievance which they claimed to have suffered at the hands of a government agency. The statistics indicate that in over 50% of the cases investigated, the outcome was an advantage of some kind for the complainant. This ranged from a speeding-up of the decision-making process, or an apology or explanation for the decision taken, to a reversal of the decision, or even in some cases payment of compensation.

These figures would seem to suggest that the Ombudsman's office provides a reasonably effective service to complainants.

However, we should not lose sight of the fact that, in the remainder of the cases investigated, the complainant was informed that, in my opinion, the agency's decision was not unreasonable. In other words, the agency's position was vindicated.

The vital attraction: a free service

One of the features of the office of Ombudsman which makes it particularly accessible (and attractive) is the fact that the Ombudsman's services are free. There is no charge for carrying out an investigation. This may be seen as a feature of vital importance to many people at a time when legal costs have escalated to the point where, generally speaking, only the rich or the poor (the latter through legal aid) are, realistically, in a position to contemplate bringing legal proceedings.

Internal review

Internal review undoubtedly serves a very good purpose, and I am all for government agencies having a simple and effective system of internal review in place. It helps the public and generally makes my job a lot easier.

However, I would tend to see internal review as complementing the Ombudsman's role rather than replacing it. Regardless of how good an agency's internal review system may be (and there are some excellent ones around), there always comes a time, I would suggest, when the citizen needs to be able to turn to some mechanism which offers a fully independent and impartial review of the situation, but without the formality, costs and delays that tend to be associated in the public's mind with some courts and tribunals.