
Commonwealth Ombudsman

Annual Report

The Commonwealth Ombudsman's Annual Report for the year ending 30 June 1984 was tabled in the Parliament on 27 February 1985 and in the ACT House of Assembly on 4 March 1985. Professor Richardson stated that the Ombudsman's office was barely able to cope with the demand on its services because he was unable to obtain additional investigation staff due to Government imposed staff ceilings.

Some points discussed in the Report are outlined below.

- . During the year the Ombudsman's office received a record number of approaches (over 20,000) and the ratio of complaints rose from 76.8 (in 1979-80) to 129.7 per 100,000 of Australia's mean population. The volume of complaints places the office amongst the world's largest Ombudsman offices.
- . There were three major failures to consult with the Ombudsman about legislative developments directly affecting his office - these concerned the National Crime Authority, the Merit Protection and Review Agency and the Australian Protective Service.
- . The Ombudsman was concerned with:
 - continued challenges to his jurisdiction in programming matters by the Australian Broadcasting Corporation; and
 - the inability of the Taxation Office to process cases for transmission to Boards of Review within a reasonable time (at 30 June 1984 there were 53,000 outstanding applications).
- . Because of its inadequate staffing level, the office had experienced considerable difficulties in the FOI area, not only as a subject agency in responding to requests for access and in participating in AAT proceedings, but also in relation to the Ombudsman's new role as general counsel before the AAT. Scarce resources had compelled the Ombudsman to decline to act as general counsel in all but one case.

Visit of the United Kingdom Select Committee

Five members, including the Chairman, of the Select Committee of the House of Commons on the Parliamentary Commissioner for Administration conferred with the Commonwealth Ombudsman and his officers, and senior members of the Australian Federal Police in Canberra on 20 February 1985.

International Ombudsman Consultative Committee Meeting

A meeting of the International Ombudsman Consultative Committee to consider arrangements for the Fourth International Ombudsman's Conference (Canberra, 1988) will be held in Canberra on 15 - 17 April 1985. The Board of Directors of the International Ombudsman Institute will hold its annual meeting in Sydney on 18 - 19 April 1985.

Judicial Interpretation of 'matter of administration'.

The Supreme Court of Canada in British Columbia Development Corporation - v - Friedmann (22 November 1984) has taken an expansive view of the meaning of "a matter of administration" for the purpose of defining the scope of an Ombudsman's jurisdiction. Justice Dickson, who gave the leading judgment, held that this concept:

encompasses everything done by governmental authorities in the implementation of government policy. I would exclude only the activities of the Legislature and the Courts from the Ombudsman's scrutiny.

The case may provide persuasive authority for defining the jurisdiction of Ombudsmen in Australia.

STATISTICAL TRENDS

The table below shows a steady increase in the total number of complaints received in 1985 after a decrease in new complaints in December 1984. Written complaints in March 1985 exceeded the number in any earlier month in the table. Written complaints generally tend to involve more complex issues and require greater investigative resources to be spent on them than oral complaints.

No. of Complaints Received/On Hand

1984/85	Oct	Nov	Dec	Jan	Feb	Mar
Complaints received:						
Oral	1836 (86%)	1633 (83%)	1385 (85%)	1552 (83%)	1594 (85%)	1674 (83%)
Written	311 (14%)	341 (17%)	239 (15%)	327 (17%)	288 (15%)	354 (17%)
TOTAL	<u>2147</u>	<u>1974</u>	<u>1624</u>	<u>1879</u>	<u>1882</u>	<u>2028</u>
Written complaints on hand	2011	2002	1960	1964	1932	1903

 The Courts

Scope of Review Under the AD(JR) Act

The requirement under the AD(JR) Act that the decision to be reviewed must be 'of an administrative character' was not satisfied according to the Federal Court by a decision of a Court of Petty Sessions refusing to renew registration of a motor vehicle: Registrar of Motor Vehicles -v- Dainer and Anor. (17 February 1985). The case may be contrasted with the now established view that magistrates' decisions in committal proceedings fall within the Act's ambit.

The Federal Court in Bayley -v- Osborne (19 December 1984) was not satisfied that the requirement under the AD(JR) Act that the decision to be reviewed must be made 'under an enactment' had been met. Mr Justice Davies held that a direction to work standard public service hours (as opposed to flexi-time hours) was given not under an enactment but pursuant to the power of any employer to give reasonable and lawful directions to an employee.

Failure to Take Into Account a Relevant Consideration

The Federal Court in Peko-Wallsend Ltd. and Ors. -v- Minister for Aboriginal Affairs and Anor. (15 February 1985) held that where