

## Ombudsman address

### Opening

- Thank you Penny, it is a pleasure to be here today.  
At the outset, I would like to associate myself with your welcome to country and to acknowledge the Ngunnawal people as the traditional custodians of the lands around Canberra, that are lands where people from different places have met and come together for tens of thousands of years.
- And welcome everyone to our Complaint Handling Forum.
- Over the last 2 years I have met and talked with complaint handlers from a wide range of entities and from countries around the world, and I always find we have things in common and things we can learn from each other.  
We ask government and other entities to continually improve how they engage with complaints: we should shine the same light on ourselves, and ask ourselves to also keep improving how we engage with complaints and complainants.  
I hope that this week brings new learnings, recognises and refreshes existing learnings, and recognises and refreshes our collective commitment to complaint handling – which at its heart is about listening to people, and helping people. It can be easy to think of complainants as “other people” – but complainants are us. We need to be independent and impartial in dealing with complaints – but we can also acknowledge that the people on the other side of the complaint are people just like us.

### About the Office

- By way of background and context for what I will be saying, I will start with a snapshot of my Office and our functions.
- The Office is the biggest Ombudsman in Australia, but we are relatively small given the big job we do: we have around 280 staff delivering 17 different statutory functions (soon to be 18 and working towards over 340). We have offices across Australia, in Canberra, Sydney, Melbourne, Brisbane, Adelaide and Perth. We are shadowing an APS of 170,000 and an ACTPS of 27,000.
- The 17 functions includes providing oversight of Commonwealth government agencies, some state and territory agencies and certain private sector providers. On the screen you will see a slide which outlines all of the functions of the Office. At a glance it looks disparate, however in practice it is not.
- My functions are connected by themes of complaints, improvement, assurance, analysis, listening to people, resolving issues and identifying how things can be done better. And for staff working in my office, as many of you will experience in your own agencies, consistent skills run across the functions also. Curiosity; empathy; the willingness to dig and to analyse; the ability to identify issues and to explore the evidence base surrounding them; the courage to raise and press those issues; and

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the capability to articulate them in a way that can influence.

As well as the ability and willingness to tell complainants when we do not see unfairness, and when we cannot assist them.

[the functions:

- Oversight of Australian Government entities [Cwlth Ombo]
- Law Enforcement Ombudsman - oversight of law enforcement and integrity agencies' use of covert and intrusive powers
- Torture prevention roles – Commonwealth NPM
  - NPM Coordinator
- Immigration Ombudsman - statutory reporting under the Migration Act
- Oversight of the Public Interest Disclosure Scheme
- Defence Force Ombudsman
- Postal Industry Ombudsman
- Overseas Students Ombudsman
- Private Health Insurance Ombudsman
- VET Student Loans Ombudsman
- ACT Ombudsman
  - Inspector of the ACT Integrity Commission
  - Principal Officer to the ACT Judicial Council
  - part of the ACT's multi-body NPM under OPCAT
  - overseer of the operation of the ACT Freedom of Information Act 2016
  - overseer of the ACT Reportable Conduct Scheme.
- National Student Ombudsman which we anticipate in February 2025 [extent of the role will be subject to the passage of legislation]

### About myself

- I am now 2 years into my term as Ombudsman, a fascinating and challenging role. It is an immense privilege to have the opportunity to help people and improve government.

### Evolving role of the Ombudsman

- I find it instructive to read reports of my predecessors, including the first Commonwealth Ombudsman Professor Jack Richardson AO.
- It was interesting to read of the opposition the first Ombudsman faced from agency heads in the late 1970s, who often refused to cooperate with early complaint investigations. It seems it was difficult for some to adjust to the changes in the Australia administrative law framework at the time - designed to create greater transparency and accountability - including giving people the right to challenge government decisions and make a complaint.

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- I am glad to say that nearly 50 years later, the Commonwealth complaints landscape has changed significantly. Australian government agency heads now accept and expect the Ombudsman to ask questions and request documents as part of an investigation; to examine potential systemic issues and to make recommendations for change; to publish reports about issues.
- There is now greater recognition of the value of complaints - providing free feedback and highlighting areas for improvement.
  - And I think this is the case in many areas of complaint handling. Where it was once not seen as a responsibility of entities to receive complaints – as though the delivery of programs and services was not connected to the people who received those services - it is now commonly seen as appropriate and necessary to engage with complaints, to respect complainants, to acknowledge defective service and to seek to remediate it. Mostly, government agencies have grown accustomed to the reality that citizens are entitled to complain, to ask for an explanation of why something did or didn't happen, to raise a grievance and to be entitled to a hearing of that grievance.
- Generally, government agencies are more open to putting things right when things go wrong - recognising their obligation to try to fix mistakes and restore the person affected to the position they would have been in, if the defective administration had not occurred.
- We still find from time to time that some agencies delay and obfuscate; they may try to distract or divert us, or persuade us of their view, without providing the evidence we have asked for.
- In those situations, we use our formal powers if necessary - because we need to do our job. Without fear or favour, independently and impartially, we need to consider whether someone has been treated unfairly; whether the administration of a program or services has not operated properly; whether some further action is required to resolve the issue.
- This is the core work of my Office – helping people, providing assurance on whether the government and private sector entities we oversee act with integrity, and promoting systemic improvement in public administration.
- We do this by investigating complaints, reviewing administrative action, conducting statutory compliance inspections and reporting on our activities to the public and parliament.
- A large part of the role of my Office is to keep reminding the government agencies and private providers we oversee of the need to make lawful, fair and timely decisions, supported by clear decision records, with reasons for the decision and advice of any review rights, communicated simply and clearly.

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- However complaint management is not just about the agencies that we oversee. It is inherently about people.  
This can be challenging. When people come to us, they may have had a succession of unhappy experiences; they may have solidified their views; they may be focussed on vindication. Our job is to explain that we will independently form our own views of their concerns – which is sometimes not popular. But that is our job. And we need to be able to engage with complainants as people; to explain, respectfully, simply and clearly, what our view is.  
It is remarkable how often the outcome we provide is simply a better explanation of why something did or did not happen. And we receive plaudits from a number of complainants, who say that while they did not receive the outcome they hoped for, at least they felt listened to and they recognised our efforts to investigate and to explain.  
We also receive brickbats from some complainants, who decide that we have just formed ranks to protect government agencies, and that after all we are part of government too.
- When we are handling complaints we are not undertaking a merits review as such, however our analysis of the process cannot ignore whether the response to the complaint was, in substance, appropriate. The Ombudsman Act asks whether they administrative action was “otherwise wrong in all the circumstances”. In considering the complaint, we need to respond to both the issue and the person.  
This does not mean that we can give people what they want. Oversight is not advocacy. It does mean however that in the exercise of the functions in my Office, and I expect in many of yours, we need to be focussed on navigating this challenge effectively with every complaint. The outcome and the proportionate action will be different each time, but the challenge remains the same.
- I was interested recently to read the Annual Report from the Ombudsman of Ontario. As a provincial Ombudsman, their jurisdiction ranges from garbage bins to law and order and health.  
They receive 27,000 complaints a year – more than us – and in 2022-2023 they resolved 44% of these complaints within 1 week and 57% within 2 weeks.
- I reached out to them to ask what was underpinning this extremely impressive performance. They advised that they had previously focussed on specific, tight rules for identifying out of jurisdiction matters and for exercising their discretion to not investigate matters - but they found that in fact they were missing matters that they really should have been investigating. As an example, they found that they had missed a strong and well made complaint that identified a significant issue of neo-natal health, which they had turned away because it was made by a third party, not someone directly involved in a neo-natal health matter.

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- So they have turned it around and focussed on identifying the essence of each complaint and what they can do about it – and on selecting complaint handlers with the ability and aptitudes to do this well, then training and supporting them to do this important work.
- Which comes back to curiosity, empathy, ability, courage, persistence – as I mentioned earlier.
- Agencies may be required by law to take certain actions. However, they are also responsible for taking that action in a way that minimises harm and distress.
- Good public administration and government decision-making requires:
  - strong leadership
  - systems that support staff to follow the legislation and maintain proper records
  - well-trained staff who understand the legislation they administer
  - staff who are skilled in dealing with people from a range of backgrounds with empathy and respect, even when making decisions that may not be in a person's favour.
- However, even with the best leadership, systems, training and staff – mistakes happen. That's why organisations need a strong complaints-handling process and culture - to listen to people who raise the alarm, report errors and failures and highlight mistakes.
- If an organisation has a best practice complaints-handling system in place, these mistakes can be remediated, lessons can be learnt and action taken to prevent systemic errors from reoccurring.
- We encourage agencies to develop and maintain better practice complaints handling systems to harness the value of complaints and put things right when they go wrong.
- To safeguard the community and help government improve, the Ombudsman is there as an external complaints body to hear complaints, help people and highlight issues for remediation.

#### **Key achievements 2023-24 and reflections on use of powers**

- So how have we been doing this?
- In 2023-24 the Office received more than 24,000 complaints, finalising more than 23,000 through early resolution, investigation or a decision not to investigate, including where the complainant had not yet complained to the agency concerned first (which can be the quickest way for the complainant to get an outcome).
- While I mention the numbers to demonstrate the work we have undertaken, it is worth noting that a single complaint may highlight a serious issue. For example, the Office identified and pursued a systemic issue affecting 47,000 child support

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assessments, identified initially from a single complaint. Each child support assessment involves at least 3 people – the two in the former relationship, plus at least one child under 18 – so 47,000 assessments can mean 141,000 affected people. This highlights the power of complaints to bring to light important issues requiring remediation.

- With any complaint there are a range of options for how to progress and involves considering how do you help avoid repetition of the same issue, how you inform other people in the same situation that there is an issue. I have discretion under the Ombudsman Act to determine the path forward. When we identify a significant issue, from one complaint, or many, the options include:
  - confidential investigation and engagement- this may include publishing an anonymised account to inform communication members or agencies OR
  - Publishing a detailed account
- In choosing the path to take we need to consider how do we mitigate against reputation of the same issue? And how do you inform people in a similar situation that there is an issue?

This is important. Accountability includes letting the public know what we are focussing on, when it is appropriate to do so. There may be people in a similar situation who have not complained, or who are wondering whether to walk away from their complaint.
- Publishing our reports shines the light of transparency on the actions of agencies and makes it clear to the community, parliament and to other agencies where and how we think things can be done better.
- Last financial year, the Office produced 29 reports from investigations I initiated as the Ombudsman into systemic issues, under specific Ombudsman roles and as the Commonwealth National Preventive Mechanism (NPM).
- We released 35 publications aimed at influencing systemic improvement in public administration and made 11 submissions to Joint Standing Committees, the Attorney-General's Department, legislative reviews and the United Nations Special Rapporteur on Torture.
- Publishing reports is usually a vehicle for making suggestions and recommendations. This can extend beyond making recommendations regarding substantial process improvement and can include engaging with agencies about making an apology. The power and meaning of apologies, and the importance of remediation is visible in the report jointly produced by my Office and the Inspector- General of Taxation and Taxation Ombudsman, *How to tell people they owe the government money*. This

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report set out best practice principles for notifying people about debts. It was drawn from the Office's observations and experience overseeing Australian Government agencies' administrative practices and provides best practice guidance for agencies to ensure their dealings with the Australian community are fair, transparent and accountable.

- In wrapping up my summary of our achievements in 24-24, we have also kept busy in our assurance activities.
- We conducted 105 inspections across 22 agencies and 11 regimes using covert, coercive and instructive powers.
- We inspected how agencies handle and destroy information obtained through a surveillance device or by accessing a person's computer. While the Surveillance Devices Act enables a law enforcement agency to gather and use such material to support civil or criminal proceedings, it is incumbent on the agency to destroy this information when it is no longer required for a lawful purpose.
- We made 17 visits to places of detention as the Commonwealth NPM to prevent mistreatment and conducted 372 assessments of people held in long-term immigration detention.

#### **Continuous improvement**

- I am pleased with the progress the Office has made in the last year. Equally, I am keen that we continue to improve how we deliver our functions and the service we provide to complainants, just as we ask the agencies and providers that we oversee to do the same.
- During 2023–24, we improved our service in the following ways:
  - making early resolution of complaints a greater focus, where possible, to allow people to move on with their lives sooner
  - meeting or exceeding all of our quality assurance standards across general complaint handling, Public Interest Disclosure (PID) investigations, Vocational Education and Training (VET) FEE-HELP complaint handling and Defence Force Ombudsman (DFO) reports
  - making meaningful improvement towards meeting our complaint handling timeframes and telephone wait times standards
  - increasing the impact of our publications through enhanced design, plain English, infographics, visual elements, case studies and examples.
  - explaining our findings more clearly and simply to help agencies, the community and parliament understand the impact of our findings on people's lives and how to improve the delivery of services across government.

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**Forward focus**

- Looking ahead, our areas of focus are to:
  - Deliver critical functions
  - Improve our service
  - Act with influence

**National Student Ombudsman**

- In the coming year, the Office is gaining a new statutory function with the establishment of the National Student Ombudsman (NSO), which will be a very significant undertaking.
- We will need to recruit and train staff and engage with new stakeholders in order to handle a workload of uncertain volume, some of which will concern allegations of gender-based violence.
- The NSO will provide higher education students with an escalated complaint mechanism, if they are unhappy with how their higher education provider handled their complaints about their provider's policies, procedures and decisions.
- In establishing the NSO, we will draw on our experience as the Overseas Student Ombudsman, VET Student Loan Ombudsman, lessons learnt from our implementation of other new functions, and from our ceasing functions across the Office.

**Risk-based approach to statutory oversight functions**

- The Office will continue a recently implemented risk-based approach to inspecting law enforcement and integrity agencies' use of covert, coercive and intrusive electronic surveillance powers.
- These inspections are an important community safeguard and public assurance measure that the Office conducts and reports on each year.
- Adopting this risk-based approach gives us the opportunity to explore the risks and behaviours that result in agencies not complying with the use of certain covert and intrusive powers.
- In some cases, our approach revealed instances where the powers were not used for lawful purposes or where an agency's governance and administrative controls were ineffective in preventing misuse of these powers.
- We will continue this risk-based approach to develop a better understanding of government agencies' compliance culture and the way law enforcement agencies use covert and intrusive powers in investigations.



- As in complaint-handling, we need to be curious, courageous and persistent when we investigate how law enforcement agencies have used their powers – and focussed on how agencies can improve their practices.

#### **New Complaints Management System and Service Charter**

- We will continue to deliver on our purpose through handling complaints, conducting investigations, visiting places of detention, conducting inspections and influencing good public administration.
- In our core work we want to provide effective, efficient, and fair complaint handling to ensure we foster trust and satisfaction in those we serve. We are working, and will continue to work, to improve our complaint handling service.
- From resolving individual issues, to using data to uncover systemic issues, complaint handling is at the core of what we do. To facilitate this work, we will continue to invest in effective, efficient and accessible complaint management systems.
- In 2024-26 we will have a particular focus on replacing our aging case management system and realising efficiencies from more streamlined complaint handling processes. This will be a complex and challenging change management exercise, given the integration of our existing system throughout our processes.
- We will also launch the Office's Service Charter and continue to reinforce our expectations of how agencies we oversee should engage with us.

#### **Own motion investigation reports and publications**

- The Office continues to enhance how we influence systemic improvement in public administration by monitoring and detecting trends and taking action, where appropriate, in the form of own motion investigations and initiatives.
- We will continue to leverage the progress that we made in 2023-24 to produce clear, easy to understand publications. Our aim is to make it easier for the community and agencies to understand our concerns and learn from our investigations.
- In the 2023 *Room for Improvement* report we highlighted 5 key themes:
  - Follow the law
  - Keep good records
  - Have clear policies and guidelines (train your staff well)
  - Make your complaint-handling user centred
  - Communicate clearly
- In 2023–24, we finalised 4 Own Motion Investigations and published the following reports:

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- August 2023 Lessons in lawfulness and December 2023 Accountability in action: identifying, owning and fixing errors, into Services Australia and the Department of Social Services and income apportionment. We looked into an issue with how Services Australia had been apportioning income to calculate social security payment rates for 17 years before December 2020, when the law changed. We published and made a number of recommendations, including that the agencies consider and develop a comprehensive remediation strategy to provide a fair and reasonable outcome for customers who have had debts or payments incorrectly calculated due to income apportionment.
- Defending Fairness: Does Defence handle unacceptable behaviour complaints effectively? - This report is an own motion inquiry to build on the findings of our previous report Defence's policies for receiving and responding to reports of abuse and to examine how the policies and procedures we evaluated in that inquiry work in practice
- Taking Liberties: Investigation into the appropriateness of Department of Home Affairs' and Australian Border Force's policies and procedures for the timely removal of unlawful non-citizens from Australia. This investigation report considered whether the Department of Home Affairs (Home Affairs) and Australian Border Force had appropriate policies and procedures in place to ensure unlawful non-citizens were removed from Australia in a timely way. Home Affairs accepted the 3 recommendations made by my Office, and we will monitor their implementation.

- Last year, my Office noticed an influx of media reports about the costs of student loans, with high rates of indexation applied to student debts. The indexation was applied to various student loan schemes administered by the Department of Education, Department of Employment and Workplace Relations and Department of Social Services.

We looked into the matter informally and considered what information was publicly available to students about indexation applying to various student loan schemes, including VET FEE-HELP, Student Startup, Trade Support, HECS-HELP loans and Student Supplement Financial Loan Scheme debts.

We found the information about indexation was absent or referred to inconsistently across the different student loan schemes. Where information about indexation was provided, we found it was limited and lacked clear examples of how indexation applied specifically to student loans.

I wrote to the secretaries of Education, DEWR and DSS about the availability and consistency of information available to students about the financial implications of taking out a student loan and explained the importance of providing clear,

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coordinated and consistent information about the operation of student loan schemes, including the financial implications for prospective students. This information is essential to helping students make informed decisions before taking out a student loan. This led to them all taking steps to align the information they were providing, to make it consistent, accurate and best practice.

### **Engagement**

- In 2024-25 we will increase our engagement with civil society, to hear views on the performance and accessibility of the Office, exchange mutually beneficial information and views, and increase transparency — both real and perceived — of the Office’s role and functions. To achieve this, we will try new ways of engaging, such as a series of round table engagements with thematic groupings of civil society peak bodies and entities.
- I held my first roundtable in August this year. It is important to open a dialogue with a wide range of stakeholders. They have people coming to them who may also be coming to us, and they may have intelligence on developing issues of government administration. We need to be willing to listen, and to create opportunities to hear, beyond those that evolve through complaints and assurance functions.

### **Well trained and supported staff**

- To meet our priorities, we will ensure that we are investing in the right tools, technology, systems, and in our people. Our people are our most valuable asset. By ensuring staff are valued and have the right skills to do their job, we enable them to perform at their best.

### **Core values continue to guide the Ombudsman’s work**

- As public administration and the expectations of citizens evolve, so must the Ombudsman. But the core values set from the very beginning of the Office — independence, integrity, accessibility and professionalism — remain the same and will continue to guide the Office into the future.
- I note that there is a session at the end of the CHF related to the future of complaint handling. Any conversation on the future I am sure will include a conversation about technology, in particular AI. AI holds out the possibility of more efficient complaint handling services — we are trialling it as a tool to assist us in identifying common features in complaints — but also provides a significant challenge for oversight agencies — namely are agencies and entities using AI in a fair and accountable manner; are they keeping records of decisions and of the involvement of AI, so that it is contestable; are they assuring themselves effectively of the manner in which the AI is operating.

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- So watch this space!

**Conclusion and Q & A**

- Thank you for taking the time to be here today. I look forward to the insights that will emerge over the coming days.
- It's time to open the floor for questions. If you can please drop your questions in the Q and A, Penny will facilitate your questions.

[4,216 words = 32 minutes (@ 130 words per minute)]