Control Yuan

澳洲監察使制度之運作

陳金記
陳燕卿　編著

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摘 要

一、考察目的：澳洲之監察使制度與我國差異極大，惟其實務運作有諸多可供借鏡之處，藉此次考察活動，提出未來策進監察效能之建議，以供參採。

二、考察過程：參訪澳洲聯邦及新南威爾斯州監察使辦公室，以充分交換兩國監察實務運作經驗與意見，另亦參訪新南威爾斯州議會，以瞭解其監察使與議會之互動情形。

三、考察心得與建議：

澳洲聯邦監察使辦公室以保障人權爲優先，使用了34 種不同的語文版本類別詳細說明民眾如何申訴的方法，提供新移民與外籍人士得以傾訴冤屈之機會；設有「保護舉報（Protected disclosure）」或稱 Whistleblowers Protection 的申訴案件處理制度；且其業務和組織架構逐年調整，以適應不斷變化的公共事務，號稱監察使成立30 年來，已有 30 項重大改變；並規定人民在向監察使投訴之前，應當首先自行爭取和相關的部門共同解決其所欲投訴的問題。

因此建請我國監察院增加其簡介資料及民眾陳情受

理文件語文版本、強化其國際事務小組之職能、研議引進「保護舉報（Protected disclosure）」申訴案件處理制度、增設該院網頁文件之下載計數器，俾量化排序造訪人氣指數、善用網站加強宣導公務員法紀教育與廉政倫理規範。

目 錄

壹、前言

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一、考察動機與目的

由於澳洲的監察使分散於 8 個不同轄區，互不隸屬，各自成立辦公室獨立運作，並均爲國際監察組織（International Ombudsman Institute，IOI）[1]之成員，亦即該國在 IOI 裡擁有 8 票的投票權；反觀我國監察院（下稱本院），雖有 29 位監察委員，但在 IOI 中卻僅享有 1 票的投票權[2]。因此，這種監察使分散設置的制度，頗值得參考借鏡。

其次，澳洲監察使的職權範圍，除政府機關外，亦包括非政府組織（non-government agencies），反觀國內，監察委員職權行使的範圍，僅限於政府機關與公務人員，究竟澳洲監察使職權可觸及非政府組織的歷史因素爲何？其運作方式與成效等等，均有加以探究之必要。

1 國際監察組織（IOI）成立於 1978 年，屬一非政府組織（NGO），總部設於加拿大愛德蒙頓。成爲 IOI 會員的條件有二：獨立行使監察職權、直接受理人民陳情。截至 2007 年止，共有 132 個國家及地區加入成爲會員。

2 本院於 1994 年以「中華民國監察院（Control Yuan of R.O.C.）」名義加入國際監察組織，成爲具投票權之正式會員。

因爲對澳洲監察使制度分散設計與監督對象擴及非政府組織之特色盼能深入瞭解，加上其爲英語系國家，語文溝通較爲方便，且邇來該國相關監察使法規增修頗多、各地方監察使組織架構更迭頻仍，業務推展快速，爰選定考察該國。

本出國考察計畫之參訪機關選擇位於首都坎培拉的澳洲聯邦監察使辦公室，及位於雪梨市的新南威爾斯州監察使辦公室。係因位於坎培拉的聯邦監察使，是澳洲唯一的聯邦監察使，處理的是聯邦事務，與州/領地監察使均不同[3]，具有指標性意義；而選定新南威爾斯州監察使則是因該州人口眾多，其與國際互動較爲活耀，績效也較良好，在州/領地監察使中，較具代表性之故。

吾等希望藉由此次的參訪、會面、晤談、討論等考察活動，再參酌專案蒐集之相關網站資料，企圖描繪出澳洲監察使制度的全貌，並客觀比較兩國監察制度之差異所在，以他山之石足供借鑑之態度，虛心探討歸納出具體可行建議事項，俾可提供政府參考採行。

3 用中央與地方分權的概念來看，可以理解成聯邦監察使處理「中央」事務，州及領地監察使處理「地方」事務，然須注意的是，在澳大利亞，聯邦政府與州/領地政府並無隸屬關係，聯邦監察使與州/領地監察使亦同，這與我國中央與地方有隸屬關係的分權制度不同。

二、考察計畫

在考察人選方面，經監察院 97 年度職員出國考察人選評選專案小組第 2 次會議決議，以 97 年 5 月 27 日以（97）秘台人字第 0971600335 號函，指派陳調查官金記、陳調查員燕卿等 2 人，赴澳洲考察。

考察日期自 97 年 6 月 8 日至 14 日（計 7 天），參訪機關除原訂之澳洲聯邦監察使辦公室（位於首都坎培拉）及新南威爾斯州監察使辦公室（位於雪梨）外，另增加參訪新南威爾斯州議會（The New South Wales Parliament），以瞭解其監察使辦公室與議會之互動情形。以及拜會我駐外單位—駐雪梨台北經濟文化辦事處（Taipei Economic and Cultural Office Sydney, Australia）及駐澳洲代表處（Taipei Economic and Cultural Office in Australia）。

而考察項目爲：

1. 澳洲監察制度的法規、功能與組織（The regulations, functions and organizations of the Australian Federal and State Supervision System）；
2. 澳洲監察制度的任務、角色、審查與程序（The mission, role, jurisdictions and procedures of the Australian

Supervision System）；

3. 澳洲監察使辦公室與聯邦/州政府、司法機構、人民及議會之互動關係（The interaction with federal and local governments, judicial agencies, the people and Australian Parliament）；
4. 澳州監察使辦公室處理申訴之機制以及個案追蹤情形（The mechanism of handling petitions and case follow-up）；
5. 其他與澳洲監察制度相關之資訊（Other information in connection with the Australian Supervision System）。

三、考察行程安排

由於監察院監察調查處林調查官明輝獲得行政院人事行政局「97 年度出國專題研究」之補助，於 97 年 5 月中旬前往澳洲進行 4 個月的監察制度專題研究，爲避免澳洲方面及我駐澳、駐雪梨代表處人員重複接待本院考察人員，在與林調查官明輝確認可會同參訪後，隨即聯繫澳洲聯邦監察使 Professor John McMillan 及新南威爾斯州監察使 Mr. Bruce Barbour，該兩位監察使並分別指派 Ms. Emma、Ms. Elizabeth（澳洲聯邦監察使辦公室），及 Ms. Lisa（新南威爾斯州監察

使辦公室）協助安排。

另爲使考察行程順利、圓滿，亦函請我駐雪梨台北經濟文化辦事處及駐澳洲代表處人員安排、陪同，由於事前聯繫得宜，使得本次考察經過均能依據原訂行程進行，有關 97 年度監察院職員赴澳州考察行程表詳如附錄一。

貳、澳洲之監察使制度

2

澳洲政府是威斯敏斯特（Westminster，或稱聯邦）系統的典型，總理和其閣員（大臣）均爲議會的成員，依據法律提供各項服務給大眾，並仔細審查各項施政作爲，有關澳洲之政府體制介紹詳如附錄二。

澳洲監察制度存在的價值與可貴之處就在於，澳洲實施民主政治，民主的眞諦即：在沒有阻礙及不會受到威脅的情況下，人民可以向獨立監察使申訴政府機關的作爲，並依申訴的本質獲得解決或改善。這可確保政府機關都是可責信的（accountable），也支持了政府改善施政措施的可能。

澳洲監察制度與澳洲聯邦政府系統一致，在聯邦有聯邦監察使，在州/領地亦有獨立的監察使，共計 8 位監察使，受理人民陳情。

一、澳洲監察制度歷史演進

㈠監察使制度的歷史演進

監察使的概念剛剛在斯堪地那維亞半島萌芽的時候，是

指正式的、通常由政府或國會任命的、透過調查和提出報告等方式來保障大眾利益的官員。承襲 1809 年瑞典司法監察使的傳統，監察使的現代意義仍是在維護人民的權利，監察使最早是設在行政部門下，是一個掌管監察（supervisory）百官的獨立分支單位。

或許有人會問：爲什麼是「ombudsman」？而非「ombudswoman」？其實，「ombudsman」這個字沒有性別意涵，它是古老的斯堪地那維亞（Old Norse）的語言，最初的寫法是「umbuds man」，是指「人民的代表（representative of the people）」的意思，「umbuds man」這個字的使用，最早被發現是在 1552 年，然而，斯堪地那維亞半島各國卻都有不同的寫法，冰島是「umboðsmaður」、丹麥是「ombudsmand」、挪威是「ombudsman」。

紐西蘭則爲英語系國家中第一個有監察使的國家（1962 年成立），較英國（the United Kingdom）早 5 年成立（1967 年成立）。在澳洲，第一位監察使是西澳州監察使，於 1971 年被任命，聯邦監察使辦公室則是在 1976 年成立，並在 1977 年 6 月開始運作。監察使能調查百官、解決政府與民眾的爭端，這樣的概念已廣爲世界各國所接受，儼然已成爲民主社會最基本的責任機制。

㈡澳洲監察制度的歷史演進

澳洲監察制度的歷史演進約可從三個方向來看：

1. 1960 年代及 1970 年代澳州行政法

1960、1970 年代，澳洲政府的施政逐漸影響人民，但卻沒有適當的方法進行行政法（administrative law）的改革，以改善新的施政作爲所產生的問題，人民也沒有實際可行的方法來檢驗行政過程或決策，唯一的方法只能尋法律途徑—雖然法律途徑僵化且隱含技術性被否決的危機。

1962 年，紐西蘭國會通過「國會委員長（監察使）法（Parliamentary Commissioner（Ombudsman）Act）」，是澳洲監察使發展的重要關鍵。3 年後，當時任職於新南威爾斯高等法院的法官 Else-Mitchell 在雪梨舉行的第三屆聯邦與國協法律會議上發表「1965 年司法法庭之職權（The Place of the Administrative Tribunal in 1965）」論文，激勵澳洲行政法的改革，也是促成澳洲監察使發展的重要關鍵。

2、1968 年及 1973 年間聯邦政府三個委員會

1968 年及 1973 年間，聯邦政府成立三個委員會（科爾委員會 The Kerr Committee, 布萊德委員會 The Bland Committee, 艾利考特委員會 The Ellicott Committee）以審查

澳洲政府的行政決策。

1968 年 10 月 29 日，政府成立聯邦行政評議委員會（Commonwealth Administrative Review Committee），又稱爲科爾委員會（The Kerr Committee），這是以當時的聯邦產業法庭（Commonwealth Industrial Court）的主席 John Kerr 命名。1971 年 10 月 14 日，科爾委員會發表一篇報告，提出了五點建議，其中，第一點建議即與監察使制度的建立有關。科爾委員會認爲，政府應設置一般陳情法律顧問（general counsel for grievances，即監察使），且應設置在行政審查（administrative review）而非國會執行（parliamentary executive）下，而且，一般陳情法律顧問應與上訴法院及其他審查機構相結合。

繼科爾委員會報告之後，政府又另外指派兩個委員會（布萊德委員會及艾利考特委員會）進一步檢視澳洲的行政法。1973 年 1 月 19 日，布萊德委員會提出報告建議成立監察使辦公室。1973 年 5 月 29 日，艾利考特委員會也在報告中建議政府應接受科爾委員會的提案（政府應指派處一般陳情法律顧問或監察使）。

事實上，這三個委員會都知道，對民眾而言，既有的行政救濟途徑，都是相當複雜、昂貴，且難以接近的。

1976 年 6 月，艾利考特在對眾議院發表第二次關於監察使法議案的看法時表示，這次新立法最重要的部分，就是當民眾不滿政府的作爲時，可以有合理的陳情管道，且有公正的調查員進行調查。他並指出，監察使的優勢就在於其調查的獨立與公正性。

受到這三個委員會報告的影響，聯邦議會通過了三項重要的立法，即：1976 的監察使法（Ombudsman Act）、1975 年的行政上訴法庭法（Administrative Appeals Tribunal Act）及 1977 年的行政決策（司法審查）法（Administrative Decisions (Judicial Review) Act）。因爲這三個法案的通過，催生了監察使辦公室、行政上訴法庭及行政審查會（Administrative Review Council，依據行政上訴法庭法所設立），加上更新了司法審查系統，均使澳洲監察體制更趨完備。

3. 澳洲監察使

Gough Whitlam 在 1972 年擔任總理前即表示，將指派監察使作爲「人民的守護者（guardian of the people）」。監察使應調查民眾對於政府部門及職權單位不公平待遇的陳情案，並直接向議會報告。

由 Gough Whitlam 領導的政府於 1975 年向聯邦議會提出

監察使議案（Ombudsman Bill），但在 1975 年 11 月遭到兩院的雙重否決而撤銷。由 Malcolm Fraser 領導的政府，在 1976 年 6 月及 1977 年 3 月重新提出監察使法議案，並指派 Jack Richardson 教授爲聯邦監察使，任期 7 年。當 Malcolm Fraser 在眾議院宣布任命監察使時，他說：「監察使辦公室的設立，是在確保政府部門都是負責任的、有適應力的，並且能對民眾需求保持敏感度」。

監察使辦公室成立以來，收到成千上萬的陳情案，完成許多報告，也提出許多改善公共行政的建議。

㈢ 30 年，30 個改變—以聯邦監察使辦公室爲例

從 1971 年西澳州監察使辦公室成立以來，澳洲監察制度已施行了 30 多年，聯邦監察使辦公室（1976 年成立）特別在其年度報告中提出「30 年，30 個改變」，陳述這 30 年來，政府、受理陳情，及處理和解決陳情案的改變，並據以說明政府與人民關係的變化，監察使在這關係中又扮演了什麼角色。

這 30 個改變是：行政法的新系統（A new system of administrative law）、聯邦監察使工作的增加（Growth in Commonwealth Ombudsman work）、澳州監察使制度的評估

（Evolution of the Ombudsman institution in Australia）、專家監察使角色（Specialist Ombudsman roles）、政府服務提供者的司法審判權（Jurisdiction over government service providers）、監督法律執行與機構記錄（Inspection of law enforcement and agency records）、恐怖主義時代下的角色（Playing a role in an age of terrorism）、接納政府的新功能（Adapting to new functions in government）、因應政府的複雜性（Responding to complexity in government）、申訴權（The right to complain）、提高政府的可近性（Making the office accessible to the public）、協助民眾處理問題（Helping people deal with problems in government and business）、內部申訴處理系統的發展（Growth of internal complaint-handling systems）、強調（品質）好的陳情處理（Ombudsman focus on good complaint handling）、服務章程的成長（Growth of service charters）、機構聯合管理的發展（Development of agency liaison arrangements）、信賴正式的調查權（Reliance on formal investigation powers）、和大眾站在一起（Reaching the public）、棘手的陳情案（Difficult complainants）、調查的結論（Concluding an investigation）、提供可行的修正（Providing a practical remedy）、對政府的錯誤向人民道歉（Apologies as

a remedy for government error）、錯誤施政的救濟/補償（Compensation for defective administration）、監察使的爭訟事件（Litigation against the Ombudsman）、研究方案（Research projects）、監察使的地位（The Ombudsman's place in the structure of government）、與其他監督機制合作（Liaison with other oversight agencies）、議會聯繫（Connecting with Parliament）、監察使聯盟（Ombudsman associations）及 7 位監察使的介紹（Seven Ombudsmen）等。

二、澳洲監察機關簡介

自 1901 年以來，澳洲便是個聯邦式的民主共和國[4]，她將首都設在坎培拉，聯邦議會亦在此成立。又，澳洲將領土分爲 6 個州（New South Wales, Queensland, Victorian, South Australian, Western Australian, 以及 Tasmanian）及 2 個領地（ACT, Northern Territory），因此，在澳洲共有 8 位監察使，分別是 1 位聯邦監察使（Commonwealth Ombudsman，兼 ACT Ombudsman）、6 位州監察使（新南威爾斯州監察使 New South

4 1900 年 9 月，英國維多利亞女王下詔宣布，1901 年 1 月 1 日，不僅是新世紀的開端，也是澳州這個新國家的誕生日。女王簽署這份文告用的桌子，隨後從倫敦船運到雪梨。元旦當天，並由當時國家首任總督霍普堂勛爵（Lord Hopetoun）主持開國典禮。

Wales Ombudsman; 昆士蘭州監察使 Queensland Ombudsman; 維多利亞州監察使 Victorian Ombudsman; 南澳州監察使 South Australian Ombudsman; 西澳州監察使 Western Australian Ombudsman; 塔斯馬尼亞州監察使 Tasmanian Ombudsman）及 1 位領地監察使（北領地監察使 Northern Territory Ombudsman）。以下依其成立年代先後順序分別介紹之：

㈠西澳州監察使辦公室（WA Ombudsman Office）

西澳州監察使辦公室（Western Australian Ombudsman Office）是澳洲第一個成立的監察使辦公室，成立依據是 1971 年通過的國會委員長法（Parliamentary Commissioner Act）。這歸功於當時的總理 John Tonkin（任期 1971-74）。1963 年，當 John Tonkin 還是反對黨的領袖時，即有任命州監察使的提議，等到 1971 年，他正式成爲總理時，即立刻兌現支票，向議會提出國會委員長議案，並順利通過。

西澳州監察使目前爲 Chris Field (2007-至今)，他是第 7 任的西澳州監察使。西澳州監察使辦公室目前約有 30 名員工，除監察使、副監察使（Deputy Ombudsman）外，尚有「評

估和擴展（Assessments and Outreach）」、「調查和重要方案（Investigations and Major Projects）」，及「公司/團體服務（Corporate Services）」三大部門。

㈡南澳州監察使辦公室（SA Ombudsman Office）

1960、1970 年代，監察使制度的建立蔚爲風潮，南澳政府因此向南澳州議會提出監察使法案，經通盤檢討及多次修正後，監察使法（the Ombudsman Act）在 1972 年 11 月 23 日通過，南澳州監察使辦公室（South Australian Ombudsman Office）正式成立，並開始接受民眾陳情。南澳州監察使辦公室最初設在南澳州議會內，但隔年即搬遷至目前的住址（Level 5 East Wing 50 Grenfell St）。

第 4 任的南澳州監察使 Eugene Biganovsky 於 2007 年 6 月任期屆滿，目前由 Ken MacPherson（Acting Ombudsman）代理。南澳州監察使辦公室共有 15 名成員，除監察使、副監察使外，尚有 5 名調查官（Investigating officers）、3 名控管人員（one holding officer, two Assessment Officers）、3 名法律人員（Legal Officers）及 2 名辦事員（clerical officers）。

南澳州監察使辦公室成立時第 1 年收到 726 件人民陳情案，最近 1 年（2006/07）已收到 2290 件人民陳情及 234 件

有關資訊公開法的陳情案。

㈢維多利亞州監察使辦公室（Vic Ombudsman Office）

維多利亞州監察使辦公室（Victorian Ombudsman Office）是依據 1973 年之監察使法，於 1973 年 10 月 31 日成立[5]，成爲緊接在西澳州、南澳州之後，第三個成立監察使辦公室的州。1962 年，北歐國家任命 Guy Powles 爵士爲紐西蘭第 1 任監察使，促使 George Reid 爵士（當時爲澳洲維多利亞州的檢察總長）將監察使的立法介紹給維多利亞州議會。辦公室成立 30 多年來，見證、影響了許多重要的政府服務多元化的改變，同時，辦公室本身也有許多改變，但是捍動不了監察使的角色與責任。

維多利亞州監察使現爲 George Brouwer，爲維多利亞州第 5 任監察使。除監察使、副監察使外，維多利亞州監察使辦公室設有六大部門:「媒體（Media）」、「業務服務（Business services）」、「法律申訴（Legislative Compliance）」、「調查（Investigations）」、「運輸事故委員會/維多利亞女王時代

5 澳州聯邦監察使辦公室的網站顯示，維多利亞州監察使辦公室於 1972 年成立。本報告以維多利亞州監察使辦公室網站登載之資訊爲準。

WorkCover 當局公報（Transport Accident Commission and Victorian WorkCover Authority bulletins ，簡稱 TAC/VWA）」、「重要方案（Major Projects）」等。

㈣昆士蘭州監察使辦公室（Qld Ombudsman Office）

依據 1974 年通過的國會委員長法（Parliamentary Commissioner Act），昆士蘭州第 1 任監察使 David Longland 爵士於 1974 年被任命，昆士蘭州監察使辦公室（Queensland Ombudsman Office）正式成立，目前的監察使 David Bevan 爲昆士蘭州第 5 任監察使。

昆士蘭州由監察使下設「行政改善部（Administrative Improvement Unit）」、「溝通與研究部（Communication & Research Unit）」、「公司/團體服務部（Corporate Services Unit）」；另由副監察使下設「評估與決議組（Assessment & Resolution Team）」、「社區服務與糾正組（Community Services & Corrections Team）」、「地方政府與基礎設施組（Local Government & Infrastructure Team）」。以促進公共部門（州政府部門及其所屬體系）及地方委員會的行政改善，並針對陳情案件進行調查。

㈤新南威爾斯州監察使辦公室（NSW Ombudsman Office）

新南威爾斯州監察使辦公室（New South Wales Ombudsman Office）係依據議會法（Act of Parliament），在1975 年成立[6]，和世界各國的監察使一樣，都是模仿自 1809 年瑞典司法監察使（Justitie-Ombudsman）。

新南威爾斯州監察使目前爲 Bruce Barbour，他是新南威爾斯州第 5 任監察使。除監察使外，該監察使辦公室尚有 2 位副監察使、3 位助理監察使（Assistant Ombudsman）。新南威爾斯州監察使辦公室有五個部門：「一般組（The general team）」、「警政組（The police team）」、「兒童保護組（The child protection team）」、「社區服務部（The community services division）」及「公司/團體組（The corporate team）」，目前共有 178 名職員。

㈥聯邦監察使辦公室（Commonwealth Ombudsman Office）

聯邦監察使辦公室於 1976 年成立，第 1 任聯邦監察使

6 澳州聯邦監察使辦公室的網站顯示，新南威爾斯州監察使辦公室於 1975 年成立。本報告以新南威爾斯州監察使辦公室網站登載之資訊爲準。

Jack Richardson 在 1977 年 3 月被任命，目前的聯邦監察使爲 John McMillan，他是第 7 任聯邦監察使。聯邦監察使辦公室依據 1976 年的監察使法（Ombudsman Act）而設立，監察使法是行政法中非常新且特別的部分，辦公室在行政團隊內，由總理監督治理。

聯邦監察使辦公室的組織編制除聯邦監察使外，尚有 2 位副監察使、6 位資深助理監察使（Senior Assistant Ombudsman），各自負責「公司/團體（Corporate）」、「社會支持與法律（Social Support and Legal）」、「郵政產業、國際與各州事務（Postal Industry, International and State Offices）」、「移民（Immigration）」、「法律執行、檢/視察與稅務（Law Enforcement, Inspections and Taxation）」、「國防、首都領地、原住民及民眾會面組（Defence, ACT, Indigenous and Public Contact Team）」等六個部門。目前聯邦監察使辦公室的員工共有 150 名。

㈦北領地監察使辦公室（NT Ombudsman Office）

北領地監察使辦公室（Northern Territory Ombudsman Office）依據 1977 年北領地監察使條例（Ombudsman〔Northern Territory〕 Ordinance）而成立，目前的監察使是

Carolyn Richards。

北領地監察使的組織編制，除監察使、副監察使外，尚有「達爾文（Darwin Operations）」、「愛麗絲泉（Alice Springs Operations）」、「健康與社區服務申訴委員會（Health and Community Services Complaints Commission, 簡稱 HCSCC）」及「業務運作（Business Operations）」等部門，計有 20 名員工。

㈧塔斯馬尼亞州監察使辦公室（Tas Ombudsman Office）

塔斯馬尼亞州監察使辦公室（Tasmanian Ombudsman Office）是依據 1978 年的監察使法（Ombudsman Act）成立，因此是澳洲最後一個成立監察使辦公室的州，塔斯馬尼亞州監察使目前是 Simon Allston，員工總數爲 19 人。

依據 1995 年的健康申訴法（Health Complaints Act），塔斯馬尼亞州監察使同時是健康申訴委員（Health Complaints Commissioner），也執行 1998 年通過的能源監察使法（Energy Ombudsman Act）。此外，塔斯馬尼亞州監察使亦審查依據 1991 年通過的資訊自由法（Freedom of Information Act）的相關決定；依據 2002 年通過的公眾利益公開法（Freedom of

Information Act）受理且調查公開事項；依據 2004 年通過的個人資訊保護法（Personal Information Protection Act）受理且調查相關的陳情案；審查依據 1988 年通過的領養法（Adoption Act）的確定決定；監督依據 1999 年通過的塔斯馬尼亞通訊（攔截）法（Telecommunications (Interception) Tasmania Act）有關警察的陳情案；以及監督依據 2000 年通過的證人保護法（Witness Protection Act）的證人保護方案。

三、澳洲監察機關職權

依據監察使法，澳洲各監察使辦公室的職權主要有三：受理民眾陳情、獨立調查及促進好的公共行政（good public administration）以確保公共行政的原則及實行。茲依州別分述如下：

㈠西澳州監察使辦公室的職權

西澳州監察使辦公室的職權主要有三：

1. 受理並協助人民陳情案

協助西澳人解決陳情案，包括對於州公部門機構、法定機關、地方政府及公立大學的陳情。

2. 主動調查權

即使沒有具體的陳情案，監察使仍能主動調查關於州公部門機構、法定機關、地方政府及公立大學的各項活動。

3. 促進政府責信並改善行政

幫助機構更有責信及改善他們行政決定的實務與行爲的標準。

㈡南澳州監察使辦公室的職權

監察使依據以下法規行使職權：1972 年監察使法、1991 年資訊自由法、1999 年地方政府法、1917 年皇家委員會法、1993 年揭密者保護法（Whistleblower’ s Protection Act），以及其他影響監察使職權的立法。譬如依據資訊自由法及監察使法，監察使能調查及檢視政府機構資訊自由的活動與決定。南澳州監察使辦公室的職權如下：

1. 受理人民陳情案

在監察使的管轄範圍內，行政部門、權責機關或委員會，對個人或組織有任何直接、不利益的影響時，皆可陳情或由他人代理陳情。

2. **調查**

1972 年的監察使法提供監察使範圍廣泛的調查權（investigative powers），包括皇家委員會（Royal Commission）調查州政府機構、法定機關、地方政府委員會的任何瑕疵行政行動。

監察使可根據民眾陳情（電話、親自前來或由他人代理、陳情函或網路），亦可經由國會議員、議會決議，進行非正式或正式的調查（初步的或充分的）調查，或主動調查，如果決定不調查，會告知原因。

3. **建議權**

監察使決定調查的同時，會同時向機構提出建議。另外，監察使在調查的結論中，也可以建議機構應有補救措施，或建議實務和作法應該有所修正或改進，以避免問題再度發生。當然，監察使也能向議會提出建議。除非被要求回應，否則監察使不能在報告中作出任何有關個人或機構的不利評論。

㈢維多利亞州監察使辦公室的職權

維多利亞州監察使辦公室的職能包括：獨立調查、解決對州政府部門、地方委員會及法定機關的行政行爲的陳情

案，並將結果向陳情人及機構報告，也向議會報告，以改善責信，並促進公平、合理的公共行政。依據 2007 年的年度報告，簡述其職權如下：

1. 受理陳情

2007 年，維多利亞州監察使辦公室共接獲 3,628 件民眾陳情案，較 2006 年增加 15％。大部分的指控與政府部門、地方委員會或法定機構不合理、不公平或錯誤的決定、行動或執行有關，有些陳情人要求徹底地調查，但大部分的陳情案在機構的關切下，即已獲得解決。

地方政府對 24％的陳情案作出了滿意的解釋，在司法部（Department of Justice, DOJ）管轄下的機構和機關則對 19％的陳情案作出了滿意的解釋，41％的陳情案則由人群服務部（DHS）、財政部（Department of Treasury and Finance, DTF）、基礎建設部（Department of Infrastructure, DOI）、教育部（Department of Education, DOE）以及永續經營與環境部（Department of Sustainability and Environment, DSE）等 5 個單位作出了滿意的解釋，剩下 16％的陳情案則由跨部門的單

位協調作出滿意的解釋。

近年來，維多利亞州監察使因爲本土動物（野生及會造成公害的動物）法（Domestic 〔Feral and Nuisance〕 Animals Act）、恐怖主義（社區保護）法修正案（Terrorism 〔Community Protection〕〔Amendment〕 Act）、人權與責任宣言法（Charter of Human Rights and Responsibilities Act）及兒童青年家庭法等法規的通過，更擴大了監督（受理陳情及進行調查）的範圍。

2. **建議權**

監察使針對利益衝突、與法定要求不合、對陳情者的服務不週及機構間缺乏合作機制等系統性的問題，提出許多建議，並鼓勵政府部門盡力回應。

3. **調查權**

根據 1973 年的監察使法，監察使可自動調查，譬如維多利亞州監察使在 2006 年 6 月向議會提出「監禁者的條件（Conditions for persons in custody）」，以及在 2007 年 2 月提出「大 Geelong 市計畫部警政程序（Own motion investigation into the policies and procedures of

the Planning Department at the City of Greater Geelong）」等自動調查報告。監察使亦可根據有人揭露而調查，譬如 2007 年 4 月監察使根據揭密者保護法而調查「職場安全人員及維多利亞警察處理威逼及騷擾陳情（Investigation into a disclosure about WorkSafe and Victoria Police handling of a bullying and harassment complaint）案件。

㈣昆士蘭州監察使辦公室的職權

昆士蘭州監察使辦公室的職權主要有三：

1. 受理陳情

受理並調查所有對於昆士蘭州公部門及其職員的不合法、不合理、不公平、不恰當的歧視或其他錯誤的陳情案。但並不提供法律建議（legal advice）。

2. 促進行政作爲

昆士蘭州監察使也協助州政府及地方政府機構改善行政作爲，其方式包括：經由調查後提出建議、辦理處理陳情、如何作好的決定等在職訓練，以及提供忠告或支援等。

3. **調查權**

昆士蘭州監察使可以進行調查的事情態樣包括：公部門並未妥善處理陳情，以及不公平的就業或招標過程。

其他可進行調查的事情，在昆士蘭州政府部門部分還有：執照與汽機車登記、兒童保護、不公平的招標過程、不合理的費用、陳情的處理、州政府提供救濟金的可近性、環境控制議題、領地（Crown land）與水資源的分配、學校的問題、國宅資格、監獄問題、土地徵收；而在地方委員會（Local Councils）則有：利率與收費、土地使用、建照執照，垃圾、道路養護、排水、供水、污水等服務，地方政府執法、環境管理、工作者的補償金、法律扶助、大學及教育訓練（TAFEs）、退休金等議題。

在大部分的情況下，昆士蘭州監察使提供的建議，機構都會落實辦理，顯示監察使的存在是有價值的。

不過，在許多情形下，調查權也是有限制的，譬如總理與內閣的決定、法院、法官的決定，私人或私部門的行爲（如保險或電話公司）、警察的操作行動

（the operational actions of police）、聯邦或其他州等非屬昆士蘭州管轄範圍的作爲。此外，如果案件在陳情時已超過 1 年，或者救濟途徑尚未窮盡，或者陳情人並不打算先尋求相關機構解決問題等等，監察使都不能介入。

㈤新南威爾斯州監察使辦公室的職權

新南威爾斯州監察使協助轄內機構陳述其績效問題，這些問題可能還沒經由陳情而被發現，但卻因監察使辦公室的詳審、監督、調查，而引來關注。

監察使辦公室希望能改善機構的作爲或促使機構作出合宜的決定，並希望機構能察覺對社會大眾的責任，通常監察使會透過處理陳情及向相關機構提出建議來達成這些目的。

近幾年，監察使辦公室有許多更積極的行動，不但自動調查許多重大議題，也鼓勵機構和陳情者直接去找出滿意的結果。陳情是最好的回饋來源，監察使辦公室鼓勵並協助機構建制、維持有效的陳情處理系統，以處理陳情及改善他們的作爲，監察使辦公室並提供處理棘手陳情案及如何進行調查的訓練和資源。

監察使同時擁有許有具體的功能，譬如：新南威爾斯州

的兒童保護、社區服務的傳送，照護機構中兒童、身心障礙者死亡的原因與模式，機構在資訊自由應用上的決定、警察權力的運作等。

新南威爾斯州的管轄權有：公部門機構（包括：政府部門、法定機關、局處（boards）、健康服務領域、警察）、地方或郡縣委員會、提供公共服務的私立機構或個人（譬如 Junee 戒治中心）、私立認證機構中類似地方委員會功能的部分、提供兒童服務的公私立機構（公立或私立學校、兒童照護中心、兒童庇護中心），以及接受政府部門補助提供社區服務的機構。

新南威爾斯州監察使主要的職能有：

1. 受理陳情—包括：公部門機構、地方委員會、警察、社區服務提供者、職場兒童保護議題、矯正中心（correctional centres）、資訊自由、言論保護等。
2. 監督及管控（monitor）機構的調查。
3. 詳審系統（Scrutinise systems）—包括：警察、社區服務、職場兒童保護議題。
4. 審理證人保護議題的上訴。
5. 檢視接受照護服務者的狀況。
6. 管控及檢視社區服務。

7. 檢視可檢視的（reviewable）死亡案例。
8. 檢視法律的施行。
9. 提供資訊與建議。
10. 協調巡察員方案（Official Visitors program）。

㈥聯邦監察使辦公室的職權

聯邦監察使的存在是在保衛社區對付政府機構（避免被政府傷害），以及確保澳洲政府機關的行政行動是公平且有責任的。監察使有三項法定角色：

1. **陳情案件的調查**（Complaint investigation）：依據來自人民、團體及組織陳情的要求，調查及檢視澳洲政府及機構的行政行爲。
2. **獨立調查**（Own motion investigation）：監察使主動或依法獨立調查。
3. **合法性審計**（Compliance auditing）：檢查（inspecting）機構的記錄，譬如聯邦警察（Australian Federal Police , AFP）及澳洲犯罪委員會（Australian Crime Commission, ACC），確保合乎法規要求。

受理民眾陳情和獨立調查是相當傳統的監察使角色，也是監察使辦公室大部分的工作。調查的指導原則是，不管調

查中的行政行爲是否不合法、不合情理、不公道、有壓迫、不適當地差別對待、有不足，或其他錯誤。總之，監察使能建議採取強制性的行動。這可能發生在個案及相關立法、行政政策或程序中。

監察使一個很重要的目標，就是要促進澳洲政府機構一個好的公共行政（good public administration）確保公共行政的原則及實行，對於民眾的利益都是具有敏感度、反應很快、且能適應的。

聯邦監察使原則上依據監察使法（Ombudsman Act）行使職權。但依據 1979 年的澳洲聯邦警察法（Australian Federal Police Act），有特別的程序應用在澳洲聯邦警察陳情的處理上。

聯邦監察使能考量幾乎是所有關於澳洲政府部門及機構，以及大多數的將服務輸送到社區的代辦單位，或能代表政府單位的陳情案。

監察使法也賦予監察使五個專家角色：

1. **國防監察使**（Defence Force Ombudsman）—處理澳洲國防部的陳情案。
2. **移民監察使**（Immigration Ombudsman）—處理移民與公民事務部（DIAC）的陳情案。

3. 法律執行監察使（Law Enforcement Ombudsman）—處理澳洲聯邦警察及其成員的行爲與實行的陳情案。

4. 郵政監察使（Postal Industry Ombudsman）—處理澳洲郵政與郵務人員的陳情。

5. 稅務監察使（Taxation Ombudsman）—處理澳洲稅務局（Australian Taxation Office, ATO）的陳情案。

此外，依據 1988 年的澳洲首都領地自治（間接條款）法，聯邦監察使也是澳洲首都領地監察使（Australian Capital Territory, ACT），首都領地監察使依據 1989 年的首都領地監察使法行使職權，並依據協議書的協議而成立。首都領地監察使向首都領地議會提出有關其運作的年度報告。

目前，聯邦監察使辦公室正在做的事有：調查關於澳洲政府機構的陳情案，並提出解決陳情案的建議（調查權、受理陳情、建議權）；將郵政監察使的功能應用到公私部門的郵政運作上；促進澳洲政府機構妥善處理陳情；透過處理陳情、法定獨立調查（own motion investigations）及報告等方式，凸顯公共行政的問題；促使行政法及公共行政的公共討論；關注政府行政對個人的負面影響；增進開放的政府；檢/視察各項執法紀錄的精確度與全面性；評估移民個案拘留安排的適切性；依據政府部門之要求進行調查；與州、領地及工業

監察使合作；與亞太地區監察使辦公室合作等等。

㈦北領地監察使辦公室的職權

北領地監察使的職能有：

1. 受理並解決人民陳情

依據北領地監察使法，監察使應受理人民對於北領地政府部門、法定機關或地方政府或社區委員會、北領地警察或戒治服務單位，對其不公平、不恰當對待的陳情。

在正式調查之前，大部分的陳情案可透過初步詢問，或使用替代的方式，促使民眾迅速獲得滿意的結果。不過若陳情案未獲解決，監察使就會採取修正行動，譬如提供陳情者補救的方式。

2. 調查權

監察使調查人民對於北領地政府部門及法定機關的陳情案。依據北領地監察使法，調查任何北領地政府機構或地方政府委員會對內、對外、或代表其行使職權者之所有行政措施。調查北領地警察任何採取或拒絕採取的行動（無論該行動是否爲行政行爲、無論

該行動之地點、目的，或是否與北領地警察的權能有關）。

3. **支持建立陳情處理系統**

北領地監察使協助機構建立、檢視或評估其陳情處理過程。

4. **監督與報告**

依據北領地電信（攔截）法、聯邦電信（攔截與取得）法之執法機構的監督與報告。依據健康與社區服務陳情法（監察使亦是健康與社區陳情委員會的委員）的監督與報告。

㈧塔斯馬尼亞州監察使辦公室的職權

塔斯馬尼亞州監察使依據監察使法行使職權，利用詢問與調查，解決人民對於塔斯馬尼亞政府部門、地方政府委員會等公部門行政措施的陳情。監察使協助解決個別申訴或公部門系統性的問題，透過獨立、客觀且公平的調查，監察使力求公平與平等，並企求改善公共行政的品質與標準。

塔斯馬尼亞州監察使的法定職能尚有：

依據 1991 年的資訊公開法檢視相關決定、依據 1998 年

的能源監察使法調查陳情案、依據 2002 年的公共利益揭露法監督及調查洩密事件、依據 1988 年的領養法檢視影響資訊釋放的決定、依據 1999 年的塔斯馬尼亞電信（攔截）法檢驗塔斯馬尼亞警察陳情案、依據 2000 年的證人保護法檢視警察委員會成員的確定決定、依據 2004 年的個人資料保護法調查相關陳情案。

3 參、考察心得

澳洲人口約爲 2,118 萬人，其聯邦監察使辦公室卻使用了 34 種不同的語文版本類別（詳如附錄三），而新南威爾斯州人口約爲 692 萬人，其監察使辦公室亦使用了 16 種（詳如附錄四）語文，詳細說明民眾如何申訴的方法，提供新移民與外籍人士得以傾訴冤屈之機會，相對於台灣人口高達 2,300 萬人，而監察院之民眾陳情說明資料卻只使用中文和英文 2 種語文版本，就語文表達之便利性與申訴管道之可近性而言，我國顯然還有很大改善空間。

澳洲聯邦監察使辦公室設立於 1977 年，適逢 1970 年代該國政府擴大對人民生活的管理和干預。監察使是人民的守護者（citizen's defender），協助推動及確保政府機關在施政和對待人民的方式上，維持公平性及透明化，同時也確保政府機關對民眾的需求能做到負責、有回應性、和細心，堪稱「以保障人權爲優先」。且該辦公室扮演了一個讓政府和各機構改善其政策和施政制度瑕疵的重要角色。雖然它無權敦促各該行政當局做出任何補救措施；但其健全的陳訴案件電腦

化資料庫系統，往往可指出經常被民眾抱怨的結構性缺失，且由於監察使在政府與民間所擁有的崇高身分與地位，行政機關對其建議事項大多予以採納，從而達到協助公部門改進其運作方式及提昇行政機關施政績效之目的。

澳洲聯邦暨各州監察使辦公室均有類似『窩裡反證人保護』的「保護舉報（Protected disclosure）」申訴案件處理制度，政府官員可以要求以保護舉報（或稱 whistle blowing）的方式，在確保其身分不致外洩的前提下，「不怕家醜外揚」勇敢地進行舉報，以保護其舉報安全。惟必須有配套之防弊措施，亦即當情況顯示，因爲必要且重大的原因，而最好以匿名陳情人的方式進行，但卻有足夠理由令人相信此一陳情是值得調查下去時，才予以受理，俾免挾怨報復或匿名誣控濫告。

澳洲聯邦監察使辦公室的業務和組織架構逐年調整，以適應不斷變化的公共事務，其於成立 30 週年（1977~2007）之專刊中，號稱監察使成立 30 年來，已有 30 項重大改變，足見其發展和功能都能與時俱進，誠屬難能可貴。反觀我國監察院的業務和組織架構多年來未見修正，是否符合世界潮流、時代趨勢與當前新增之陽光法案申報與查核實務作業需要（尚有擬議中之廉政公署），有無通盤檢討大幅調整之必

要，允宜考量。

依據澳洲聯邦暨各州監察使辦公室之規定，人民在向監察使投訴之前，應當首先自行爭取和相關的部門共同解決其所欲投訴的問題，因爲在澳洲，許多部門都具備有效的投訴機制，故陳情人倘未先向各該部門投訴，俾先行設法尋求解決問題，則監察使可能不會就其投訴進行調查（亦即在監察使進行調查前，所有申訴管道和救濟途徑的法定權利，必須都已經用盡）。然在我國，民眾毋需用盡救濟途徑，只要對政府部門或公務員有違法失職之情事，即可到院陳情，較澳洲監察制度更稱便民。

肆、建議事項

4

一、增加監察院簡介及民眾陳情受理文件語文版本，讓不懂中文、說別種語言的外籍勞工、新移民與外籍人士有公平傾訴冤屈之機會，以戮力紓解民怨、保障基本人權。

二、強化監察院國際事務小組之職能，積極參與各項全球性暨區域性監察使活動，廣結友我情誼善緣，庶能增進國際能見度，汲取外國精髓、擷長補短，策進監察效能。

三、建請研議引進「保護舉報（Protected disclosure）」 申訴案件處理制度，藉由確保投訴人隱私資料秘密的措施，鼓勵體制內之官員勇於檢舉其機關內之貪瀆案件。

四、建請增設監察院網頁文件之下載計數器，俾量化排序造訪人氣指數，確實掌握民眾關切之重要議題和信息，運用網路資訊科技以有效開展符合民意需求之業務。

五、就行政監察的功能而言，允宜善用網站加強宣導公務員法紀教育與廉政倫理規範，以避免發生違法失職情事，防範「瀆職」事件於未然，並形塑勤政、廉潔的政府。

附錄一：赴澳洲考察行程表

日　期	行　　程	考　察　重　點
97.06.08 （星期日）	台北→雪梨	啓程
97.06.09 （星期一）	雪梨機場→飯店	抵達雪梨，本日爲澳洲之國定假日
97.06.10 （星期二）	雪梨	上午：拜會駐雪梨台北經濟文化辦事處 下午：參訪新南威爾斯州監察使辦公室（NSW Ombudsman Office）
97.06.11 （星期三）	雪梨	參訪新南威爾斯州議會（The New South Wales Parliament）並拜會該州議會「法規及司法常任委員會（Standing Committee on Law and Justice）」副主席 David Clarke 上議員
97.06.12 （星期四）	雪梨	自由參訪雪梨市區社會文化醫療設施
97.06.13 （星期五）	雪梨→坎培拉→雪梨	上午：參訪坎培拉聯邦監察使辦公室（Commonwealth Ombudsman Office） 下午：拜會駐澳洲代表處
97.06.14 （星期六）	雪梨→台北	返程

附錄二：澳洲國情及政府體制介紹

一、澳洲基本資料

澳洲位於南半球，西臨印度洋，東濱太平洋，印尼和巴布亞新幾內亞以南，紐西蘭以西。這世界上最大的島嶼（同時也是世界上最小的大陸）東西綿延約 4,000 公里、南北約 3,200 公里，澳洲地形變化很大，東南山脈連綿，中部沙漠地帶廣闊乾旱，而東北海岸對面則爲大堡礁。

澳洲是一個穩定的、文化相當多元的，以及民主的社會，擁有大量技術性、彈性的勞動力市場、強盛且具競爭力的商業部門，以及相當有效率的政府團隊。她是世界上唯一獨占一個大陸的國家，也是世界第六大國家[7]（土地面積約 7,690,000 平方公里，約爲台灣的 214 倍大）。

澳洲屬英語系國家，但因澳洲多元文化的社會型態，有超過 500 萬的人口會說第二語言，吸引許多外國公司來澳投資。且因爲擁有豐富的物質資源，所以澳洲的生活水準一直很高，澳洲政府並且在社會基礎建設上作了許多重大的投

7 前五大國家分別是蘇俄、加拿大、中國、美國、巴西。

資，包括教育、訓練、健康和運輸。約有 1 千萬的受薪階級受過良好的訓練，資深的管理者、技術人員都具有國際經驗，半數左右的受薪階級擁有大學文憑或貿易證照。

澳洲的現代史相當短暫，從 1788 年 1 月 26 日，雪梨郊外的傑克森港灣駛進了一艘載著 1500 多人的英國船艦開始，迄 2008 年止，也不過才 220 年。而如果從英國維多利亞女王下詔宣佈，澳洲的誕生日（1901 年 1 月 1 日）起算，澳洲開國迄今（2008 年）才 108 年。

二、澳洲自然人文概況

澳洲大陸是世界上最古老的大陸之一，估計在 6 萬年前即有人類。在歐洲人到達以前，原住民及托雷斯海峽島（Torres Strait Island）[8]的島民即已居住在此。

澳洲人口超過 2 千 1 百萬，人口組成分子有：到澳洲殖民的大不列顛的後裔、澳洲土著以及來自世界 200 多個國家、超過 650 萬的移民（超過澳洲人口的 1/4），其中包括 66 萬的難民。

澳洲致力於保存其獨特的環境和自然遺產，其方式有登

8 托雷斯海峽島位於澳大利亞大陸北方，接近巴布亞新幾內亞。

錄世界遺產目錄、設置國家公園和野生動物保護區。澳洲的生物多樣性約占全世界的 10%，約有 1 百萬種的本土物種，超過 80%的開花植物、哺乳動物、爬蟲類及蛙類；大部分的魚類及將近半數的鳥類等；均爲世界所獨有。澳洲的海洋環境也很具特色，4000 多種魚類、超過 500 種的珊瑚、50 種的海洋哺乳動物，以及各種不同的海鳥，均在澳洲海洋環境中孕育、棲息。此外，澳洲擁有超過 140 種的有袋動物，包括無尾熊、袋熊、袋獾（Tasmanian devil，塔斯馬尼亞惡魔，是全世界體型最大的肉食性有袋哺乳動物）。澳洲還有一種特有的單孔動物，這是一種卵生的哺乳類，被稱爲活化石，最具代表性的單孔動物就是鴨嘴獸。

三、澳洲政府體制—聯邦制與三權分立

澳洲是英聯邦成員國之一，英國女王是澳洲的精神領袖[9]，目前爲伊莉莎白二世。根據澳洲憲法，澳洲聯邦在議會民主下實施君主立憲制，實施行政、立法、司法三權分立，是

9 1990 年代末期，以澳大利亞總督（the Governor-General）取代英國女王，以擔任國家元首的共和制問題，成爲澳大利亞政治上的重大議題。越來越多人，特別是年輕的澳大利亞人，感到與英國的憲政聯繫不再具有重大意義，唯一前進之路就是宣佈澳大利亞爲共和國。然而，1999 年舉行全民公投的結果卻是保持現狀—英國女王在澳大利亞仍居於最崇高的領導地位，澳大利亞總督由其任命。

一自由民主的國家，其行政事務由內閣執行，並向議會負責，內閣由總理主持，總理則由總督任命，現任總督爲 Michael Jeffery（2008 年 4 月 13 日宣布自 2008 年 9 月 5 日起由 Quentin Bryce 接任），現任總理則爲工黨領袖 Kevin Rudd。

澳洲實行聯邦、州和地方三級政府體制，在聯邦體制下，國家政權和義務由聯邦政府（national government）、州/領地政府（state/territory government）和地方政府（local government）三級分擔，聯邦政府主管國防、外交、貿易、移民、社會福利和稅務等事務；州/領地政府主要負責教育、健康、交通運輸和司法等事務（依據聯邦憲法，凡不屬於聯邦政府管轄的許可權均由州/領地政府負責）；地方政府主要負責社區設施（如圖書館、公園）、道路維護、社區計畫、社區服務（如垃圾清理），以及配合州/領地政府從事少部分的警政、消防、學校等業務。

在立法方面，依據澳洲憲法，聯邦議會由英國女王、眾議院（House of Representatives）、參議院（Senate）組成，此兩院制的議會即爲澳洲的立法機關。另外，澳洲憲法也賦予六個州組織議會的權力，因此，澳洲一共有 7 個議會（1 個聯邦議會、6 個州議會），每個議會各自獨立運作，互不牽制。議會制定法律並監督行政及司法機關，澳洲議會是兩院制，

由英國女王、參議院（76 位參議員）眾議院（150 位眾議員）組成。參議院又被稱爲「州的議院」，它是由每州各選出 12 名（6*12）、澳洲首都領地（ACT）和北領地各選出 2 名（2*2）參議員組成，由眾議院制定通過的法律和議案必須經參議院批准才有效。眾議院是澳洲議會中重要的一院，眾議員的選舉每 3 年舉行一次，由獲多數席次的黨或多黨聯盟組成政府，也就是說，政府只有在眾議院中得到多數議員的支持才能執政，在眾議院中占第二多數席次的政黨成爲反對黨。

在行政方面，根據澳洲憲法，聯邦的行政權屬於英國女王，總督則是女王的代表，行使執行的權力，由女王任命，且必須尊崇女王。實際上，總督爲澳洲政府的元首，執行所有權力，與女王無涉。行政業務由內閣推動，總督（the Governor-General）、總理（the Prime Minister）及多位大臣（Ministers）組成聯邦行政委員會（The Federal Executive Council），賦予內閣決策以法定的權力，內閣成員除副總理（現爲 Julia Gillard）外，尚有各部大臣，內閣部門計有 19 個，包括：農漁林業部（Department of Agriculture, Fisheries and Forestry, DAFF）、法務部（Attorney-General’ s Department , AG’ s）、寬頻通訊與數位經濟部（Department of Broadband, Communications and the Digital Economy, DBCDE）、氣候變化

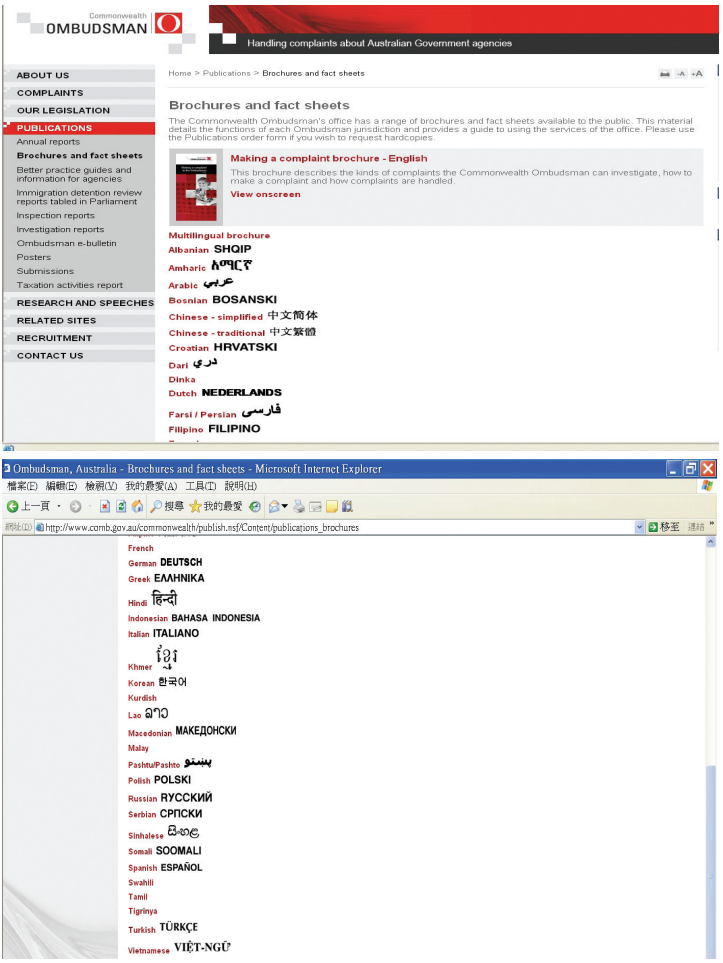
部（Department of Climate Change）、國防部（The Department of Defence）、教育就業與職場關係部（Department of Education, Employment and Workplace Relations, DEEWR）、環境、水、文化遺產與藝術部（Department of the Environment, Water, Heritage and the Arts）、家庭住宅社區服務部與本土事務部（Department of Families, Housing, Community Services and Indigenous Affairs, FaHCSIA）、金融管理部（Department of Finance and Deregulation）、外交經貿部（Department of Foreign Affairs and Trade, DFAT）、健康與老化部（Department of Health and Ageing）、人群服務部（Department of Human Services，DHS）、移民與公民事務部（Department of Immigration and Citizenship, DIAC）、基礎建設、運輸、區域發展與地方政府部（Department of Infrastructure, Transport, Regional Development and Local Government）、創新、工業、科學與研究部（Department of Innovation, Industry, Science and Research, DIISR）、總理與內閣部（Department of the Prime Minister and Cabinet, DPMC）、資源、能源與旅遊部（Department of Resources, Energy and Tourism, RET）、財政部（Department of the Treasury）、退伍軍人部（Department of Veterans' Affairs, DVA）。

最後，在司法方面，澳洲的司法部門分爲兩大系統：聯邦法院及州/領地法院系統，每一系統各自獨立，互不隸屬，且皆有高等法院（Superior Courts）及次級法院（Inferior Courts）。高等法院是澳洲聯邦與各州/領地最高的司法機關，受理轄內所有法律糾紛事件，且只受聯邦、州議會監督，在聯邦稱澳洲最高法院（the High Court of Australia）[10]，在州/領地稱最高法院（the Supreme Courts）。次級法院與高等法院相反，只能決定一些議會同意的事項，在此範圍內，其決定能上訴到高等法院。以聯邦法院系統爲例，這些依據聯邦法律（Commonwealth law）而設立的法院組織包括澳洲最高法院（High Court of Australia）、澳洲聯邦法院（Federal Court of Australia）[11]、澳洲家事法院（Family Court of Australia）、聯邦治安法庭（Federal Magistrates' Court of Australia）及行政上訴審理委員會（Administrative Appeals Tribunal）等等。聯邦治安法庭爲次級法院，行政上訴審理委員會在檢視行政程序，事實上，稱不上是法院，只有運作的方式類似法院而已，除此之外，澳洲最高法院、澳洲聯邦法院及澳洲家事法院均

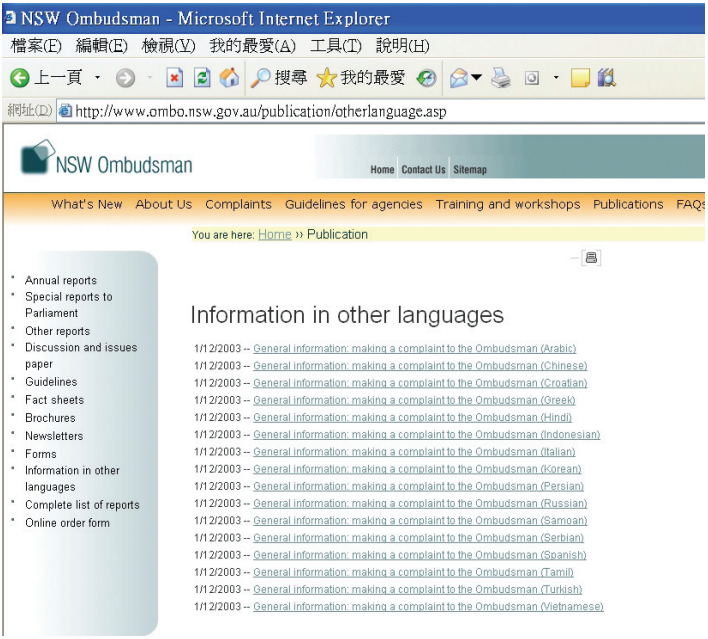
10澳大利亞最高法院爲澳大利亞上訴終審法院。
11受理案件以貪污、貿易實務、產業關係、破產、消費、移民及其他聯邦法律（federal law）規定之範圍。

屬聯邦系統中的高等法院層級。

附錄三：澳洲聯邦監察使辦公室 34 種不同申訴語文版本網頁



附錄四：新南威爾斯州監察使辦公室 16 種不同申訴語文版本網頁



附錄五：考察行程留影

與新南威爾斯州監察使辦公室執行助理監察使 Ms. Monique Adofaci 合影

與新南威爾斯州監察使辦公室 Mr. Kelvin Simon 合影

與澳洲聯邦監察使 Professor John McMillan,
聯絡人 Ms. Elizabeth 合影

與澳洲聯邦監察使 Professor John McMillan 交換意見

與新南威爾斯州議會「法規及司法常任委員會」
副主席 David Clarke 上議員合影

新南威爾斯州議會（The New South Wales Parliament）前之街景

澳洲聯邦國會之議事廳

拜會駐雪梨台北經濟文化辦事處與林處長錦蓮合影

附錄六：

Commonwealth Ombudsman

（聯邦調查政府官員舞弊的官員）

投訴澳大利亞政府部門

調查政府官員舞弊的官員的任務

調查政府官員舞弊的官員是獨立官員。當人們對政府部門的決定或行動提出投訴，調查政府官員舞弊的官員就會進行調查。調查政府官員舞弊的官員還可以就如何改進政府的行政管理提交報告。

調查政府官員舞弊的官員有權調查一系列的投訴，例如，社會福利項目及付款、單親父母撫養孩子、移民、稅收、澳大利亞聯邦警察以及郵局。

提出投訴之前

在向調查政府官員舞弊的官員投訴之前，你應當首先爭取同相關的部門一道解決你所投訴的問題。

許多部門都具備有效的投訴機製。如果你沒有首先試圖同相關的部門解決你所投訴的問題，調查政府官員舞弊的官員可能會決定不對你的投訴進行調查。

調查政府官員舞弊的官員的權力

調查政府官員舞弊的官員的權力範圍很廣。

在調查過程中，調查政府官員舞弊的官員有權要求政府官員出示文件、回答問題。

如果調查政府官員舞弊的官員認爲政府部門採取的行動有缺陷，他們可以建議這個部門修改這一行動。調查政府官員舞弊的官員可以建議政府部門做出解釋或提出道歉、改變決定、免除債務、或支付賠償金。

在有些情況下，調查政府官員舞弊的官員可以提交書面報告或者建議，要求部長、總理進行調查。調查政府官員舞弊的官員也可以簽發公共報告。

如何提出投訴

凡認爲澳大利亞政府部門的行動或決定侵犯了他們的權力的人士，都可以向調查政府官員舞弊的官員提出投訴。投訴人可以是個人、企業、俱樂部、團隊、社區組織和慈善機構。投訴人可以是澳大利亞公民，也可以是非澳大利亞公民。朋友、親屬、社區工作者或者任何其他人都可以經過授權而代表投訴人提出投訴。

你可以親自去聯邦調查政府官員舞弊的官員的地方辦公室，或者打電話、寫信或發傳真給他們。你也可以填寫我們網站的在線投訴表，通過因特網提出投訴。

- 致電調查政府官員舞弊的官員全國投訴熱線1300 362 072 (此號碼按本地收費)。
- 寫信給Commonwealth Ombudsman, GPO Box 442, Canberra ACT 2601，或發傳真給 02 6249 7829。
- 登陸www.ombudsman.gov.au網站，填寫在線投訴表；或者

保密與費用

所有調查均予保密而且免費。

以上信息僅是一個指導。欲知更多詳情，請同聯邦調查政府官員舞弊的官員聯係。

同我們聯係

致電離你最近的調查政府官員舞弊的官員辦公室，電話按本地收費

National Complaints Line – 1300 362 072
(提示：使用手機將按手機收費)

Email ombudsman@ombudsman.gov.au
Web www.ombudsman.gov.au

聯邦調查政府官員舞弊的官員辦公室

ADELAIDE
電話 1300 362 072
傳真 08 8226 8618
Level 5, 50 Grenfell Street
Adelaide SA 5000

BRISBANE
電話 1300 362 072
傳真 07 3229 4010
Level 25, 288 Edward Street
Brisbane QLD 4000

CANBERRA & NATIONAL OFFICE
電話 1300 362 072
傳真 02 6249 7829
GPO Box 442
Canberra ACT 2601

Ground Floor, 1 Farrell Place
Canberra City ACT 2600

DARWIN
電話 1300 362 072
傳真 08 8941 5400
GPO BOX 1344, Darwin NT 0801

Level 12, NT House
Cnr Bennett & Mitchell Streets
Darwin NT 0801

HOBART
電話 1300 362 072
傳真 03 6233 8966
GPO Box 960
Hobart Tas 7001

Ground Floor
99 Bathurst Street
Hobart TAS 7000

MELBOURNE
電話 1300 362 072
傳真 03 9654 7949
Level 10 Casselden Place
2 Lonsdale Street
Melbourne VIC 3000

PERTH
電話 1300 362 072
傳真 08 9221 4381
PO Box Z5386
St Georges Terrace
Perth WA 6831
Level 12, St Martin's Tower
44 St Georges Terrace
Perth WA 6000

SYDNEY
電話 1300 362 072
傳真 02 9211 4402
PO Box K825
Haymarket NSW 1240

Level 7, North Wing
Sydney Central
477 Pitt Street
Sydney NSW 2000

協助你投訴的服務

如果你的英語不是很好，請撥打**131450**，我們可通**Translating and Interpreting Service(TIS)**幫助你。

如果你有聽覺、視覺或語言障礙，請撥打全**National Relay Service 133 677**， 可得到**TTY**(電傳打字機的簡稱)服務。

綜合資訊

NSW Ombudsman

向申訴專員投訴

Chinese

如果您認爲自己受到了新南威爾士省政府機構及其雇員、非政府服務提供機構及其雇員的不公正對待，您可以向我們投訴。我們接受有關以下諸方面的投訴：

- 新南威爾士省警察機構及警員
- 地方議會、市議員及議會工作人員
- 懲教中心
- 青少年管教中心
- 政府與非政府性質的社區服務提供機構、有關兒童和家庭服務方面的事項、殘疾人住宿安排及援助、家庭與社區照管、避難所以及其他服務等
- 資訊自由，及
- 隱私保護。

另外，對於就兒童保護方面針對政府及某些非政府機構(如學校)雇員的指控，我們還負責對其調查過程的檢查監督工作。

我們調查的行爲包括：非法行爲、不合理、不公正或壓制性行爲、不適當的歧視行爲、建立在不良動機或不相關基礎上的行爲，建立在法律漏洞或事實錯誤基礎上的行爲、以及其他錯誤行爲。

如何投訴？

請首先與所涉機構聯絡。許多機構設有客戶服務中心，專門處理公眾投訴。

無論何時需要諮詢，請與我們聯絡。如果我們無法爲您提供幫助，我們會將您轉介給能夠提供幫助的人士。

通常情況下，應以書面形式向我們投訴。當然，在某些情況下，我們也接受口頭投訴，比如，有關社區服務方面的投訴就可以是口頭投訴。

如果您寫信有困難——由於語言障礙或因傷殘之故——我們可以幫助您……另外，我們還可以爲您安排翻譯、傳譯和其他服務。

投訴信應包括甚麼內容?

首先，應簡要說明投訴的問題。您所提供的資料應盡可能詳實、充分，以便我們對投訴情況進行評估並做出最適當的回應。

撰寫投訴信時，應當說明：

- 發生了什麼事？發生在何處？
  發生在何時（時間和日期）？
  涉及哪些人？
- 有沒有目擊證人？（請詳細說明）
- 有沒有醫學證明？是否有相關照片或書面證據？
- 是否涉及警員，您能指認出有關人員嗎？
- 是否向其他機構提出過投訴？或採取過任何其他行動（請詳細說明）？
- 提出投訴後，您希望我們採取何種行動或希望看到怎樣的投訴處理結果？

並非上述諸項內容都必須填寫。總體而言，投訴書中應包括全部相關資料，以便我們能夠清楚地瞭解事情的原委。

我們會怎樣處理您的投訴?

在權力和財力允許的前提下，我們將受理您的投訴。我們會優先處理嚴重事件，特別是那些可能會影響到他人的事件。如果不能受理您的投訴，我們會告訴您原因。

絕大多數投訴案無需進行正式調查便可得以解決。通常情況下，我們會給所涉機構或個人打電話或寫信，要求其對投訴的情況作出解釋。通過這種方式，許多問題都可以得到圓滿解決。

如果對所涉機構的答覆不滿意，我們可能會對事件進行調查。屆時，我們的調查員會與您聯絡。

調查是如何進行的？

第一步我們會要求所涉機構或個人談談對您的投訴的看法，並書面解釋其行爲。我們會告訴您他們是怎麼說的，並告訴您我們對其解釋的看法。有些事情可能會在此階段得到解決，我們的調查也就終止了。如果我們繼續調查，那麼可能需要幾個月才能完成最終調查報告。需要繼續調查時，我們會告訴您並通知您可能會出現的情況。

如果調查結果證實您的投訴理由充分，我們會向有關機構及有關的部長報告我們調查的結果。同時，我們也會將調查結果和結論告訴您。

在最終調查報告中，申訴專員可能建議：

- 所涉機構重新考慮或改變其行動或決定
- 對有關法令、規則或程式進行修改
- 所涉機構採取適當行動解決問題，例如，對您進行經濟補償，情況嚴重時，對有關人員進行紀律處分或提出刑事訴訟

申訴專員不能強迫所涉機構採納其建議，但通常所涉機構會接受其建議，如果不接受，申訴專員可以向州議會提交特別報告。

新南威爾士省申訴專員是獨立的和不偏不倚的。我們會公正地處理各種投訴，並向公眾提供免費服務。

誰可以向申訴專員投訴？

任何人都可以向申訴專員投訴。如果您不想親自投訴，可以委託他人——親戚、朋友、倡導組織人士、律師、社工。國會議員也可以代表您向我們投訴。

申訴專員會怎樣做

我們將高度重視您的投訴。如果您投訴的事件屬於我們能夠而且應該調查的範圍，我們將儘快調查。

如果您的投訴沒有得到調查，我們會將原因告訴您。雖然我們的權力和財力有限，但在這些限度之內，我們會竭誠爲您提供幫助。

聯絡詳情

Level 24 580 George Street
Sydney NSW 2000

諮詢時間：星期一至星期五早晨9點至下午4點，或預約其他時間

諮詢電話：02 9286 1000
免費電話（雪梨以外地區）：1800 451 524

電話打字（TTY）：02 9264 8050

電話傳譯服務（TIS）：131 450
（我們可以安排傳譯服務，在與我們聯絡之前，您亦可直接與TIS聯絡）

傳真號碼：02 9283 2911

電子郵件：nswombo@ombo.nsw.gov.au

網址：www.ombo.nsw.gov.au

您提出投诉之后会怎样？

1. → 我们通常会在七天之内对您的投诉进行评估，并决定是否对其进行调查。有时候我们会需要与您或相关机构谈话，以便妥善评估您的投诉。

2. → 若我们认为相关机构存在过错或未能公正地对待您，我们会建议其改正错误或采取其它措施。

3. → 若我们不对您的投诉进行调查，我们会向您说明原因。

4. → 绝大多数问题都会很快得到解决。但较复杂的问题可能需要一定的时间，因为我们可能需要审查文件或采访相关人员。但我们会及时将任何最新进展情况通知您。

监查专员会处理所有投诉吗？

不会。有些问题不属于我们的调查权限范围，如下列人士或部门的行为：

- 部长及内阁、法院及法官、政府法律顾问或总审计长；
- 私营个体或企业（如保险或电话公司）；
- 警方的军事行动；
- 联邦或州际政府部门。

另外，我们通常也不会调查下列投诉：

- 您在投诉之前知晓相关问题的时间超过12个月；
- 您未使用您所有的另一项要求复审的权利；
- 您未试图与相关机构解决问题。

您的投诉能起所用吗？

能。与您有同样经历的不止您一人，若您不提出投诉，什么都不会改善。我们可以促进就与您的投诉相关的制度、政策和程序做出改进。几乎所有机构都会接受我们的推荐意见。

您的隐私权

在接收、回应投诉及查询过程中，我们从投诉人及其他人处获得的资料将仅用于我们进行调查和履行《*2001年监查专员法 (Ombudsman Act 2001)*》所规定的义务之目的。除非法律另有规定，否则，资料不会披露给任何其他人。

其他语言

如果英语不是您的第一语言，也无需担心。在我们的网站上，关于本机构的相关信息有以下语言版本：

中文	Thuonjăn
Tiếng Việt	አማርኛ
Español	فارسی
Gagana Samoa	فارسی
Hrvatski	Türkçe
العربية	Soomaaliga

访问 **www.ombudsman.qld.gov.au/languages**.

我们的联络方式

Level 25, 288 Edward Street
Brisbane QLD 4000
GPO Box 3314 Brisbane QLD 4001

电话：**07 3005 7000**
免费电话：**1800 068 908**（布里斯班市以外）
电传打字机(TTY)：**07 3006 8174**
传真：**07 3005 7067**
电子信箱：**ombudsman@ombudsman.qld.gov.au**

网址：**www.ombudsman.qld.gov.au**

您的反馈对我们很重要。就本宣传册发表评论，请发送电子邮件或致电 **07 3005 7000**

QUEENSLAND
ombudsman

您需要提出投诉吗？

昆士兰州监察专员能为您提供帮助。

我们如何帮助您？

自1974以来，昆士兰州监查专员(Queensland Ombudsman)一直在调查昆士兰州公共机构及其所属人员可能存在的不合法、不合理、不公正或其它不适当的行为和决定。

若您感到自己受到了来自某个公共机构或其所属人员的不公正对待，我们能为您提供帮助。

我们可以迅速弄清问题的真相。作为独立机构，我们保持行事不偏不倚，对此您完全可以放心。我们的服务都是免费的。

谁可以投诉？

您可以自己独自投诉，也可以与他人一起共同投诉，还可以让他人代表您投诉。

若您身在管教或青少年拘留中心，您可以利用中心的邮件系统放心地将自己的投诉转给我们。

我们可以调查哪些类型的问题？

我们调查的问题包括：

针对昆士兰州政府部门：

- 执照与机动车辆注册登记；
- 儿童保护；
- 不公正的招标过程；
- 不合理收费；
- 投诉处理；
- 州提供的福利问题；
- 环境保护问题；
- 公有土地及水资源分配；
- 学校问题；
- 公有住房资格；
- 监狱问题；
- 土地收回问题。

针对当地市议会：

- 税收及其它收费；
- 土地使用、建筑或许可决定；
- 垃圾、道路维护、排水等服务、供水与排污；
- 当地政府的法律实施情况；
- 环境管理。

针对其它公共机构：

- 工伤补偿索赔；
- 法律援助申请；
- 大学及技术与继续教育学院（TAFE）的学生问题；
- 公共受托人问题；
- 养老金支付问题；
- 专业投诉机构的投诉处理。

您应该首先做什么？

前往相关机构，真诚地试着解决问题。绝大多数机构都有自己的投诉处理系统。将谈话内容记录下来，并妥善保存您写给或从相关机构收到的信件或电子邮件的副本。

确保将您的要求告诉他们——希望他们向您道歉？做出不同的决定还是改变办事方式？

如果您仍然感到不满意，应该怎样投诉？

投诉过程很简单。可以通过下列方式与我们联络：

- 电话；
- 当面；
- 书面（传真、电子邮件或普通邮件）；
- 利用我们的在线投诉表通过网站投诉。

若因语言不同或残疾等原因书写有困难，我们可以安排人协助您。

您的投诉中应该包括：

- 您的姓名、住址、电子信箱及电话号码
- 简要说明您的投诉内容——所涉人员、事由、发生时间和地点，以及您感到不公正或有问题的原因
- 您为试图解决您所投诉的问题所采取的措施以及结果
- 相关信件或其它文件的副本
- 您希望得到的结果。

若您感到自己受到了来自公共机构或其所属人员的不公正对待，我们能为您提供帮助。

Ombudsman Victoria

您要投訴嗎？

如果您不滿意維州政府部門、法定管理部門或地方市政府對待您的方式，可以向維多利亞州調查專署（Ombudsman Victoria）提出投訴。

調查專署是什麼機構?

調查專署負責調查對政府部門、管理部門和地方市政府工作人員提出的投訴。

調查專署提供自由、獨立、公正的服務。

所有調查都是保密的。

我能向調查專署提出什麼投訴？

調查專署收到的投訴通常涉及到政府管理部門工作人員的決定、行動或行爲。 這可能包括，比如：

- “懲教服務部門”（Correctional Services）中有關宗教風俗安排的問題
- “懲教服務部門”中出現的財產損失
- 有關部門未能處理監獄犯人的要求
- 工作人員對監獄犯人的身體和口頭騷擾
- 教師、講師和主管的不公平對待
- 不公平的評估方法和程序
- 註冊方式
- 未能對以前的學習課程計算學分
- 助殘服務問題
- 公共住房的資格或維修的問題
- 車輛登記問題
- 違章停車罰款和市政府設施。

您的投訴中應包含什麼內容－給我們寫信或打電話時的一些注意事項

抓住主要事實

- 發生了什麼事？
- 與誰有關?

用自己的話表達

- 哪一天、什麼時間？
- 是否有見證人?
- 是否有照片？
- 是否有文件？
- 是否受傷？

可用任何語言書寫

我們可以翻譯您的信件。如果您有殘疾或語言問題，可以給我們打電話。

我們將竭力爲您提供幫助。

聯絡辦法

您可以通過口筆譯服務處(TIS)（電話 131 450）來致電維多利亞州調查專署。

您可以給我們打電話提出投訴、詢問任何問題或者獲得調查專署對您投訴的建議。

The Ombudsman Victoria
Level 3, 459 Collins Street
Melbourne VIC 3000
電話： 9613 6222
免費電話： 1800 806 314
聾人電話（TTY）： 9613 6229
傳真： 9614 0246
電子郵件:ombudvic@ombudsman.vic.gov.au
網址： www.ombudsman.vic.gov.au

記住您的權利

- 您有權獲得良好的服務
- 您有權提出投訴。

附錄七：

thirty years ... thirty changes

The Commonwealth Ombudsman has been receiving complaints about the administrative actions and decisions of Australian Government agencies for thirty years. It has been a period of significant change—in government, in the complaints received by the office, and in how those complaints are handled and resolved. This chapter notes thirty changes over the period that illustrate the changing relationship between people and government, and the Ombudsman's role in that relationship.

A new system of administrative law

The office of Commonwealth Ombudsman was created as part of a comprehensive reform of Australian administrative law in the 1970s. Previously there were limited means for ordinary Australians to obtain independent review of government administrative actions and decisions. A new approach to administrative law was proposed in four reports—the report of the Commonwealth Administrative Review Committee (the Kerr Committee, named after its chair Sir John Kerr), two reports of the Committee on Administrative Discretions (the Bland Committee, named after its chair Sir Henry Bland), and the report of the Committee of Review of Prerogative Writ Procedures (the Ellicott Committee, named after its chair Mr R J Ellicott).

The administrative law reform package comprised three main planks:

- the *Administrative Decisions (Judicial Review) Act 1977*, reforming and codifying the system for judicial review of administrative action by the Federal Court of Australia, including a requirement for reasons to be given on request
- the *Administrative Appeals Tribunal Act 1975*, establishing both a new tribunal to undertake merit review of selected administrative decisions, and an Administrative Review Council (ARC) to advise the Government on administrative law reform
- the *Ombudsman Act 1976*, establishing the office of Commonwealth Ombudsman to investigate complaints from the public about Australian Government agencies and to undertake own motion investigations.

Two other key elements of the administrative law system—the *Freedom of Information Act 1982* (FOI Act) and the *Privacy Act 1988*—were enacted later. Other subsequent changes include the creation of specialist administrative tribunals, and the development of internal review and complaint systems.

This new system of Australian administrative law has largely stood the test of time. Parts of it have been copied or studied closely in other Australian jurisdictions and internationally.

Growth in Commonwealth Ombudsman work

When the office opened on 1 July 1977, it comprised the Ombudsman and five staff. One hundred and seventy complaints had already been lodged. Within two years the numbers had grown to 42 staff and over 7,500 complaints and enquiries annually. Regional offices or agency arrangements were established in all state and territory capital cities. Information about how to make a complaint was published in 21 community languages.

This national office structure has remained in place, and been a source of strength. The office has expanded to nearly 150 staff, dealing with around 33,000 complaints and enquiries annually. The Ombudsman has acquired additional functions in areas as diverse as law enforcement, immigration and freedom of information.

Evolution of the Ombudsman institution in Australia

Western Australia was the first jurisdiction in Australia to establish an office of Ombudsman in 1971—called the Parliamentary Commissioner for Administrative Investigations. The Commonwealth Ombudsman was the sixth Ombudsman to be established. There is now an Ombudsman office in each state, the Northern Territory and the Australian Capital Territory (an office currently held by the Commonwealth Ombudsman). Across Australia, the public sector Ombudsmen receive in excess of 50,000 complaints about government each year (plus many other approaches and enquiries).

The institution of ombudsman has also grown in strength in the private sector. Industry Ombudsman offices now handle complaints about telecommunications, banking and financial services, energy and water, private health insurance, public transport and postal services. This oversight role is underpinned in some instances by legislation that obliges commercial bodies to accede to the jurisdiction of the industry Ombudsman.

Together, Australian Ombudsman offices—public sector and industry—handle upward of 170,000 complaints from the public each year, in addition to many other approaches and enquiries. They provide an accessible complaint service to all members of the public.

Changes in Ombudsman responsibilities occurred over time. For example, prior to the creation of the Telecommunications Industry Ombudsman (TIO) in 1993, complaints about Telecom (then a government instrumentality) accounted for around one-fifth of all complaints to the Commonwealth Ombudsman—about 3,000 in 1992–93. The TIO was also given jurisdiction over Telecom (later Telstra), and now has jurisdiction over 1,200 other telecommunications and internet service providers, handling over 85,000 complaints each year.

Specialist Ombudsman roles

Over time the Commonwealth Ombudsman has gained additional specialist Ombudsman roles. The first, created by amending legislation in 1983, was Defence Force Ombudsman—a role that includes jurisdiction over employment-related matters in the Australian Defence Force. Other specialist roles since conferred on the Commonwealth Ombudsman are Taxation Ombudsman (1995), Immigration Ombudsman (2005), Postal Industry Ombudsman (2006) and Law Enforcement Ombudsman (2006). A current proposal before Parliament is to confer a new role of Access Card Ombudsman.

The Commonwealth Ombudsman is well placed to discharge those specialist Ombudsman roles. The national structure and size of the office means that a specialist function can be discharged across Australia with limited extra staff. The office can also adapt easily to a new specialist function. We employ staff with a diversity of skills, maintain a strong training program, operate a sophisticated complaint management system, can move staff quickly to functional areas of temporary need, and can draw on our long and broad experience to develop new functions. A recent example was the way we quickly took on the new statutory responsibility of reviewing the circumstances of people held in immigration detention for two years or more.

In essence, the Ombudsman office has repositioned itself as a generalist agency hosting a cluster of specialities. While dealing with the general problems that people experience in all areas of government, the office discharges a role that requires specialist understanding and expertise in selected areas of government that fall under the spotlight of public accountability.

Jurisdiction over government service providers

The corporatisation, privatisation and contracting out of government functions and service delivery has transformed the landscape of government. A complex array of government, private and not-for-profit organisations can jointly be parties to a government transaction with an individual.

This change impacted on the jurisdiction of the Ombudsman, which was defined in the Ombudsman Act as extending to action taken, or deemed to have been taken, by government

departments and agencies. Both the ARC in 1998 and the Joint Committee of Public Accounts and Audit in 2000 recommended legislative change to extend the Ombudsman's jurisdiction to apply to government functions across the public/private divide. Following an amendment to the Ombudsman Act in 2005, the office now has jurisdiction over Commonwealth service providers—that is, non-government bodies that are contracted to provide goods and services to the public on behalf of the Australian Government.

Inspection of law enforcement and agency records

A major new function the office acquired in 1988 was to inspect the records of law enforcement agencies relating to telecommunications interception, and to report to the Attorney-General. This function has since been extended to cover inspection of records relating to stored communications, controlled operations and the use of surveillance devices. The number of enforcement agencies that have access to those intrusive powers has increased.

The Ombudsman inspection role means activities that by nature are secret and unknown to most people are subject to regular independent oversight. Parliament and the community can be reassured that law enforcement agencies exercise those powers lawfully and with propriety.

The Ombudsman role of inspecting agency records has been extended to other areas. On an own motion basis, the office has examined agency records to evaluate such matters as freedom of information administration and child support change of assessment.

Administrative audits of this kind can assess agency compliance with core administrative law values of legality, rationality, fairness and transparency. A new task of the office, in the role of Law Enforcement Ombudsman, is to undertake an annual audit of Australian Federal Police (AFP) complaint handling. In the role of Immigration Ombudsman, the office is implementing a program of regular inspection and monitoring of immigration detention arrangements and compliance activity. Another current proposal made by a Parliamentary committee is for the Ombudsman to undertake periodic compliance audits of quarantine investigations.

Playing a role in an age of terrorism

Parliament's response to terrorism included special mention of the Ombudsman's independent oversight role. The Ombudsman is to be notified if a person is taken into custody under a preventative detention order, in response to a perceived or imminent terrorist threat. The Ombudsman is to be given a copy of the initial preventative detention order, and the person detained must be advised of their right to complain to the Ombudsman. Similarly, a person detained by police for questioning by the Australian Security Intelligence Organisation (ASIO) is to be informed of their right to complain to the Ombudsman about the actions of the AFP.

The oversight role of ASIO is undertaken by a different statutory office, the Inspector-General of Intelligence and Security (IGIS). The IGIS or his staff sit in on the first day of every questioning detention session by ASIO; and the IGIS has a compliance audit role in relation to ASIO records that is similar to the Ombudsman's role in relation to law enforcement records. The Ombudsman and the IGIS have signed a memorandum of understanding and established administrative protocols to facilitate cooperation and integration in discharging their oversight of policing and national security agencies.

Adapting to new functions in government

The office has had to adapt to substantial changes in the functions and structure of government. For example, the change in family patterns and expectations has given rise to a Child Support Agency (CSA) that administers complex laws controlling the financial obligations of parents. Social security benefits impose complex tests and obligations on recipients, and are delivered through a variety of mechanisms in the public and private sector.

Government regulation is now more intensive in many areas that generate complaints, such as companies and securities regulation,

counter-terrorism, environmental protection and, most recently, health and social support in Indigenous communities.

Another change is that government now relies more on executive rather than statutory power to underpin programs as diverse as the management of immigration detention centres, payment of lost redundancy entitlements, work referral for job seekers, and provision of disaster relief. The Ombudsman is the main administrative law agency with a general jurisdiction covering the administration of executive programs.

The changing programs and priorities in government can also throw up new issues for the office. For example, there was a sharp increase in complaints in the late 1990s following Australian Taxation Office (ATO) action in relation to mass-marketed investment schemes, and later the introduction of the Goods and Services Tax. We managed these changes by centralising the handling of taxation scheme complaints in a specialist Tax Team. The challenges facing the office at that time were to become familiar with new taxation legislation, conduct some large-scale investigations, and inform the public of their right to complain if problems arose.

Responding to complexity in government

Government rules, structures and programs have also grown in complexity over the last thirty years. For example, the ATO has approximately 22,000 employees administering nearly 10,000 pages of taxation legislation embodying the complexity that has developed in working arrangements, business structures, financial arrangements, government incentives, and support programs. Centrelink has over 26,000 employees, has more than 6.5 million customers and records more than five billion electronic customer transactions each year, paying benefits, collecting debts from people who were overpaid, evaluating people's family arrangements, assessing people's job skills, and storing personal information.

The majority of the complaints dealt with by the Ombudsman are now about the ATO, Australia Post, Centrelink, the CSA and the Department of Immigration and Citizenship (DIAC). Many arise from complex laws administered by those agencies that are not well understood by government clients, nor at times by the administrators. The complexity is compounded if multiple agencies, government and non-government, play a role in administering a program.

The prime focus of the office in dealing with an individual complaint is always to find a practical solution to the complainant's problem or grievance. We also have an eye to improvements that can be made to administrative systems that are large, complex and technical.

The right to complain

Thirty years of Ombudsman complaint handling (longer at state level) has been accompanied by the emergence of a 'right to complain'. The notion has become embedded in Australian law and practice that people have a right to complain about government and business, to an independent agency, without hindrance or reprisal, and to have their complaint resolved on its merits according to the applicable rules and the evidence. Ombudsman brochures now speak to people of their 'right to complain'.

Public awareness of this right to complain has strengthened. Surveys commissioned by the Commonwealth Ombudsman in 2006 and 2007 indicate that around three quarters of those surveyed were aware of the role of Ombudsman offices. This compares with only half of those surveyed in a similar survey in the early 1990s. In the latest survey 'the Ombudsman' was the most frequently nominated agency to turn to with a complaint about government.

Making the office accessible to the public

A key step in making the office accessible to the public was to accept oral complaints. An amendment to the Ombudsman Act in 1983 confirmed this established practice. This enabled complaints to be dealt with in an informal and timely manner, without the need in most cases to invoke the formal investigation processes specified in the Act.

A substantial majority of the complaints to the office are received orally—about 80% in 2007.

Technology changes have seen a steady rise in the number of complaints made electronically. In 2006–07 11% of approaches and complaints were received by email or the online complaint form on the Ombudsman website. Plans are afoot to keep abreast of newer developments in communications, by trialling the lodgement of complaints by SMS.

Helping people deal with problems in government and business

The Public Contact Team established in the office in 2006 has been able to respond to a different challenge that people face in resolving problems. The increased complexity both in government and in the arrangements for delivering services to the public means that many people do not know where to turn when a problem arises.

The number of complaints and approaches to the Commonwealth Ombudsman increased to over 33,000 in the past year—a rise of 18%. Nearly half those approaches consisted of requests for information or matters that were outside jurisdiction—an increase of 51% from the previous year. Those calling the Public Contact Team sometimes knew that their complaint might not be a matter for the Commonwealth Ombudsman, yet approached the office to find out where they should go or what they needed to do to register their concerns about a government action.

Growth of internal complaint-handling systems

Complaint handling was not a well-developed function in government at the time the Ombudsman commenced operation. Few agencies had a publicised internal process for handling complaints from the public, and there were no service-wide benchmarks for measuring client satisfaction with government service delivery.

Most agencies now have a visible and accessible internal complaint-handling process. Examples in some of the larger agencies are the Customer Relations Units in Centrelink, ATO Complaints in the ATO, the Fairness and Resolution Branch in Defence, and Professional Standards in the AFP.

The Ombudsman has strongly supported the development of professional complaint handling in government. In the mid-1990s the office undertook a survey of complaint handling in Australian Government agencies that led to the publication in 1997 of a *Good Practice Guide to Effective Complaint Handling*. An updated guide will be published later in 2007.

Ombudsman focus on good complaint handling

The improvement in agency complaint handling has enabled the Ombudsman's office to change the way it conducts business. Unless there is a special reason to the contrary, complainants are advised to first use the agency complaint procedure before lodging a complaint with the Ombudsman's office. The office can decline to investigate a complaint under s 6 of the Ombudsman Act if a complainant has not taken this step. We decide not to investigate around 70% of complaints, in most cases referring a person to the agency complaint unit, compared to 20% or less in the early years of the office.

This change in practice has been beneficial. Agency complaint mechanisms now handle considerably more complaints each year than the Ombudsman's office, and can usually do so quickly and helpfully. This has enabled us to concentrate on more serious or complex complaints, and to conduct own motion investigations into possible problem areas in public administration.

This change in practice relies on agencies handling complaints effectively. The Ombudsman's office works closely with agencies—through seminars, and formal and informal consultation—to encourage professional complaint handling that complies with best-practice standards (such as the Australian Standard on Complaint Handling). This is supplemented by own motion reviews of complaint-handling systems—for example, in the ATO, the Job Network, Centrelink, the CSA, the Migration Agents Registration Authority, airports and the Australian Defence Force (jointly with Defence).

Growth of service charters

A related change is that agencies (as required by government) have developed charters that are a public statement of service delivery commitments to the community. The Ombudsman's office has actively encouraged and monitored this trend.

Charters are important when treated by agency managers and staff as a public commitment by the agency of the principles and service standards it will observe. In an accessible document, the community is told what to expect and where to complain when things go wrong. As part of a complaint investigation we frequently examine whether an agency has complied with the principles and commitments stated in its charter.

An effective service charter will also be complemented by a robust complaint handling and feedback mechanism that is integrated with program monitoring, evaluation and development in the agency.

An added reason why the Ombudsman's office has supported the development of charters is that they complement the administrative law standards that an agency must not breach if it is to act lawfully. Charters state positively what an agency will do to ensure good administrative behaviour.

Development of agency liaison arrangements

The growth in government activity and complaints to the Ombudsman made it important for the office to have convenient arrangements in place with agencies for handling complaints. An amendment to s 8 of the Ombudsman Act in 1983 authorised the Ombudsman to make an arrangement with the principal officer of an agency about the manner by which the Ombudsman would inform the agency that a complaint is to be investigated. Prior to that, the Ombudsman was required to notify both the principal officer and the Minister before each investigation commenced.

This amendment underpinned our ability to deal with complaints in a timely and efficient manner, at an appropriate level of formality.

Contact arrangements of different kinds are in place with many agencies. For some agencies, all complaints are managed initially through a central area, while for others there is a range of different contact points—for example, based on location or the nature of a complaint.

The office also deals with agencies at different levels, ranging from investigation officer level up to the Ombudsman. A matter may be escalated if there is a need to deal at a higher level with a sensitive issue, resolve a disagreement or consult about an intricate matter. Other liaison procedures with agencies include regular meetings, periodic reports on complaint issues, participation in agency training, and consultation during the formulation of agency administrative guidelines and policy documents.

Regular liaison with agencies can help us understand new policies and programs and other changes that could impact on complaint workloads. For our part, we can give agencies an early warning of possible problems, and provide advice on specialist aspects of complaint handling.

Reliance on formal investigation powers

The Ombudsman Act, as enacted in 1976, spelt out the formal investigation procedures and powers required by the office. Later changes to the Act have both modified and strengthened them.

A new s 7A, inserted in 1983, authorised the office to make a preliminary inquiry of an agency before deciding to investigate a complaint. This provided an alternative to the formal duty of the office to notify an agency that a complaint was being investigated and of the details of the investigation.

The office has extensive formal powers to conduct investigations, including powers to summons people to provide evidence and documents, to administer oaths to witnesses, and to enter premises. Use of those coercive powers is not normally necessary; agencies usually provide information or documents upon request, and only require a formal notice to make it certain that all the protections of the Ombudsman Act apply to the agency.

Over time there was a growing concern in some agencies that the voluntary provision of documents to the Ombudsman might breach laws to protect privacy, confidentiality and secrecy. An amendment to the Act in 2005 resolved this doubt by stating that the protections in the Act apply to information provided both voluntarily and in response to a formal demand by the Ombudsman.

In 2004 the Prime Minister gave consent to a project to improve and modernise the framework in the Ombudsman Act for administrative investigation. A report to the Prime Minister proposing a new Ombudsman Act was made in 2006 and is under consideration in government.

Reaching the public

Connecting with the public, especially with communities that are socially marginalised, has always been a challenge facing the office.

The Ombudsman has always had an active outreach program to reach both the community and 'gatekeepers'—community leaders and organisations that are a local source of information and advice. The scope of the outreach program has varied with the resources available over the years, but the challenge remains the same—to communicate with existing and emerging target audiences.

Since 2004 the main outreach focus has been on rural and regional communities; Aboriginal and Torres Strait Islander people, communities and organisations; and younger people. Similar target groups have been identified by other Ombudsman organisations.

In 2005–06 we participated in the 'Speak Up' initiative with other members of the Australian and New Zealand Ombudsman Association, aimed at young people. A postcard was distributed to cafes, tertiary institutions and similar outlets. The results were mixed, though encouraging, and demonstrated the challenge facing complaint agencies to convey their relevance to a younger audience. The answer may partly lie in the creative use of technology and specialist media to engage with younger audiences through their preferred means of communication.

A new Indigenous Unit was established in the office in 2007 to better understand and address issues facing Indigenous communities in dealing with government.

Difficult complainants

A joint project among Ombudsman offices, initiated in 2006 by the NSW Ombudsman office, is looking at difficult and unreasonable conduct by complainants. This has been recognised as a growing problem for Ombudsman and similar agencies.

Ombudsman offices must be accessible to all members of the community, and must listen to any complaint. The problems that people have with government are infinitely varied, and new problems arise as government itself evolves. It is to be expected that some complainants will be persistent, even emotional, in pursuing a personal grievance against government.

Yet this exposes Ombudsman offices to a pattern of engagement with some complainants that can be inefficient and debilitating. Some complainants, for example, can be obsessive, very demanding, overly persistent, rude or aggressive. Far more time can be spent on handling some individual complaints than is warranted, at the expense of dealing with other complaints and issues.

The joint Ombudsman project is developing and trialling management strategies for people who exhibit unreasonable conduct. A central objective has been to develop special training courses and manuals for investigation staff.

Concluding an investigation

For many years the office described the outcome of a complaint investigation as 'resolved substantially in complainant's favour', 'resolved partially in complainant's favour' or 'resolved in agency's favour'. This was altered in 1994 to 'substantial remedy for complainant', 'partial remedy for complainant' and 'unsubstantiated or no remedy required'. Another change later in the 1990s adopted the new terms 'arguable agency defect', 'no apparent agency defect' and 'agency defect not determined'.

There was a reporting change in 2006 to two new statistical categories. One category, described below in 'providing a practical remedy', lists the remedies provided to complainants by the Ombudsman's office. The other category, described more fully in Chapter 5—*Challenges in complaint handling*, lists sixteen categories of 'administrative deficiency' that can be recorded against an agency. The diversity of errors includes human error, legal error, factual error, unreasonable delay, unreasonable agency action, inadequate staff training, and resource deficiency.

These twin categories capture the dual focus of an Ombudsman investigation. One focus is on finding a practical remedy that will resolve a problem experienced by a person in their dealings with a government agency. The other focus is on noting deficiencies in agency conduct that may warrant further consideration, both by the agency and by the Ombudsman's office in own motion investigations into systemic problems in public administration.

Providing a practical remedy

As problems and complaints change, so too must the way that an Ombudsman's office assists people. Many complaints to the Ombudsman now reflect the difficulties experienced by people in dealing with government, arising from the complexity of legislation and government programs. A common complaint issue is that a person is perplexed by an adverse decision, does not understand what is required to obtain a government benefit, or has misunderstood the advice given to them by an agency. Frustration at perceived delay by government in making a decision is another frequent complaint.

It can be pointless or difficult in that setting to focus on whether the complaint is to be resolved in the complainant's or the agency's favour. The more pressing concern is to resolve a person's grievance and to provide a remedy, if appropriate. The Ombudsman remedies that are best attuned to problems of that nature are a clearer explanation of an agency decision, an apology, expediting an agency decision, recommending the payment of administrative compensation, or arranging a meeting between a complainant and an agency to resolve a dispute.

Many complainants to the Ombudsman have, of necessity, an ongoing relationship with an agency—for example, as a taxpayer, Centrelink customer, postal user, or member of the Australian Defence Force. This reinforces the need for a practical focus in complaint handling, to ensure that the continuing relationship between the complainant and the agency is functional and constructive.

Apologies as a remedy for government error

Complaints to the Ombudsman often stem from simple but unwarranted agency errors—such as delay, misleading advice, inexplicable reasons, lost paperwork and discourtesy. Often the most appropriate and accepted remedy for this default is an explanation or an apology.

Ombudsman offices have given added emphasis over time to the role that apologies can play in addressing grievances. An apology is a common measure of respect in society, and should be applied just as readily in interactions between the public and public administrators. Apologies can contribute to civilising the system of government and making it attuned to its accountability and responsibility to the public.

The office sometimes makes an explicit recommendation to an agency to apologise to a person who has been inconvenienced or wronged by agency action or inaction. The office also draws the attention of agencies to statements made in service charters that the agency will apologise for its mistakes.

Compensation for defective administration

The Commonwealth Ombudsman played a key role in the development of a non-statutory administrative scheme for paying compensation to members of the public. It is called the Compensation for Detriment caused by Defective Administration (CDDA) scheme and was adopted by government in 1995.

The CDDA scheme was a watershed development. For the first time it enabled agencies to compensate members of the public for detriment arising from poor agency administration, without the need to establish a legal liability to compensate. Circumstances in which compensation is paid include where a person has suffered loss caused by incorrect agency advice or an unreasonable administrative failure.

The CDDA scheme also provides that a recommendation or suggestion by the Ombudsman is a sufficient basis for compensation to be paid, even though a case does not quite fit within the scheme. This is an important tool that is used by the office to prompt agencies to find a satisfactory remedy to address a grievance.

Litigation against the Ombudsman

The office of Ombudsman is established by statute and is subject to the same legal controls and remedies as other government agencies. Both complainants and agencies can institute judicial review proceedings against the Ombudsman to seek a ruling on the legality of steps in an investigation.

Litigation against Ombudsmen has been more common in the states, particularly in the early years. For example, a few actions were commenced against the Victorian Ombudsman in the 1970s to challenge the jurisdiction of the Ombudsman to investigate complaints relating to prisons and legal proceedings.

An example of an action brought against the Commonwealth Ombudsman was in 1995. The former Aboriginal and Torres Strait Islander Commission challenged in the Federal Court a proposed Ombudsman report into the appointment of consultants. The Court held that the Ombudsman had acted beyond power in the way that some conclusions were expressed in the draft report, but otherwise did not question the authority of the Ombudsman to investigate and report on the complaint.

There have been a handful of actions in later years by complainants challenging decisions of the Ombudsman not to investigate complaints. The actions have all been dismissed by the Federal Court and the Federal Magistrates Court, which have drawn attention to the scope of the Ombudsman's discretion to decide what to investigate and how to conduct an investigation. There have also been occasional proceedings by complainants instituted in the Administrative Appeals Tribunal about decisions made under the FOI Act. Those actions have also been unsuccessful in substance.

Research projects

Another avenue taken by the office to improve public administration is to participate in research projects into prominent issues in government. An example given earlier is the joint Ombudsman project into difficult complainant behaviour.

Two other research projects are jointly being conducted with university researchers, supported by funding from the Australian Research Council. One is a national research project into the management of whistleblowers, *Whistling While They Work: Internal Witness Management in the Australian Public Sector*, described in Chapter 6—*Promoting good administration*. Other participants in this project include state Ombudsmen and anti-corruption agencies.

Another project in which the office is playing a lead role is looking at the dilemmas faced by governments in dealing with non-citizens who are not eligible to remain in a country, but there is doubt as to whether they can be removed successfully without significant risk to their human rights or health. This project may collaborate with similar research being undertaken in other countries.

The Commonwealth Ombudsman is also an ex officio member of the Administrative Review Council, which advises the government on administrative law reform. The office has actively contributed to much of the research and publications of the Council, on topics such as the scope of judicial review, the structure of administrative tribunals, providing reasons for decisions, freedom of information legislation, and principles of good decision making.

The Ombudsman's place in the structure of government

The office of Ombudsman sits in an unusual position in the constitutional structure of government. The Ombudsman is an independent statutory officer, with a function of reviewing the actions of other executive agencies. Yet the Ombudsman is often described as being part of the executive arm of government.

Some Commonwealth Ombudsmen have questioned whether the Ombudsman should be treated instead as an officer of the Parliament—a status given to Ombudsmen in many other countries. Another option discussed more recently is to treat the Ombudsman as part of a new grouping in government, that includes other independent accountability agencies such as auditors-general, administrative tribunals, inspectors-general, anti-corruption commissions, privacy commissioners and human rights commissioners. One way this proposal was put in a 2004 address by Chief Justice Spigelman of the NSW Supreme Court, was to propose 'an integrity branch of government as a fourth branch, equivalent to the legislative, executive and judicial branches'.

Proposals of that kind acknowledge the extensive framework of oversight agencies established largely in the last thirty years. Neither the structure of government nor the role of the Ombudsman is static.

Liaison with other oversight agencies

Many other oversight bodies with an accountability and integrity function have been established more recently than the office of the Ombudsman. Examples include the office of the Inspector-General of Intelligence and Security (established in 1986), the Human Rights and Equal Opportunity Commission (1986), the Office of Privacy Commissioner (1988), Inspector-General of Taxation (2003), Inspector-General of the Australian Defence Force (2005), and the Australian Commission for Law Enforcement Integrity (2006).

The functions of those agencies interact in different ways with that of the Ombudsman. Complaints can raise issues that come within the jurisdiction of more than one agency. A tradition has developed of close consultation and cooperation with other oversight agencies. This enhances the work of all agencies and avoids unnecessary duplication of effort. It also underpins the steady emergence of a sound framework of integrity organisations at the national level in Australia.

Connecting with Parliament

The Ombudsman Act provides a formal link to the Parliament in s 17, which enables the Ombudsman to report to the Parliament when a report or recommendation is not accepted by an agency. Only two such parliamentary reports have been made, in 1985 and 1986. The view expressed since by some Ombudsmen is that Parliament is either too busy or not equipped to deal with an Ombudsman report. The lack of a special Parliamentary committee to receive Ombudsman reports is part of that difficulty.

Successive Ombudsmen have instead placed emphasis on developing other links to the Parliament. One approach is to make submissions and to appear before Parliamentary committee inquiries. Committees generally welcome the Ombudsman's independence and insights, gained from dealing annually with thousands of complaints across all areas of government. Submissions and appearances have been made over the past five years on matters as diverse as immigration visa processing, mental health in detention centres, military justice, governance in the Pacific region, counter-terrorism and security legislation, family benefit payments, and conferral of coercive powers on government officials.

A major activity in the Ombudsman outreach program is to consult with parliamentary electorate offices in rural and regional Australia. Parliamentarians and the Ombudsman perform the same role of receiving complaints from the community, though the Ombudsman has a greater investigation capacity. This arises from the formal powers in the Ombudsman Act, the specialist teams, and the greater resources of the office to conduct major and complex investigations. These points are emphasised in

contact with parliamentarians, who are invited to approach the Ombudsman with any constituent or other complaint.

The Ombudsman is also required by statute to report to the Parliament on some matters. In addition to an annual report, the Ombudsman is required to provide special reports in two areas: a report on the Ombudsman's inspection of the records kept by enforcement agencies concerning their use of intrusive covert powers such as surveillance devices; and a report on the circumstances of any person held in immigration detention for two years or more. These reports keep the Parliament informed of government activities in sensitive areas that require independent scrutiny.

Ombudsman associations

Internationally the Ombudsman model has spread widely. In 1970 fewer than 20 jurisdictions had an Ombudsman. Now over 120 countries have an office established by one name or another. The establishment of a large number of Ombudsmen offices is a global trend that crosses political, cultural and language barriers.

The International Ombudsman Institute (IOI) was established in 1978 and is a worldwide organisation of public sector Ombudsmen. The Commonwealth Ombudsman's office has had a close association with the IOI. For example, the office hosted the Fourth International Ombudsman Conference in 1988, with representatives of 69 ombudsman offices from 36 countries attending; and a previous Commonwealth Ombudsman, Mr Ron McLeod, was Vice-President of the Australasian and Pacific region of the IOI.

A similar level of cooperation now exists in Australia between public sector and industry Ombudsman offices. They have jointly established the Australian and New Zealand Ombudsman Association, which has been active in sharing information among offices on topics such as learning and development, outreach, internal review of decisions, and benchmarking Ombudsman investigation work.

There is also regional cooperation among Ombudsman offices, including through a Pacific Ombudsman Network coordinated by the Commonwealth Ombudsman. The cooperative efforts, described more fully in Chapter 6—*Promoting good administration*, include staff exchanges, participation in the training programs of other offices, and legal and information technology advice.

Seven Ombudsmen

The Ombudsman is appointed by the Governor-General for a period of up to seven years. The first Ombudsman, Professor Richardson, held a seven-year term, while later Ombudsmen have served terms ranging from one year to five years.

Lawyers have dominated in appointment as Ombudsman, but not exclusively. The backgrounds of the seven Commonwealth Ombudsmen are illustrative: three were legal academics from the Australian National University Law School (Professors Jack Richardson, Dennis Pearce and John McMillan); one a former First Parliamentary Counsel (Mr Geoffrey Kolts); another a major law firm partner (Mr Alan Cameron); one a consumer affairs advocate and consultant (Ms Philippa Smith); and one a former public servant and Inspector-General of Intelligence and Security (Mr Ron McLeod).

Each Ombudsman has brought a particular focus to the office, and helped it to grow to its position of strength. This has been complemented by having staff with diverse qualifications, skills and experience. Currently Ombudsman staff include people with backgrounds in areas such as law, science, nursing, teaching, small business and disability advocacy.

附錄八：

Whistleblowers Protection Act 1994

Reprinted as in force on 1 July 2008

Reprint No. 4D

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel

Information about this reprint

This Act is reprinted as at 1 July 2008. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—
- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Spelling

The spelling of certain words or phrases may be inconsistent in this reprint due to changes made in various editions of the Macquarie Dictionary. Variations of spelling will be updated in the next authorised reprint.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

Replacement reprint date If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.

Whistleblowers Protection Act 1994

[as amended by all amendments that commenced on or before 1 July 2008]

An Act to protect whistleblowers and for other purposes

Part 1 Preliminary

Division 1 Title and commencement

1 Short title

This Act may be cited as the *Whistleblowers Protection Act 1994*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Division 2 Object of Act

3 Principal object of Act

This Act's principal object is to promote the public interest by protecting persons who disclose—

- unlawful, negligent or improper conduct affecting the public sector
- danger to public health or safety
- danger to the environment.

Division 3 Definitions

4 Definitions and dictionary

(1) The dictionary in schedule 6 defines particular words used in this Act.

(2) Schedule 5 contains certain definitions in separate sections.

(3) Schedule 5 definitions and definitions found elsewhere in this Act are signposted in the dictionary.

Division 4 Operation of Act

5 Act generally binding

This Act binds all persons, including the State.

6 Other protection saved

This Act does not limit the protection given by another law to a person who makes disclosures of any type or affect another remedy available to the person.

Part 2 General explanation of Act

7 What is the general nature of the Act's scheme?

(1) This Act provides a scheme that, in the public interest, gives special protection to disclosures about unlawful, negligent or improper public sector conduct or danger to public health or safety or the environment.

(2) Because the protection is very broad, the scheme has a number of balancing mechanisms intended to—

(a) focus the protection where it is needed; and

(b) make it easier to decide whether the special protection applies to a disclosure; and

(c) ensure appropriate consideration is also given to the interests of persons against whom disclosures are made; and

(d) encourage the making of disclosures in a way that helps to remedy the matter disclosed; and

(e) prevent the scheme adversely affecting the independence of the judiciary and the commercial operations of GOCs or corporatised corporations.

(3) The scheme gives protection only to a ***public interest disclosure***,[1] which is a particular type of disclosure defined by reference to the person who makes the disclosure, the type of information disclosed and the entity to which the disclosure is made (the ***appropriate entity***).

(4) Certain types of public interest disclosures may be disclosed under the scheme by a ***public officer***, which includes any officer of a ***public sector entity***.

(5) The expression ***public sector entity*** is widely defined and a list can be found in schedule 5, section 2.

(6) Other types of public interest disclosures may be made under the scheme by anybody.

8 Public disclosures made by public officers (pt 3)

(1) Under section 15, a public officer may disclose ***official misconduct***, an expression defined in the *Crime and Misconduct Act 2001*.

(2) Under section 16, a public officer may disclose ***maladministration*** that specifically, substantially and adversely affects someone's interests.

(3) Maladministration is widely defined to cover illegal, arbitrary, oppressive or improper public sector ***administrative action***.

(4) Under section 17, a public officer may disclose negligent or improper management involving a substantial waste of ***public funds***.

1 Each expression in this part that is in bold type and italics is defined either in the dictionary or in a section signposted by the dictionary.

(5) The disclosure may concern the conduct of any public officer or public sector entity or anyone contracting to supply goods or services (other than as an employee) to a public sector entity.

(6) Under section 18, a public officer may disclose a substantial and specific danger to ***public health or safety*** or the ***environment***.

(7) Public health or safety is widely defined in this Act and the wide definition of environment in the *Environmental Protection Act 1994* is introduced by cross reference.

9 Public interest disclosures made by anybody

(1) Under section 19, anybody may disclose a substantial and specific danger to the health or safety of a person with a ***disability***.

(2) The wide definition of disability in the *Disability Services Act 2006* is introduced by cross reference.

(3) Under section 19, anybody may disclose a substantial and specific danger to the environment from contraventions of, or of conditions under, provisions of Acts listed in schedule 2.

(4) Under section 20, anybody may disclose a ***reprisal*** taken against anybody for making a public interest disclosure.

10 How must a public interest disclosure be made (pt 4)?

(1) Under part 4, division 2, a public interest disclosure must be made to an appropriate entity, which is a ***public sector entity*** identified under the division or to a member of the Legislative Assembly who may refer it to a ***public sector entity*** identified under the division.

(2) This requirement ensures that—

(a) public interest disclosures are made or referred to public sector entities that have responsibility or power to take appropriate action about the information disclosed or to provide an appropriate remedy; and

(b) unfair damage is not caused to the reputations of persons against whom disclosures are made by inappropriate publication of unsubstantiated disclosures.

(3) Under the division, a public interest disclosure may be made to an appropriate entity—

(a) in any way, unless certain exceptions apply including, for example, another law requiring a particular procedure or the appropriate entity having established reasonable procedures; and

(b) despite any exception otherwise applying, always to specified persons within the appropriate entity, if it is a public sector entity, including the appropriate entity's ***chief executive officer***.

(4) Under part 4, division 3—

(a) public sector entities receiving public interest disclosures are required to keep proper records about them, because of the special protection given for public interest disclosures; and

(b) certain information about public interest disclosures is required to be provided annually to the Legislative Assembly; and

(c) reasonable information about action taken on a public interest disclosure made or referred to an appropriate entity, and the results, is required to be given to the discloser or referrer.

(5) Part 4, division 4 provides for the application of the Act to courts, tribunals and judicial officers in a way intended to prevent the Act's administration adversely affecting judicial work or independence.

(6) Part 4, division 5 provides for the application of the Act to GOCs in a way intended to prevent the Act's administration adversely affecting GOCs commercial operations.

(7) Part 4, division 6 provides for the application of the Act to corporatised corporations in a way intended to prevent the Act's administration adversely affecting corporatised corporation's commercial operations.

11 What is the special protection given for public interest disclosures (pt 5)?

(1) Under part 5, division 2, a person is declared not to be liable, civilly, criminally or under an administrative process, for making a public interest disclosure.

(2) Under part 5, divisions 3 to 5, causing or attempting or conspiring to cause ***detriment*** to any person because of a public interest disclosure is declared to be a ***reprisal*** and unlawful, both under the civil law of tort and the criminal law.

(3) Under part 5, division 6—

(a) public sector entities must establish reasonable procedures to protect their officers from reprisals; and

(b) public officers with existing rights to appeal against, or to apply for a review of, disciplinary action, appointments, transfers or unfair treatment are permitted to use these rights against reprisals; and

(c) public service employees are given an additional right to appeal to the chief executive of the Public Service Commission to be relocated to remove the danger of reprisals.

(4) Under part 5, division 7, the Industrial Commission, or, if the Industrial Commission does not have jurisdiction, the Supreme Court, may grant injunctions against reprisals.

12 General sections (pt 6)

(1) Part 6 provides for certain offences and the criminal proceedings about the offences.

(2) The part makes it an offence—

(a) for a public officer to record or disclose certain confidential information gained through involvement in this Act's administration other than under certain circumstances including, for example, the investigation under an Act of information disclosed under a public interest disclosure; and

(b) for a person intentionally to give false or misleading information as a public interest disclosure or in subsequent inquiries into the person's disclosure.

(3) The part also declares that a public officer who commits one of these offences or the offence of reprisal is guilty of misconduct under any Act under which the officer may be dismissed or disciplined for misconduct.

Part 3 Disclosures that may be made

13 Purpose of part

The purpose of this part is to describe the type of disclosures that may be made as public interest disclosures under this Act and who may make them.

14 What type of information can be disclosed?

(1) The types of information that may be disclosed by a public interest disclosure, and who may make the disclosure, are specified in sections 15 to 20.

(2) A person has information about conduct or danger specified in sections 15 to 20 if the person honestly believes on reasonable grounds that the person has information that tends to show the conduct or danger.

(3) If information is about an event, it may be about something that has or may have happened, is or may be happening, or will or may happen.

(4) If the information is about someone else's conduct, the information may be about conduct in which the other person has or may have engaged, is or may be engaging, or is or may be intending to engage.

(5) The information need not be in a form that would make it admissible evidence in a court proceeding.

Example—

The information may take the form of hearsay.

15 Public officer may disclose official misconduct

A public officer[2] may make a public interest disclosure about someone else's conduct if—

(a) the officer has information about the conduct; and

(b) the conduct is official misconduct.

16 Public officer may disclose maladministration

A public officer may make a public interest disclosure about someone else's conduct if—

(a) the officer has information about the conduct; and

(b) the conduct is maladministration that adversely affects anybody's interests in a substantial and specific way.

17 Public officer may disclose negligent or improper management affecting public funds

(1) A public officer may make a public interest disclosure about the conduct of another public officer, a public sector entity or a public sector contractor if—

(a) the officer has information about the conduct; and

(b) the conduct is negligent or improper management directly or indirectly resulting, or likely to result, in a substantial waste of public funds.

(2) The disclosure can not be based on a mere disagreement over policy that may properly be adopted about amounts, purposes and priorities of expenditure.

18 Public officer may disclose danger to public health or safety or environment

(1) This section applies if a public officer has information about a substantial and specific danger to public health or safety or to the environment.

2 This and other sections allowing a person to make public interest disclosures as a public officer do not generally contain rules limiting the disclosures to disclosures about the public sector unit of which the person is an officer.

(2) The public officer may make a public interest disclosure of the information.

19 Anybody may disclose danger to person with disability or to environment from particular contraventions

(1) This section applies if anybody has information about—

(a) a substantial and specific danger to the health or safety of a person with a disability; or

(b) the commission of an offence against a provision mentioned in schedule 2, if commission of the offence is or would be a substantial and specific danger to the environment; or

(c) a contravention of a condition imposed under a provision mentioned in schedule 2, if the contravention is or would be a substantial and specific danger to the environment.

(2) The person may make a public interest disclosure of the information.

20 Anybody may disclose reprisal

Anybody may make a public interest disclosure about someone else's conduct if—

(a) the person has information about the conduct; and

(b) the conduct is a reprisal.

21 Conduct of unknown person

A person may make a public interest disclosure whether or not the person is able to identify a particular person to which the information disclosed relates.

22 Involuntary disclosures

A disclosure may be a public interest disclosure even though it is made under a legal requirement.

23 Disclosure of events that happened before commencement

A public interest disclosure may be made under this Act about events that happened or may have happened before the commencement of this Act.

Part 4 Disclosure process

Division 1 Purpose of part

24 Purpose of part

The purpose of this part is to describe the ways in which a person may make a public interest disclosure and provide for related processes.

Division 2 Disclosure must be to appropriate entity

25 Disclosure must be made to an appropriate entity

(1) Section 26 specifies appropriate entities to which public interest disclosures may be made.[3]

(2) Section 27 provides more detail on how and to whom the public interest disclosure may be made within the appropriate entities.

(3) To be treated as a public interest disclosure, a disclosure under sections 15 to 20 must be made to an appropriate entity.

(4) The fact that a public interest disclosure may be made under a particular provision to a particular appropriate entity does not

3 See division 4 for overriding limitations about courts, tribunals and judicial officers and division 5 for overriding limitations about statutory GOCs.

exclude it from being made under another provision to the same or another appropriate entity.

26 When public sector entity or member of Legislative Assembly is an appropriate entity

(1) Any public sector entity is an appropriate entity to receive a public interest disclosure—

(a) about its own conduct or the conduct of any of its officers; or

(b) made to it about anything it has a power to investigate or remedy; or

(c) made to it by anybody who is entitled to make the public interest disclosure and honestly believes it is an appropriate entity to receive the disclosure under paragraph (a) or (b); or

(d) referred to it by another public sector entity under section 28.

(1A) A member of the Legislative Assembly is an appropriate entity to receive any public interest disclosure.

(2) However, subsection (1)(c) or (1A) does not permit a public sector entity or member of the Legislative Assembly to receive a public interest disclosure if, apart from this section, the public sector entity or member would not be able to receive the disclosure because of division 4, 5 or 6.

(3) If a person makes a public interest disclosure to an appropriate entity, the person may also make a public interest disclosure to the entity about a reprisal taken against the person for making the disclosure.

Examples—

Schedule 3 has examples of the operation of subsection (1)(a) and (b).

27 How to disclose to appropriate entity

(1) A public interest disclosure may be made to an appropriate entity in any way, including anonymously.

(2) However, if an appropriate entity establishes a reasonable procedure for making a public interest disclosure to the entity,

the procedure must be used by a person making a public interest disclosure to the entity.

(3) Despite subsection (2), a public interest disclosure made to an appropriate entity that is a public sector entity may always be made to—

(a) its chief executive officer;[4] or

(b) if the appropriate entity that is a public sector entity has a governing body—a member of its governing body; or

(c) if an officer of the entity is making the disclosure—a person who, directly or indirectly, supervises or manages the officer; or

(d) an officer of the entity who has the task of receiving or taking action on the type of information being disclosed.

(4) This Act does not affect a procedure required under another Act for disclosing the type of information being disclosed.

(5) If a public interest disclosure is properly made to an appropriate entity, the entity is taken to have received the disclosure for the purpose of this Act.

(6) However, subsection (5) is subject to divisions 4 to 6.[5]

Examples of subsection (3)(d)—

1 the entity's internal auditor, if the public interest disclosure is made under section 17

2 a health officer or environmental officer of the department having a statutory or administrative responsibility to investigate something mentioned in a disclosure under section 18(1) or 19(1)

3 the officer of the entity in charge of its human resource management if the public interest disclosure is made under section 20 and is about detriment to the career of an employee of the entity

4 See schedule 5, section 1 for the definition of *chief executive officer.*

5 Divisions 4 (Limitation on disclosure process for courts, tribunals and judicial officers), 5 (Limitation on disclosure process for GOCs) and 6 (Limitation on disclosure process for corporatised corporations)

28 Disclosure received by public sector entity may be referred

(1A) This section applies if a public interest disclosure is received by an appropriate entity that is a public sector entity or is referred to the entity under section 28A.

(1) If the public interest disclosure is about—

(a) the conduct of another public sector entity or the actions of an officer of another public sector entity; or

(b) the conduct of anybody, including itself, or anything that another public sector entity has a power to investigate or remedy;

the entity may refer the public interest disclosure to the other public sector entity.

(2) If the entity refers the disclosure to another public sector entity, its power to investigate or remedy is unaffected by the reference.

(3) An appropriate entity must not refer a public interest disclosure to another public sector entity unless it first considers whether there is an unacceptable risk that a reprisal would be taken against any person because of the reference.

(4) In considering whether there would be an unacceptable risk, an appropriate entity must, if practicable, consult with the person who made the public interest disclosure.

(5) An appropriate entity must not refer a public interest disclosure to another public sector entity if it considers there is an unacceptable risk.

(6) This section does not affect another law under which the entity must refer a report, complaint, information or evidence to another entity.

28A Disclosure received by member of Legislative Assembly may be referred

(1) If a member of the Legislative Assembly receives a disclosure, the member may refer the disclosure to another appropriate entity that is a public sector entity which the member considers has power to investigate or remedy the conduct the subject of the disclosure.

(2) For the purposes of this Act, the member has no role in investigating the disclosure.

(3) In this section—

disclosure means a public interest disclosure or purported public interest disclosure.

28B Legislative Assembly may still deal with disclosure

(1) This Act does not limit the powers, rights and immunities of the Legislative Assembly and its members and committees in relation to a disclosure received by a member.

(2) In this section—

committee means a committee of the Legislative Assembly, whether or not a statutory committee.

disclosure means a public interest disclosure or purported public interest disclosure.

member means a member of the Legislative Assembly.

rights includes privileges.

Division 3 Records and reports about disclosures

29 Records must be kept of disclosures

(1) The objectives of this section are to—

(a) ensure that disclosures are sufficiently identifiable to allow part 5[6] to be easily applied; and

(b) assist in the preparation of accurate reports to the Legislative Assembly under sections 30 and 31.

(2) The chief executive officer of a public sector entity must ensure that a proper record is kept about disclosures received by the public sector entity, including—

6 Part 5 (Privilege, protection and compensation)

(a) the name of the person making the disclosure, if known; and

(b) the information disclosed; and

(c) any action taken on the disclosures.

(3) The chief executive officer of a public sector entity must also ensure that a proper record is kept about each disclosure referred to the public sector entity under section 28A, including—

(a) the name of the person making the disclosure, if known; and

(b) the information disclosed; and

(c) the name of the member of the Legislative Assembly who referred the disclosure; and

(d) any action taken on the disclosure.

(4) In this section—

disclosure means a public interest disclosure or purported public interest disclosure.

public sector entity does not include—

(a) the Executive Council; or

(b) a court or tribunal.

30 Units must report to Legislative Assembly on disclosures

(1) A public sector entity or an officer of a public sector entity required under an Act to prepare an annual report of the entity's activities during a report period for tabling in the Legislative Assembly must include statistical information about—

(a) the number of disclosures received by it, or referred to it under section 28A, over the report period, for each type of information disclosed; and

(b) the number of disclosures substantially verified over the report period, even if received, or referred under section 28A, before the period, for each type of information verified.

(2) In this section—

disclosure means a public interest disclosure or a purported public interest disclosure.

public sector entity does not include—

(a) the Executive Council; or

(b) a court or tribunal; or

(c) a GOC; or

(d) a corporatised corporation.

report period of an annual report means the period covered by the report.

substantially verified disclosure includes a disclosure for which an offence prosecution or disciplinary action has been taken or recommended.

31 Minister must report to Legislative Assembly on Act's administration

(1) The Minister must prepare for each financial year an annual report to the Legislative Assembly on the administration of this Act.

(2) If asked by the chief executive of the department in which this Act is administered, a public sector entity must provide reasonable assistance to the chief executive to enable the department to compile information and statistics for inclusion in the annual report.

(3) The report may be included in the department's annual report.

(4) In this section—

public sector entity does not include—

(a) the Executive Council; or

(b) a court or tribunal; or

(c) a GOC; or

(d) a corporatised corporation.

32 Reasonable information about result of disclosure must be given to discloser or referring entity

(1) If asked by a person who makes a public interest disclosure to it or by an entity that has referred a public interest disclosure to it under section 28 or 28A, an appropriate entity must give the person or the referring entity reasonable information about action taken on the disclosure and the results.

(2) If the request is for written information, the information must be written.

(3) Information need not be given under subsection (1) to a person who makes a public interest disclosure, if—

(a) giving the information would be impractical in the circumstances; or

(b) the information requested has already been given to the person; or

(c) the request is vexatious.

(4) Information must not be given under subsection (1), if giving the information would be likely to adversely affect—

(a) anybody's safety; or

(b) the investigation of an offence or possible offence; or

(c) necessary confidentiality about an informant's existence or identity.

(5) If the public interest disclosure is made to the Crime and Misconduct Commission in a complaint of misconduct or official misconduct, this section does not impose on the commission any duty that the commission does not already have under that Act.

Division 4 Limitation on disclosure process for courts, tribunals and judicial officers

33 Object of division

(1) This division deals with some issues about the treatment of courts and tribunals as public sector entities and judicial officers as public officers under this Act.

(2) The purpose of the division is to clarify the application of this Act and to ensure this Act's administration does not detrimentally affect judicial work or independence.

(3) Section 34 deals with public interest disclosures made administratively about judicial officers.

(4) Section 35 deals with public interest disclosures made in proceedings before courts or tribunals.

34 Disclosures made administratively to or about a judicial officer

(1) This section applies to public interest disclosures made administratively about judicial officers.

(2) A person may make a public interest disclosure about the conduct of a judicial officer only under this section, despite any other provision of this Act.

(3) A public interest disclosure under section 15[7] about the conduct of a judicial officer may be made only—

(a) to the chief judicial officer of the relevant court or tribunal; or

(b) to the Crime and Misconduct Commission.

7 Section 15 (Public officer may disclose official misconduct)

(4) A public interest disclosure under section 16, 17, 18 or 19[8] about the conduct of a judicial officer may be made only to the chief judicial officer of the relevant court or tribunal.

(5) If a reprisal that is conduct of a judicial officer is taken against a person for making a public interest disclosure under this section, the person may make a public interest disclosure about the reprisal only to—

(a) the chief judicial officer of the relevant court or tribunal; or

(b) if the reprisal is official misconduct—the chief judicial officer of the relevant court or tribunal or the Crime and Misconduct Commission.

(6) A chief judicial officer may receive a public interest disclosure only if the disclosure is about the conduct of another judicial officer.

(7) Under section 28,[9] the chief judicial officer may refer a public interest disclosure made to the chief judicial officer about the conduct of another judicial officer to an appropriate entity that is a public sector entity.

35 Disclosures in court or tribunal proceedings

(1) The purpose of this section is to declare how this Act applies to disclosures made to a court or tribunal in a proceeding.

(2) This section applies if a person—

(a) has information that the person may disclose as a public interest disclosure to an appropriate entity; and

(b) discloses the information to a court or tribunal in a proceeding in which the information is relevant and admissible.

8 Section 16 (Public officer may disclose maladministration), 17 (Public officer may disclose negligent or improper management affecting public funds), 18 (Public officer may disclose danger to public health or safety or environment) or 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions)

9 Section 28 (Disclosure received by public sector entity may be referred)

(3) The disclosure is a public interest disclosure made to the court or tribunal as an appropriate entity under section 26(1)(b).[10]

(4) The court or tribunal may refer the disclosure to another appropriate entity under section 28.

(5) The fact that a court or tribunal is treated as a public sector entity under this Act, and therefore can be an appropriate entity under section 26(1)(b) to receive a public interest disclosure, does not give a person a right to take a proceeding before the court or tribunal that the person does not have apart from this Act.

Division 5 Limitation on disclosure process for GOCs

36 Object of division

(1) This division deals with some issues about the treatment of GOCs as public sector entities and their officers as public officers under this Act.

(2) The purpose of the division is to clarify the application of this Act and to ensure this Act's administration does not detrimentally affect the commercial operation of GOCs.

37 Application of Act to GOCs

(1) An officer of a statutory GOC may, under section 15, 16 or 18,[11] make a public interest disclosure to the statutory GOC about its conduct or the conduct of another officer of the statutory GOC.

(2) An officer of a statutory GOC may, under section 15, make a public interest disclosure to the Crime and Misconduct Commission about the conduct of the statutory GOC or the conduct of another officer of the statutory GOC.

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10 Section 26 (When public sector entity or member of Legislative Assembly is an appropriate entity)

11 Section 15 (Public officer may disclose official misconduct), 16 (Public officer may disclose maladministration) or 18 (Public officer may disclose danger to public health or safety or environment)

(3) An officer of a statutory GOC may, under section 17,[12] make a public interest disclosure to the statutory GOC about its conduct, the conduct of another officer of the statutory GOC or the conduct of a public sector contractor contracting with the statutory GOC.

(4) An officer of a statutory GOC may also make a public interest disclosure about a reprisal taken against the officer for making the public interest disclosure under subsection (1) or (3)—

(a) under section 26(3),[13] to the statutory GOC; or

(b) if the reprisal is official misconduct—to the Crime and Misconduct Commission.

(5) For the purpose of public interest disclosures under subsections (1) to (4) and of applying any law about the disclosures—

(a) the statutory GOC is a public sector entity; and

(b) the officer making the public interest disclosure is a public officer; and

(c) if the public interest disclosure is made under section 17 about the conduct of another officer of the statutory GOC—the other officer is a public officer.

(6) Other than as provided by subsection (5)—

(a) a GOC is not a public sector entity under this Act; and

(b) an officer of a GOC is not a public officer under this Act; and

(c) an officer of a GOC can not, as a public officer, make a public interest disclosure.

(7) This section does not affect the making of a public interest disclosure by anybody under section 19 or 20.[14]

12 Section 17 (Public officer may disclose negligent or improper management affecting public funds)

13 Section 26 (When public sector entity or member of Legislative Assembly is an appropriate entity)

14 Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions) or 20 (Anybody may disclose reprisal)

(8) This section does not affect the reference under section 28[15]—

(a) from a statutory GOC to another public sector entity of a public interest disclosure made to the statutory GOC in accordance with this section; or

(b) from a public sector entity to a statutory GOC of a public interest disclosure made to the public sector entity.

Division 6 Limitation on disclosure process for corporatised corporations

37A Object of division

(1) This division deals with some issues about the treatment of corporatised corporations as public sector entities and their officers as public officers under this Act.

(2) The purpose of the division is to clarify the application of this Act and to ensure this Act's administration does not detrimentally affect the commercial operation of corporatised corporations.

37B Application of Act to corporatised corporations

(1) An officer of a corporatised corporation may, under section 15, 16 or 18,[16] make a public interest disclosure to the corporatised corporation about its conduct or the conduct of another officer of the corporatised corporation.

(2) An officer of a corporatised corporation may, under section 15, make a public interest disclosure to the Crime and Misconduct Commission about the conduct of the corporatised corporation or the conduct of another officer of the corporatised corporation.

15 Section 28 (Disclosure received by public sector entity may be referred)

16 Section 15 (Public officer may disclose official misconduct), 16 (Public officer may disclose maladministration) or 18 (Public officer may disclose danger to public health or safety or environment)

(3) An officer of a corporatised corporation may, under section 17,[17] make a public interest disclosure to the corporatised corporation about its conduct, the conduct of another officer of the corporatised corporation or the conduct of a public sector contractor contracting with the corporatised corporation.

(4) An officer of a corporatised corporation may also make a public interest disclosure about a reprisal taken against the officer for making the public interest disclosure under subsection (1) or (3)—

(a) under section 26(3),[18] to the corporatised corporation; or

(b) if the reprisal is official misconduct—to the Crime and Misconduct Commission.

(5) For public interest disclosures under subsections (1) to (4) and of applying any law about the disclosures—

(a) the corporatised corporation is a public sector entity; and

(b) the officer making the public interest disclosure is a public officer; and

(c) if the public interest disclosure is made under section 17 about the conduct of another officer of the corporatised corporation—the other officer is a public officer.

(6) Other than as provided by subsection (5)—

(a) a corporatised corporation is not a public sector entity under this Act; and

(b) an officer of a corporatised corporation is not a public officer under this Act; and

(c) an officer of a corporatised corporation can not, as a public officer, make a public interest disclosure.

17 Section 17 (Public officer may disclose negligent or improper management affecting public funds)

18 Section 26 (When public sector entity or member of Legislative Assembly is an appropriate entity)

(7) This section does not affect the making of a public interest disclosure by anybody under section 19 or 20.[19]

(8) This section does not affect the reference under section 28[20]—

(a) from a corporatised corporation to another public sector entity of a public interest disclosure made to the corporatised corporation under this section; or

(b) from a public sector entity to a corporatised corporation of a public interest disclosure made to the public sector entity.

Part 5 Privilege, protection and compensation

Division 1 Purpose of part

38 Purpose of part

The purpose of this part is to describe the legal privilege, protection and rights of compensation given to a person who makes a public interest disclosure.

Division 2 Limitation of action

39 General limitation

(1) A person is not liable, civilly, criminally or under an administrative process, for making a public interest disclosure.

(2) Without limiting subsection (1)—

19 Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions) or 20 (Anybody may disclose reprisal)

20 Section 28 (Disclosure received by public sector entity may be referred)

(a) in a proceeding for defamation the person has a defence of absolute privilege for publishing the disclosed information; and

(b) if the person would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice—the person—

(i) does not contravene the Act, oath, rule of law or practice for making the disclosure; and

(ii) is not liable to disciplinary action for making the disclosure.

40 Liability of discloser unaffected

A person's liability for the person's own conduct is not affected only because the person discloses it in a public interest disclosure.

Division 3 Reprisal unlawful

41 Reprisal and grounds for reprisal

(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has made, or may make, a public interest disclosure.

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

Division 4 Criminal prosecution about reprisal

42 Reprisal is an indictable offence

(1) A public officer who takes a reprisal commits an offence.

Maximum penalty—167 penalty units or 2 years imprisonment

(2) The offence is an indictable offence.

(3) If a public officer commits the offence, the Criminal Code, sections 7 and 8[21] apply even though a person other than a public officer may also be taken to have committed the offence because of the application.

Division 5 Civil claims about reprisal

43 Damages entitlement for reprisal

(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.

(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

(3) If the claim for the damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

Division 6 Administrative action about reprisal

44 Public sector entity must protect its officers against reprisals

A public sector entity must establish reasonable procedures to protect its officers from reprisals that are, or may be, taken against them by the entity or other officers of the entity.

21 Criminal Code, sections 7 (Principal offenders) and 8 (Offences committed in prosecution of common purpose)

45 Appeal against action affected by reprisal

(1) This section applies to a public officer who, under an Act, may appeal against, or apply for a review of, any of the following actions—

(a) disciplinary action taken against the officer;

(b) the appointment or transfer of the officer or another public officer to a position as a public officer;

(c) unfair treatment of the officer.

(2) Whether or not the Act specifies grounds for the appeal or application, the officer may also appeal or apply to have the action set aside because it was the taking of a reprisal against the officer.

(3) Subsection (2) applies even if the decision on the hearing of the appeal or application is in the form of a recommendation.

46 Relocation of public service employees

(1) This section—

(a) must be read with the *Public Service Act 2008*; and

(b) gives a right to appeal for the relocation of a public service employee.

(2) The appeal must be made on the ground that—

(a) it is likely a reprisal will be taken against the public service employee if the employee continues in the employee's existing work location; and

(b) the only practical way to remove or substantially remove the danger is to relocate the employee.

(3) The appeal may be made to the chief executive of the Public Service Commission (the ***commission chief executive***) by the public service employee or for the employee by the chief executive of the employee's department.

(4) If the commission chief executive considers the ground is established, the commissioner may direct that the employee be relocated within the employee's department or another department.

(5) The commission chief executive can not direct that the employee be relocated without the agreement of—

(a) the public service employee; and

(b) if the relocation is to another department—the other department's chief executive.

(6) For subsection (5), the commission chief executive has power to do, or authorise the doing of anything necessary or convenient to relocate the public service employee.

Division 7 Injunctions about reprisal

47 Right to apply for Industrial Commission injunction

(1) An application for an injunction about a reprisal may be made to the Industrial Commission if the reprisal—

(a) has caused or may cause detriment to an employee within the meaning of the *Industrial Relations Act 1999*; and

(b) involves or may involve a breach of the *Industrial Relations Act 1999* or an industrial instrument under that Act.

(2) The application may be made by—

(a) the employee; or

(b) an industrial organisation—

(i) whose rules entitle it to represent the industrial interests of the employee; and

(ii) acting in the employee's interests with the employee's consent; or

(c) the Crime and Misconduct Commission acting in the employee's interests with the employee's consent if—

(i) the employee is a public officer; and

(ii) the reprisal involves or may involve an act or omission that the Crime and Misconduct Commission may investigate.

(3) The *Industrial Relations Act 1999*, section 277[22] applies to the application, but this division prevails if it is inconsistent with that section.

(4) If the Industrial Commission has jurisdiction to grant an injunction on an application under subsection (1), the jurisdiction is exclusive of the jurisdiction of any other court or tribunal other than the Industrial Court.

(5) Without limiting this section, the application is an industrial cause within the meaning of the *Industrial Relations Act 1999*.

48 Right to apply for Supreme Court injunction

(1) This section applies only to a person who can not apply to the Industrial Commission for an injunction about a reprisal under section 47.

(2) An application for an injunction about a reprisal may be made to the Supreme Court by—

(a) a person claiming that the person is suffering or may suffer detriment from a reprisal; or

(b) the Crime and Misconduct Commission acting in the person's interests with the person's consent if—

(i) the employee is a public officer; and

(ii) the reprisal involves or may involve an act or omission that the Crime and Misconduct Commission may investigate.

49 Grounds for injunction

The Industrial Commission or Supreme Court may grant an injunction, in terms it considers appropriate, if it is satisfied that a person has engaged, is engaging or is proposing to engage, in conduct (the ***reprisal conduct***) amounting to—

(a) the taking of a reprisal; or

22 *Industrial Relations Act 1999*, section 277 (Power to grant injunctions)

(b) aiding, abetting, counselling or procuring a person to take a reprisal; or

(c) inducing or attempting to induce, whether by threats, promises or otherwise, a person to take a reprisal; or

(d) being in any way, directly or indirectly, knowingly concerned in, or party to, the taking of a reprisal.

50 Order may require specified action

If the Industrial Commission or Supreme Court is satisfied that a person has engaged or is engaging in reprisal conduct, it may grant an injunction requiring the person to take specified action to remedy any detriment caused by the conduct.

51 Evidence

(1) The Industrial Commission or Supreme Court may grant an injunction restraining a person from engaging in reprisal conduct—

(a) whether or not it considers that the person intends to engage again, or to continue to engage, in the conduct; or

(b) whether or not the person has previously engaged in the conduct; or

(c) whether or not there is an imminent danger of substantial damage to anyone if the person engages in the conduct.

(2) The Industrial Commission or Supreme Court may grant an injunction requiring a person to do something—

(a) whether or not it considers that the person intends to fail again, or to continue to fail, to do the thing; or

(b) whether or not the person has previously failed to do the thing; or

(c) whether or not there is an imminent danger of substantial damage to anybody if the person fails to do the thing.

52 Interim injunction

An interim injunction may be granted pending the final decision on the application.

53 Confidentiality of applications

(1) For an application before it, the Industrial Commission or Supreme Court may direct that—

(a) a report of the whole or part of the proceeding for the application must not be published; or

(b) evidence given, or anything filed, tendered or exhibited in the application must be withheld from release or search, or released or searched only on a specified condition.

(2) The direction may be given if the Industrial Commission or Supreme Court considers that—

(a) disclosure of the report, evidence or thing would not be in the public interest; or

(b) persons other than parties to the application do not have a sufficient legitimate interest in being informed of the report, evidence or thing.

(3) An application for an injunction may be heard in chambers.

(4) An application for an injunction may be heard ex parte if the Industrial Commission or Supreme Court considers an ex parte hearing is necessary in the circumstances.

(5) This section does not limit the power of the Industrial Commission or Supreme Court.

54 Undertakings as to damages and costs

If the Crime and Misconduct Commission applies for an injunction, no undertaking about damages or costs is to be required.

Part 6 General

55 Preservation of confidentiality

(1) If a person gains confidential information because of the person's involvement as a public officer in this Act's administration, the person must not make a record of the information, or intentionally or recklessly disclose the information to anyone, other than under subsection (3).

Maximum penalty—84 penalty units.

(2) A public officer gains information through involvement in the administration of this Act if the officer gains the information because of being involved, or an opportunity given by being involved, in the administration.

Example—

If a public officer gains information because the public officer receives a public interest disclosure for an appropriate entity, the public officer gains the information through involvement in the administration of this Act.

(3) A person may make a record of confidential information, or disclose it to someone else—

(a) for this Act; or

(b) to discharge a function under another Act including, for example, to investigate something disclosed by a public interest disclosure; or

(c) for a proceeding in a court or tribunal; or

(d) if authorised under a regulation or another Act.

(4) This section does not affect an obligation a person may have under the law about natural justice to disclose information to a person whose rights would otherwise be detrimentally affected.

(5) Subsection (4) applies to information disclosing, or likely to disclose, the identity of a person who makes a public interest disclosure only if it is—

(a) essential to do so under the law about natural justice; and

(b) unlikely a reprisal will be taken against the person because of the disclosure.

(6) To remove doubt, if there is an inconsistency between this section and section 6,[23] this section prevails.

(7) In this section—

confidential information includes—

(a) information about the identity, occupation, residential or work address or whereabouts of a person—

(i) who makes a public interest disclosure; or

(ii) against whom a public interest disclosure has been made; and

(b) information disclosed by a public interest disclosure; and

(c) information about an individual's personal affairs; and

(d) information that, if disclosed, may cause detriment to a person;

but does not include information publicly disclosed in a public interest disclosure made to a court, tribunal or other entity that may receive evidence under oath, unless further disclosure of the information is prohibited by law.

law for a public interest disclosure made to a committee of the Legislative Assembly, includes a standing rule, order or motion of the Legislative Assembly.

56 False or misleading information

(1) A person commits an offence if the person—

(a) makes a statement to an appropriate entity intending that it be acted on as a public interest disclosure; and

(b) in the statement, or in the course of inquiries into the statement, intentionally gives information that is false or misleading in a material particular.

23 Section 6 (Other protection saved)

Maximum penalty—167 penalty units or 2 years imprisonment.

(2) The offence is an indictable offence.

57 Misconduct by breach of Act

(1) A public officer is guilty of misconduct under an Act under which the officer may be dismissed from office or disciplined for misconduct, if the officer contravenes the following—

- section 42 (Reprisal is an indictable offence)
- section 55 (Preservation of confidentiality)
- section 56 (False or misleading information).

(2) To remove doubt, it is declared that under the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission may investigate the contravention, or the alleged or suspected contravention, if—

(a) the public officer is a member of the police service; or

(b) the contravention is official misconduct by a person holding an appointment in a unit of public administration within the meaning of the *Crime and Misconduct Act 2001*.

58 Proceedings for offences generally

An offence against this Act other than an offence declared to be an indictable offence is a summary offence.

59 Proceedings for indictable offences

(1) A proceeding on a charge for an indictable offence under this Act may be taken, at the election of the prosecution—

(a) by summary proceeding under the *Justices Act 1886*; or

(b) on indictment.

(2) A Magistrates Court must not hear the charge summarily if—

(a) the defendant asks the court at the start of the hearing to treat the proceeding as a committal proceeding; or

(b) the court considers that the charge should be prosecuted on indictment.

(3) A Magistrates Court may start to hear and decide the charge summarily even if more than 1 year has passed since the offence was committed.

60 Change to a committal proceeding during summary proceeding

(1) This section applies if, during a proceeding before a Magistrates Court to hear and decide a charge for an indictable offence summarily, the court decides the charge is not one that should be decided summarily.

(2) The court must stop treating the proceeding as a proceeding to hear and decide the charge summarily and start treating it as a committal proceeding.

(3) The defendant's plea at the start of the hearing must be disregarded.

(4) The evidence already heard by the court must be taken to be evidence in the committal proceeding.

(5) To remove doubt, it is declared that the *Justices Act 1886*, section 104[24] must be complied with for the committal proceeding.

61 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may provide that, for all or particular public interest disclosures—

(a) a public sector entity is to be treated as a part of another public sector entity; or

(b) a part of a public sector entity is to be treated as part of another public sector entity or a separate public sector entity; or

24 *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

(c) public sector entities or parts of public sector entities are to be treated as a single public sector entity.

(3) A regulation under subsection (2) may not—

(a) apply to a public sector entity specified in schedule 5, section 2(1)(a), (b) or (g);[25] or

(b) provide for a court or tribunal to be treated as part of a public sector entity not consisting of courts or tribunals of like jurisdiction or their administrative offices; or

(c) be inconsistent with a requirement under an Act that a public sector entity act independently.

25 Schedule 5, section 2 (Meaning of *public sector entity*)

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