

Productivity Commission
SUBMISSION COVER SHEET
(not for publication)



Australian Government
Productivity Commission

Please complete and submit this form with your submission to:

Access to Justice
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

OR

By facsimile (fax) to:
Pragya Giri (02) 6240 3399
By email: access.justice@pc.gov.au

Name (first name and surname): Clare Petre

If submitting on behalf of a company or organisation:

Name of organisation: Australian and New Zealand Ombudsman Association Inc.

Position in organisation: Chair

Phone: +61 2 8218 5204

Mobile:

Email address: info@anza.com.au

Street address:

Suburb/City:

State:

Postcode:

Postal address:

Suburb/City:

State:

Postcode:

Please note:

- Copyright in submissions resides with the author(s), not with the Productivity Commission.
- Following processing, public submissions will be placed on the Commission's website. **Submissions will remain on the Commission's website as public documents indefinitely.**
- As this is a public inquiry, 'in confidence' material can be accepted only under special circumstances. **You should contact the Commission before submitting this material.**
- For submissions made by individuals, only your name and the state or territory in which you reside will be published on the Commission's website. All other contact details will be removed from your submission.

Please indicate if your submission:

YES Is a public submission, it does NOT contain 'in confidence' material and can be placed on the Commission's website.

Contains SOME material supplied 'in confidence' (provided under separate cover and clearly marked IN CONFIDENCE).

The Draft and Final Reports will be available for viewing from the Commission's website – would you like to receive a hardcopy?

No (view online)

Yes (post)

Introduction

The Australian and New Zealand Ombudsman Association (**ANZOA**) is the peak body for Ombudsmen in Australia and New Zealand¹. Among other things, ANZOA acts as a network for consultation and discussion among Ombudsmen and their staff on areas of interest, concern and common experience. The offices of ANZOA members observe the *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*².

Our 21 members come from 15 Ombudsman offices in Australia and four Ombudsman offices in New Zealand:

- Australia – Industry-based Ombudsmen
 - Energy & Water Ombudsman NSW
 - Energy and Water Ombudsman (Victoria)
 - Energy and Water Ombudsman Queensland
 - Energy Ombudsman Western Australia
 - Energy and Water Ombudsman (South Australia)
 - Financial Ombudsman Service
 - Public Transport Ombudsman Victoria
 - Telecommunications Industry Ombudsman

- Australia – Parliamentary Ombudsmen
 - Commonwealth Ombudsman
 - Ombudsman for the Northern Territory
 - Ombudsman Tasmania
 - Ombudsman South Australia
 - Victorian Ombudsman
 - Ombudsman Western Australia

- Australia – Other Statutory Ombudsmen
 - Office of the WorkCover Ombudsman (South Australia)

- New Zealand – Industry-based Ombudsmen
 - Banking Ombudsman Scheme
 - Electricity and Gas Complaints Commissioner Scheme
 - Insurance & Savings Ombudsman

- New Zealand - Parliamentary Ombudsman
 - Office of the Ombudsman

Collectively, the offices of these Parliamentary and Industry-based Ombudsmen offer Australian and New Zealand citizens and consumers³ highly effective, efficient, timely and fair access to justice, with more than 300,000 disputes⁴ finalised in 2012-13 alone.

¹ ANZOA membership is personal to the Ombudsman.

² These Benchmarks are available ANZOA's website: <http://www.anzoa.com.au/National-Benchmarks-1997.pdf>

³ In the case of Industry-based Ombudsmen, the term 'consumers' commonly includes small to medium businesses.

⁴ In this submission, the term 'dispute' has been adopted to align with the wording in the Productivity Commission's issues paper. The term more commonly used by Ombudsman offices is 'complaint'.

ANZOA welcomes the opportunity to make a submission to the Productivity Commission's very important *Inquiry into Access to Justice Arrangements*. Eleven offices of ANZOA's Australian members have contributed data and information to support this submission:

- Commonwealth Ombudsman
- Energy & Water Ombudsman NSW
- Energy and Water Ombudsman Queensland
- Energy and Water Ombudsman (Victoria)
- Energy Ombudsman Western Australia
- Financial Ombudsman Service
- Ombudsman South Australia
- Ombudsman Western Australia
- Public Transport Ombudsman Victoria
- Telecommunications Industry Ombudsman
- Victorian Ombudsman

The collective data in this submission represents the substantial contributions made by Parliamentary and Industry-based Ombudsman offices in providing and improving access to justice for consumers and citizens in Australia.

A selected literature review, which identifies a range of reference material the Productivity Commission may find relevant to its Inquiry, is included as **Attachment 1**. The literature review is principally focussed on the evolution and role of Ombudsmen, recent international access to justice inquiries and the setting and measurement of access to justice performance indicators.

Evolution of Ombudsmen⁵

Development of Ombudsman offices in Australia and New Zealand

The first Ombudsman was established in Sweden in 1809 as a parliamentary inspector of the bureaucracy. Parliamentary Ombudsmen were established in New Zealand in 1962 and across Australia in the 1970s and early 1980s. The first Industry-based Ombudsman commenced in 1989. **Attachment 2** shows the years that each of the offices of ANZOA's members was established⁶.

The last major Australian access to justice Inquiry was undertaken in 1994 by the Access to Justice Committee chaired by Ronald Sackville QC (**the Sackville Inquiry**). In its report titled *Access to Justice: An Action Plan*, the Committee said (at paragraph 12.5):

We consider that, because they are relatively inexpensive, speedy and simple, consumer complaint bodies, such as government and industry-based ombudsmen, have made a considerable contribution to improving access to justice. These kinds of bodies would appear to be most valuable when a service sector has a large number of consumers who cannot easily "shop elsewhere". The inability to "shop elsewhere" can arise, for example, where

⁵ This section draws upon Chris Field, 'Recent Evolutions in Australian Ombudsmen' (2010) 63 *AIAL Forum* 4 <http://www.aial.org.au/Publications/webdocuments/Forums/Forum63.pdf> (citations omitted) and Chris Field, 'The Role of Western Australian Energy Ombudsman and its Relationship with Regulators, Industry and Consumers' (2013) 41 *ABLR* 43.

⁶ Adapted from Australian and New Zealand Ombudsman Association, *Chronology of establishment of the offices (and predecessor offices) of ANZOA Members*, http://www.anzoa.com.au/ANZOA_Ombudsman-chronology_October2013.pdf.

consumers have little or no choice between service providers (which is especially true when the service provider is a government department or instrumentality) and where consumers are tied into one service provider (for example, pursuant to a long term superannuation or life insurance policy, or even a mortgage that cannot easily be re-financed).

Since the Sackville Inquiry, Ombudsmen have developed significantly, such that Industry-based Ombudsmen now provide the principal access pathway to independent consumer dispute resolution in a number of major sectors of the Australian economy — including telecommunications, financial services and energy and water services. Similarly, Parliamentary Ombudsmen have expanded in the scope of their responsibilities.

The expansion of the office of the Ombudsman can be said to fall largely into three categories. These are outlined below.

Migration from Sweden to other countries

The first expansion was the migration of the Ombudsman beyond its birthplace in Sweden to other countries.

Ombudsmen of some description can now be found in most European countries, throughout Africa and Asia, Canada, in a number of states of the USA, and in the Australasian and Pacific region. The office of the Ombudsman has migrated from parliamentary democracies to other forms of government, from countries with very significant public services to those with fewer, from the very prosperous to the very poor, from the very large to the very small.

In 1978, the International Ombudsman Institute (IOI) was established as a global organisation for co-operation and now represents more than 150 Ombudsman institutions.

Adoption of the term Ombudsman

The second expansion of the office of the Ombudsman has been the widespread adoption of the term Ombudsman.

As a title with understood dimensions — a provider of fair, independent dispute resolution — the Ombudsman has been adopted from its beginnings, as an officer of the parliament with specific responsibility to ensure that the administration of the laws of Parliament by public administrators. A reference to the office of the Ombudsman now equally refers to the large number of Industry-based Ombudsmen.

There are many reasons for the growth of Ombudsmen, among them privatisation of public services and a desire to promote industry self-regulatory mechanisms — including industries being encouraged to take responsibility for their own complaint handling.

The growth of Ombudsmen has also paralleled the growth in concern for access to justice and interest in alternative dispute resolution. It is clear that Ombudsmen were conceived, developed (and have flourished) in no small part because of a recognition that traditional justice mechanisms — despite their fundamentally important role in contributing to the maintenance of the rule of law and the provision of high quality resolution of disputes — also had shortcomings for consumers, particularly

low-income consumers. These included problems with (1) accessibility and, in particular, the cost of dispute resolution; (2) the time taken to have disputes resolved; and (3) the extent to which courts and tribunals were not equipped to, or able to, identify thematic or system-wide problems arising from disputes and refer those problems to agencies (such as departments of consumer affairs or regulators) who might be in a position to encourage their resolution.

Where problems arise in an industry or an area of government services, the call for an Ombudsman commonly follows. In itself this is not an issue — indeed it is a testament to the high level of public respect for the independence, integrity and impartiality of Ombudsman offices. However, there is concern about the inappropriate use of the term Ombudsman to describe bodies that do not conform to, or show an understanding of, the accepted Ombudsman model and its 200 year history.

If the concept of Ombudsman is applied inappropriately, public confidence in the role and independence of the Ombudsman institution is at risk of being undermined and diminished. Using the term Ombudsman to describe an office with regulatory, disciplinary and/or prosecutorial functions confuses the role of Ombudsman with that of a regulatory body. An 'ombudsman' office under the direction or control of an industry sector or a government Minister is not independent. An office set up within a company or government agency as an 'internal ombudsman' is not independent.

The ANZOA policy statement on *Essential criteria for describing a body as an Ombudsman* is included as **Attachment 3**.

Increase in the scope of Ombudsmen

While the Ombudsman has spread throughout the world, the expansion of the Ombudsman institution has not been one of just scale, but also scope. The third category of expansion has been the evolution in the scope of functions undertaken by Parliamentary Ombudsmen.

Parliamentary Ombudsmen now undertake a much wider range of activities than was the case traditionally. For example, in addition to the 'classical' Ombudsman functions (that is, the investigation of complaints about government services), Ombudsmen now inspect telecommunications intercepts and the exercise of other covert powers, investigate public interest disclosures (commonly referred to as whistle-blower complaints), investigate complaints from overseas students, review the deaths of certain children and family and domestic violence fatalities, and monitor and review a range of legislation (for example, legislation regulating criminal organisations and the issuing of criminal penalty infringement notices).

Some Ombudsmen are also undertaking dual roles, combining their Parliamentary role with that of an Industry-based Ombudsman. For example, the Tasmanian Ombudsman and Western Australian Ombudsman both undertake the role of Energy Ombudsman for their respective states.

It is also important to acknowledge the evolution of the role of Ombudsmen as human rights protectors. Former Commonwealth Ombudsman, Professor John McMillan has observed that

"the right to complain, when securely embedded in a legal system, is surely one of the most significant human rights achievements that we can strive for".⁷

Access to justice via Ombudsman offices

Types of disputes handled

Ombudsman offices in Australia operate across a number of different spheres and handle a broad range of disputes.⁸ Parliamentary Ombudsmen deal with disputes about the conduct and decision-making of government agencies or with disputes in a particular policy sector⁹. Parliamentary Ombudsmen generally have the powers of a standing royal commission in investigating disputes.

Industry-based Ombudsmen deal with disputes about service providers in particular key industries — such as energy and water, financial services, public transport and telecommunications. They have wide powers of investigation and, when determining disputes, consider the law (including the Australian Consumer Law), industry-specific regulation (including licences and relevant codes), common law and contract law. It is important to note though, that Industry-based Ombudsmen do not determine disputes based on the law alone — they also consider good industry practice and what is just, fair and reasonable in all of the circumstances, as well as whether the matter was within the service provider's reasonable control.

How disputes are received

The services of Ombudsman offices are free to citizens and consumers. Each Ombudsman office offers a range of ways in which citizens and consumers can access its dispute resolution service. These include telephone — usually via a free call telephone number, in writing — via online web forms, email, letter or fax, and in person. Ombudsman offices also offer citizens and consumers free access to an interpreter service or the National Relay Service if this is required.

Based on the aggregated 2012-13 data from the eleven Ombudsman offices, around 59.6% of disputes are received by phone, around 31.6% by email or through online lodgement forms, around 7.6% by letter or fax, and the remainder through other methods including in person. This is a change from 2007-08 when close to 90% of disputes were received by phone and around 8% by letter, fax or online lodgement forms¹⁰. Table 1 (on page 7) outlines how disputes were received by the eleven Ombudsman offices in 2012-13.

⁷ McMillan, John, *The Role of the Ombudsman in Protecting Human Rights* (Commonwealth Ombudsman, 2006)

http://www.ombudsman.gov.au/files/21_July_2006_The_role_of_the_Ombudsman_in_protecting_human_rights.pdf

⁸ Parliamentary and Industry Ombudsmen also undertake significant work in addressing the patterns, trends and systemic issues that underlie and arise from disputes and, working with regulators and others, seek to reduce citizen/consumer detriment and the disputes that arise from such detriment.

⁹ Parliamentary Ombudsmen may also undertake other roles or functions conferred by statute — these roles are not within the scope of this submission.

¹⁰ Based on data from five of the eleven Ombudsman offices for 2007-08 — these offices have seen considerable change in the way complaints are received, with more consumers using online or electronic means in 2012-13 than in 2007-08.

Table 1: How disputes were received by the eleven Ombudsman offices in 2012-13	Aggregated average (%)
Telephone (free call, Translator Service and National Relay Service)	59.6%
Email or online lodgement form	31.6%
Written or fax (free fax)	7.6%
In person or other ways	1.4%

To ensure further accessibility to their dispute resolution services, Ombudsman offices allow citizens and consumers to be represented, if they so wish, by a family member, friend, consumer advocate, financial counsellor or other duly authorised representative. This is particularly appropriate where there is a barrier to the citizen or consumer lodging the complaint directly — such as language, frailty, health or literacy. Citizens and consumers are usually informed that access to the Ombudsman is free and paid representation is not required unless that is what the citizen or consumer wants.

These mechanisms ensure citizens and consumers have easy, flexible and equitable access to Ombudsman offices.

Demographic information

Most Ombudsman offices in Australia collect different types of demographic information about the citizens or consumers who use their dispute resolution services. This information helps these offices identify ways to make their services as accessible as possible.

Most Industry-based Ombudsmen offer their dispute resolution services to small businesses, as well as to individual consumers. Because small businesses are less likely to have the resources necessary to pursue a grievance through the formal legal system, it is appropriate that they have access to the free dispute resolution services these Ombudsman offices provide.

Table 2 (below) outlines the proportion of in-jurisdiction disputes received from individual consumers, small businesses and others (for example, charitable/not for profit organisations) for five Industry-based Ombudsman offices in 2012-13.

Table 2: Distribution of in-jurisdiction disputes received by five Industry-based Ombudsman offices in 2012-13, by consumer type	Aggregated average (%)
Individual consumers	93.2%
Small businesses	6.5%
Others (charitable institutions, not-for-profits)	0.3%

Some Parliamentary and Industry-based Ombudsman offices collect geographical demographic information about citizens and consumers. Demographic information by region was available from six Ombudsman offices. Table 3 (on page 8) outlines the distribution of citizens and consumers who used these dispute resolution services in 2012-13, by region.

Table 3: Distribution of consumers and citizens for six Ombudsman offices in 2012-13, by region	Aggregated average (%)
Metropolitan or urban areas	75.3%
Regional and rural areas	23.3%
Others (unknown)	1.4%

Some Ombudsman offices also collect other types of demographic information to identify ways to better assist citizens and consumers access their services. This includes information about age, gender, primary language spoken and household income.

Volume of disputes and contacts received

Australia's Ombudsmen operate within diverse and complex areas and industries, handling different volumes of disputes.

Each Ombudsman office receives a number of in-jurisdiction disputes each year — that is, matters about agencies or service providers that fall within the Ombudsman's remit or powers — as well as contacts or enquiries that fall outside jurisdiction. Ombudsman offices deal with the in-jurisdiction disputes, and make sure citizens and consumers with out-of-jurisdiction matters are appropriately referred to another organisation which can assist them.

Parliamentary Ombudsman offices deal with disputes involving a range of different agencies that come under their purview. The volume of in-jurisdiction disputes that Parliamentary Ombudsmen handle each year ranges from several thousands to close to 20,000 disputes.

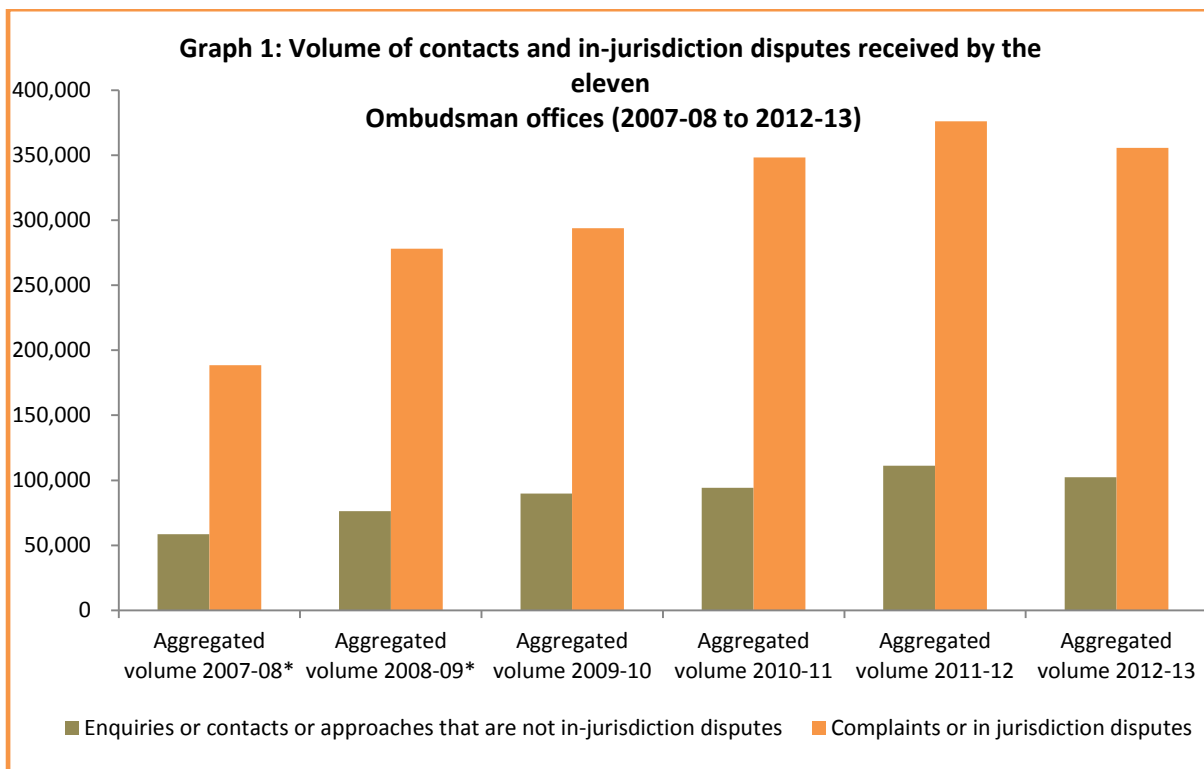
Industry-based Ombudsman offices deal with disputes within particular industries about services offered within those industries. The volume of in-jurisdiction disputes that Industry-based Ombudsmen handle each year ranges from several thousands to over 150,000 disputes.

Collectively, the eleven Ombudsman offices received 355,630 in-jurisdiction disputes in 2012-13. This was an increase of around 28% on in-jurisdiction disputes of 278,226 in 2008-09. Table 4 (below) outlines the volume of in-jurisdiction disputes and other contacts received by the eleven Ombudsman offices in 2012-13, compared to 2008-09.

Table 4: Volume of contacts and in-jurisdiction disputes received by the eleven Ombudsman offices	Aggregated volume in 2008-09*	Aggregated volume in 2012-13
Enquiries or contacts that are not in-jurisdiction disputes	76,262	102,422
In-jurisdiction disputes	278,226	355,630
Total contacts and in-jurisdiction disputes received	354,488	458,052

**2008-09 data includes contacts data for nine Ombudsman offices and in-jurisdiction disputes data for ten Ombudsman offices.*

Graph 1 (on page 9) shows the volume of in-jurisdiction disputes and other contacts received by the eleven Ombudsman offices over the past six years.



**2007-08 data includes contacts data for eight Ombudsman offices and in-jurisdiction disputes data for nine offices; *2008-09 data includes contacts data for nine Ombudsman offices and in-jurisdiction disputes data for ten offices*

Dispute resolution methods

Ombudsman offices offer citizens and consumers greater access to justice by providing an independent, fair, timely, efficient and informal dispute resolution service that:

- brings the parties together
- allows the parties a fair opportunity to present their respective views
- often allows the parties to tailor the resolution of their issue to their individual circumstances
- provides clear reasons to complainants if there are no further grounds for investigation
- helps the parties work towards a mutually acceptable resolution of the dispute, and
- if this does not eventuate, can result in formal recommendations or (in the case of Industry Ombudsmen) a decision that is binding on the service provider.

Ombudsman offices in Australia actively champion and use alternative dispute resolution methods when helping parties resolve their disputes. These methods are accessible, easy to use and are at no cost to the citizen or consumer. For many disadvantaged and vulnerable citizens and consumers in particular, Ombudsman offices offer an affordable and practical mechanism for resolving disputes without having to face the costs of legal representation or accessing civil justice services, which are often prohibitive or disproportionate to the issues in dispute.

Ombudsman offices usually use — with a high degree of success — early resolution methods such as initial assessments or referrals to a specialist area within the agency or service provider, where there is some but limited involvement by the Ombudsman office. Disputes that are not resolved through these methods may require more active involvement by the Ombudsman office, using resolution methods such as conciliation, facilitation, investigation, and finally, determination or recommendation.

The volume of disputes resolved by these methods differs among Ombudsman offices, as the efficacy of each method can depend on the types of disputes, the agencies or industries involved, and the complexity of the issues raised by the parties.

Based on aggregated 2012-13 data from nine of the eleven Ombudsman offices, around 82.2% of disputes are resolved via early resolution methods, with around 16.7% of disputes resolved via conciliation, facilitation or investigation, and only a small proportion requiring determination. Table 5 (below) outlines the proportion of disputes resolved through different resolution methods used by nine Ombudsman offices in 2012-13.

Table 5: In-jurisdiction disputes resolved by nine Ombudsman offices in 2012-13, by type of resolution methods used	Aggregated average (%)
Early resolution methods such as initial assessment, referral back to the provider or referral to a specialist area of resolution with the agency or provider	82.2%
Conciliation, facilitation or investigation	16.7%
Determinations or binding decisions	1.1%

Timeframes for resolution

Ombudsman offices offer a timely, efficient and effective service for resolution of disputes. Even where Ombudsman offices deal with more complex issues, disputes are usually resolved expeditiously.

Most in-jurisdiction disputes received by Ombudsman offices are finalised quickly, particularly through the early resolution methods. For some Ombudsman offices, close to 90% of their in-jurisdiction disputes are finalised within 30 days or less. For others, most of their in-jurisdiction disputes are likely to be resolved within 30 to 90 days, with only a very small proportion of disputes taking more than 180 days to resolve.

Table 6 (below) outlines the proportion of in-jurisdiction disputes finalised in less than 30 days, between 30 and 180 days and over 180 days by the eleven Ombudsman offices in 2012-13.

Table 6: Timeframes for resolution or finalisation of in-jurisdiction disputes by the eleven Ombudsman offices in 2012-13	Aggregated average (%)
Resolved or finalised within 1 month (< 30 days)	79.6%
Resolved or finalised between 1 to 6 months (30 to 180 days)	17.5%
Resolved or finalised after 6 months (> 180 days)	3.0%

Resolutions and remedies

The key strengths of Ombudsman offices lie in the resolutions and remedies that can be achieved. The dispute resolution processes used by Ombudsman offices can result in:

- more effective and flexible options to resolve the main issues in dispute
- the preservation of ongoing relationships between the parties to the dispute, and
- compromises and trade-offs on issues that are ancillary to the dispute.

The dispute resolution processes can also identify systemic issues, which are taken up by the Ombudsman office with an agency or company to reduce or prevent further complaints.

Each Ombudsman office has a range of remedies it can consider and determine, according to its charter, terms of reference or statutory powers. These remedies fall into two broad categories:

- remedies that result in resolution of the individual dispute between the parties, and
- remedies that result in improvements to the practices or processes of the agency or service provider concerned.

Examples of outcomes or remedies for each of these two categories are outlined in Table 7 (below).

Table 7: Examples of remedies or outcomes that can be achieved by Ombudsman offices	
Range of remedies to resolve individual disputes	Range of remedies to improve practices of an agency/service provider
<ul style="list-style-type: none"> • Provision of an apology • Waiver or refund of charges or fees • Financial remedy – compensation or act of grace payment • Release from a service contract without early termination fees • Connection, re-connection or repair of a service • Removal or amendment of a credit default • Negotiation of a reasonable payment arrangement • Expedition of an action or stopping of a particular conduct • Provision of an explanation or reasons for decision 	<ul style="list-style-type: none"> • Changed or improved policies or practices • Improved record keeping • Provision of staff training or modify training practices • Provision of informal counselling to agency officers • Improved systems to correct problems • Addressing of systemic issues that affect citizens or consumers • Improved information and explanation to citizens or consumers • Monitoring of compliance or regulatory intervention

Costs of handling disputes

Ombudsman offices offer a free dispute resolution service to citizens and consumers. Unless a citizen or consumer is represented by a solicitor or other paid representative, they do not incur any cost to have their dispute resolved via an Ombudsman office — other than perhaps the cost of their time or incidental expenses.

Office funding differs between Parliamentary Ombudsmen and Industry-based Ombudsmen. Parliamentary Ombudsmen receive annual appropriations from federal or state governments to fund their dispute resolution services and other statutory roles. The funding for Industry-based Ombudsmen comes from the industry within which the office operates — through regular levies calculated on the basis of service provider customer numbers, or through fees charged for the number of complaints lodged against individual service providers, or a combination of these.

Costs vary across each of the eleven Ombudsman offices due to a number of factors including:

- the complexity of disputes
- the different resolution methods and processes used
- the complexity of obligations involved in a particular area or industry, and
- the range and nature of the disputes.

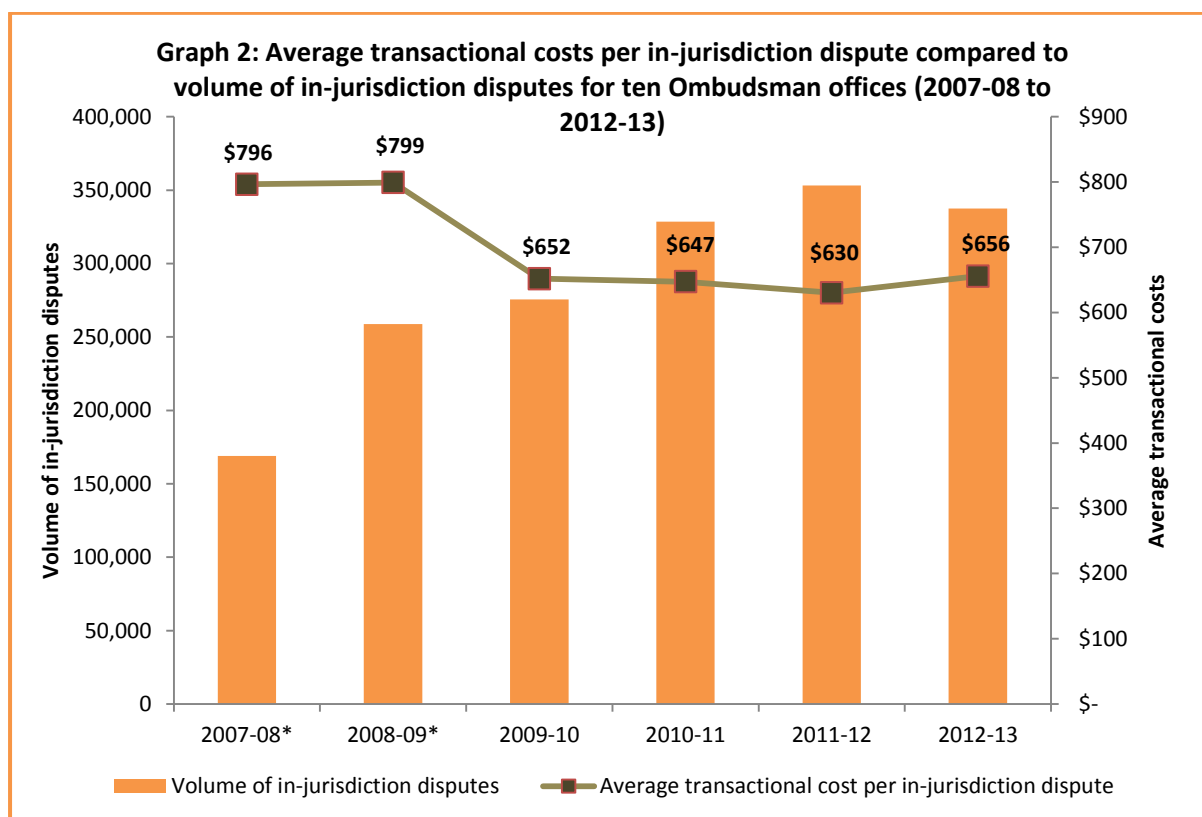
The average costs of the eleven Ombudsman offices have reduced since 2007-08, despite their in-jurisdiction disputes and contacts volumes increasing. This reflects the efficiency gains and improvements that these offices have achieved over this period.

In 2012-13, the cost of handling or resolving an in-jurisdiction dispute was, on average, around \$656 per in-jurisdiction dispute, compared to almost \$800 in 2008-09, a decrease of close to 18%. This is against a backdrop of an increase of close to 28% in the volumes of in-jurisdiction disputes handled by these offices over the same period (see Table 4 above). Table 8 (below) sets out the average transactional costs incurred per in-jurisdiction dispute handled by ten of the eleven Ombudsman offices in 2012-13 compared to 2008-09.

Table 8: Transactional costs for handling in-jurisdiction disputes by ten Ombudsman offices	Aggregated average *2008-09	Aggregated average 2012-13
Average cost per in-jurisdiction dispute	\$799	\$656
In-jurisdiction disputes	258,814	337,533

**Transactional costs data in 2008-09 is only available for nine of the Ombudsman offices*

Graph 2 (below) highlights the average transactional costs per in-jurisdiction dispute compared to the volume of disputes for ten of the eleven Ombudsman offices over the past six years.



**2007-08 data includes transactional costs and in-jurisdiction disputes data for eight Ombudsman offices;*

**2008-09 data includes transactional costs and in-jurisdiction disputes data for nine Ombudsman offices*

Stakeholder satisfaction

Ombudsman offices measure their performance and stakeholder satisfaction regularly, via stakeholder satisfaction surveys, qualitative research and other feedback processes.

Six of the eleven Ombudsman offices conduct regular consumer satisfaction surveys at intervals ranging from bi-monthly to triennial. Recent consumer satisfaction surveys conducted by these six offices indicate that, on average, customer satisfaction with their services is around 86%, with consumers either satisfied or very satisfied with the overall handling of their disputes. Results of these consumer satisfaction surveys are usually made publicly available by the respective Ombudsman offices.

Industry-based Ombudsman offices also maintain close engagement with their industry participants — including through provider satisfaction surveys, regular e-newsletters, participant conferences and forums, participant presentations and ongoing dialogue through specific industry/member engagement arrangements. While consumers usually rate Industry-based Ombudsman offices more positively than service providers do, recent service provider satisfaction survey results from two Industry-based Ombudsman offices indicate increased service provider satisfaction with their overall handling of disputes. Results of service provider satisfaction surveys are also usually made publicly available by the respective Ombudsman offices.

Consumer awareness and outreach activities

Each Ombudsman office uses a range of means to promote and monitor public awareness of, and ease of access to, its dispute resolution services — including public awareness surveys and outreach programs or activities.

Public awareness surveys are usually conducted several years apart to enable Ombudsman offices to gauge overall trends in public awareness, as well as micro trends such as awareness levels according to age-groups, location and other demographic indicators. Results of these types of surveys are used to highlight community groups or locations in which awareness needs to be raised via targeted outreach activities.

Recent public awareness surveys undertaken by three Ombudsman offices indicate a relatively good level of awareness of the respective office, ranging from 50% to 66%. These awareness surveys also highlight particular segments of the Australian community which are less likely to be aware of, or access, the dispute resolution services offered by Ombudsman offices. These segments include:

- Indigenous Australians, particularly those in regional and remote areas
- young people aged 18 to 24 years and young adults aged 25 to 34 years, and
- people from culturally and linguistically diverse backgrounds, especially new arrivals and migrant communities.

To promote greater awareness and increase access to justice, especially for vulnerable members of the Australian community, Ombudsman offices regularly organise and participate in a range of outreach programs or community activities. These initiatives are an essential part of effective stakeholder engagement and enable Ombudsman representatives to work closely with community

workers, consumers and small businesses to learn about and discuss important issues, in addition to raising awareness. Some of these activities involve collaboration between Ombudsman offices.

Table 9 (below) sets out examples of outreach activities regularly undertaken by the eleven Ombudsman offices to promote awareness of, and access to, their dispute resolution services.

Table 9: Examples of outreach activities regularly undertaken by Ombudsman offices to improve access to their services
➤ Regular attendances at community meetings and visits to metropolitan, regional and rural community groups for events such as Bring Your Bills Days, Seniors Week, 'complaint clinics', Financial Literacy Week, multicultural events, information stalls, expos and forums.
➤ Electronic communications; websites, including links to the sites of other organisations; forms of social media
➤ Participation in conferences and providing training for financial counsellors and community legal centre staff to raise awareness about Ombudsman dispute resolution services, provider/agency obligations and consumer rights and responsibilities.
➤ Meetings with community groups, regional centres, disability advocacy services, federal and state Members of Parliament, migrant and refugee resource centres, government and consumer agencies.
➤ Participation in targeted regional outreach programs, such as the Regional Accessibility and Awareness Program (RAAP) to raise awareness and increase accessibility for regional and Indigenous Australians.
➤ Participation at forums and meetings for communities affected by natural disasters such as bushfires and floods.
➤ Regular visits to, and meetings with, Indigenous communities including participation in 'The Good Service Mob' where agencies work together to increase access to dispute resolution services for Indigenous Australians.
➤ Collaboration with other agencies to develop accessible tools and resources to improve financial literacy of particular segments of the community, for example, young people.
➤ Workshops for community groups or service providers on the role of the Ombudsman, good service provider internal dispute resolution processes, and strategies for pursuing a dispute with an agency or provider.

Attachment 1

Selected Literature Review

Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil and Family Justice: A Roadmap for Change*, Canadian Forum on Civil Justice (2013)

http://www.cfcj-fcj.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf

AfriMAP and Open Society Foundation for South Africa, *South Africa: Justice Sector and the Rule of Law* (2005)

http://www.opensocietyfoundations.org/sites/default/files/afrimapreport_20060223.pdf

Australian and New Zealand Ombudsman Association (ANZOA), *Chronology of establishment of the offices (and predecessor offices) of ANZOA Members* (2011)

http://www.anzoa.com.au/ANZOA_Ombudsman-chronology_October2013.pdf

Australian and New Zealand Ombudsman Association (ANZOA), *Essential Criteria for describing a body as an Ombudsman* (2010)

http://www.anzoa.com.au/ANZOA%20Policy%20Statement_Ombudsman_Essential%20Criteria_Feb2010.pdf

Australian and New Zealand Ombudsman Association (ANZOA), *Setting the scene: Industry-based customer dispute resolution schemes* (speech delivered by Colin Neave and John Pinnock, NADRAC conference 2003)

http://www.anzoa.com.au/ANZOA-presentation_Setting-the-scene-Industry-based-customer-dispute-resolution-schemes_NADRAC-September2003.pdf

Australian and New Zealand Ombudsman Association (ANZOA), *Resolving customer disputes – case studies and current issues* (Ombudsman panel, NADRAC conference 2003)

http://www.anzoa.com.au/ANZOA-presentation_Resolving-customer-disputes_case-studies-and-current-issues_NADRAC-September%202003.pdf

Canadian Bar Association, *Access to Justice Metrics: A Discussion Paper* (2013)

http://www.cba.org/CBA/Access/PDF/Access_to_Justice_Metrics.pdf

Cohen, Simon, *Fair and reasonable – An industry Ombudsman's guiding principle* (2010)
63 AIAL Forum 20

Creyke, Robin and John McMillan, 'Chapter 4: Other Methods of Administrative Law Review' in *Control of Government Action: Text, Cases and Commentary* (LexisNexis Butterworths, 2012)

Duggan, Anthony, 'Consumer Access to Justice in Common Law Countries: A Survey of the Issues from a Law and Economics Perspective' in T Telfer and C Rickett (eds), *International Perspectives on Consumers' Access to Justice* (Cambridge University Press, 2003)

Elias, Rt Hon Dame Sian, Chief Justice of New Zealand, *Life beyond legality: The place of the Ombudsman in the justice system* (speech delivered at ANZOA's biennial conference, 2010)

http://www.anzoa.com.au/publications/ANZOA-Conference-2010/Dame-Sian-Elias_The-place-of-the-Ombudsman-in-the-justice-system.pdf

Field, Chris, *The Role of Western Australian Energy Ombudsman and its Relationship with Regulators, Industry and Consumers* (2013) 41 ABLR 43

Field, Chris. *The Fourth Branch of Government: The Evolution of Integrity Agencies and Enhanced Government Accountability* (2013) 72 AIAL Forum 24

Field, Chris, *Recent Evolutions in Australian Ombudsmen* (2010) 63 *AIAL Forum* 4

Field, Chris, *Alternative Dispute Resolution in Victoria: Supply Side Research Project* (Chris Field Consulting Pty Ltd, 2007)

<http://www.consumer.vic.gov.au/library/publications/resources-and-education/research/alternative-dispute-resolution-in-victoria-supply-side-research-project-2007.pdf>

McMillan, John *What's in a name? Use of the term Ombudsman* (Speech delivered at ANZOA's biennial conference, 2008)

http://www.anzoa.com.au/publications/ANZOA-Conference-2008/John-McMillan_What's_in_a_name_Use_of_the_term_Ombudsman.pdf

McMillan, John and Ian Carnell, *Administrative Law Evolution: Independent Complaint and Review Agencies* (2010) 59 *Admin Review* 30

McMillan, John, *The Ombudsman's Role in Human Rights Protection – An Australian Perspective* (Commonwealth Ombudsman, 2009)

http://www.ombudsman.gov.au/files/2-5_November_2009_The_Ombudsmans_role_in_human_rights_protection_an_Australian_perspective.pdf

McMillan, John, *Can Administrative Law Foster Good Administration?* (Commonwealth Ombudsman, 2009)

http://www.ombudsman.gov.au/files/16_September_2009_Can_administrative_law_foster_good_administration.pdf

McMillan, John, *Ten Challenges for Administrative Justice* (2009) 61 *AIAL Forum* 23

McMillan, John, *Natural Justice – Too Much, Too Little or Just Right?* (2007) 58 *AIAL Forum* 33

McMillan, John, *The Role of the Ombudsman in Protecting Human Rights* (Commonwealth Ombudsman, 2006)

http://www.ombudsman.gov.au/files/21_July_2006_The_role_of_the_Ombudsman_in_protecting_human_rights.pdf

McMillan, John, *The Ombudsman and the Rule of Law* (Commonwealth Ombudsman, 2004)

http://www.ombudsman.gov.au/files/5-6_November_2004_The_Ombudsman_and_the_rule_of_law.pdf

Lane, W B and Simon Young, *Administrative Law in Australia* (Lawbook Co, 2007)

Office of the Auditor General Western Australia, *Order in the Court: Management of the Magistrates' Court* (Report No. 8, 1996).

https://audit.wa.gov.au/wp-content/uploads/2013/05/report96_08.pdf

Ostrom, Brian and Roger Hanson, *Achieving High Performance: A Framework for Courts* (USA, National Centre for State Courts, 2010)

http://www.ncsc.org/Services-and-Experts/Technology-tools/Court-Technology-Framework/~/_media/Files/PDF/Services%20and%20Experts/CTF/Achieving_HPC_April_2010.ashx

Petre, Clare, *Future of the relationship between Parliamentary Ombudsmen and Industry Ombudsmen* (2003) 36 *AIAL Forum* 63

Preston, Brian, *The Land and Environment Court of New South Wales: Moving Towards a Multi-Door Courthouse* (2008) 19 *ADRJ* 72. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2346046

Spigelman, James, *Measuring Court Performance* (Speech delivered at the Annual Conference of the Australian Institute of Judicial Administration, Adelaide, 16 September 2006)
http://www.lawlink.nsw.gov.au/lawlink/Supreme_Court/ll_sc.nsf/vwPrint1/SCO_spigelman160906

Stuhmcke, Anita, *Australian Ombudsmen and Human Rights* (2011) 66 *AIAL Forum* 43

Stuhmcke, Anita, *The Commonwealth Ombudsman: Twenty Five Years On and No Longer Alone* (2003) 36 *AIAL Forum* 54

Stuhmcke, Anita, *Resolving Consumer Disputes: Out of the Courts and into Private Industry* (2003) 31(1) *ABLR* 48.

<http://epress.lib.uts.edu.au/research/bitstream/handle/10453/905/2003002137.pdf?sequence=3>

Wakem, Dame Beverley, *Achieving Administrative Justice and Procedural Fairness in Ombudsman Investigations* (speech delivered at ANZOA's biennial conference, 2008)

http://www.anzoa.com.au/publications/ANZOA-Conference-2008/BevWakem_Achieving_administrative_justice_procedural_fairness_ANZOA_Conference_2008.pdf

Attachment 2

Chronology of the establishment of the offices of ANZOA members

1962	New Zealand: Office of the Ombudsman New Zealand
1962 - 1971	Australia: Ombudsman Western Australia
1972	Australia: Ombudsman South Australia
1972 - 1973	Australia: Ombudsman Victoria
1977	Australia: Commonwealth Ombudsman (expanded to include the Taxation Ombudsman in 1995, the Immigration Ombudsman in 2005, the Postal Industry Ombudsman in 2006 and the Law Enforcement Ombudsman in 2006)
1978	Australia: Ombudsman Tasmania
1981	Australia: Ombudsman Northern Territory
1989	Australia: Australian Banking Industry Ombudsman (ABIO), which was renamed as the Banking and Financial Services Ombudsman (BFSO) in 2003
1991	Australia: General Insurance Claims Review Panel & Insurance Industry Complaints Council (IICC); dissolved in 1997.
1991	Australia: Life Insurance Complaints Review Committee (LICRC). LICRC merged with the Life Insurance Federation of Australia Inquiries and Complaints Service in 1993 to become the Life Insurance Complaints Board (LICB). LICB became the Life Insurance Complaints Service (LICS) in 1995 (on incorporation) and then became the Financial Industry Complaints Service (FICS) in 1999.
1992	New Zealand: Banking Ombudsman Scheme New Zealand
1993	Australia: Insurance Enquiries and Complaints Ltd (IEC Ltd), an incorporated body accountable to IICC, above. In 1997, IEC Ltd restructured as a company limited by guarantee. IEC Ltd became Insurance Ombudsman Service in 2005.
1993	Australia: Telecommunications Industry Ombudsman
1995	New Zealand: Insurance & Savings Ombudsman Scheme
1995	Australia: Electricity Industry Ombudsman (Victoria) (EIOV), which became the Energy Industry Ombudsman (Victoria) (EIOV) in 1999, and was expanded to be the Energy and Water Ombudsman (Victoria) (EWOV) in 2001
1997	Australia: Health Services Commissioner Victoria
1998	Australia: Energy Industry Ombudsman New South Wales (EION), which became the Energy & Water Ombudsman NSW (EWON) in 2000
1998	Australia: Electricity Ombudsman Tasmania (EOT), which became the Energy Ombudsman Tasmania in 2005
2000	Australia: Electricity Industry Ombudsman (SA) (EIOSA), which became the Energy Industry Ombudsman (SA) in 2003 and the Energy and Water Ombudsman (SA) in December 2011
2002	New Zealand: Electricity and Gas Complaints Commissioner Scheme
2003	Australian and New Zealand Ombudsman Association (ANZOA) set up in May 2003

2004	Australia: Gas Industry Ombudsman Western Australia (GIOWA), which became the Energy Ombudsman Western Australia in 2005
2004	Australia: Public Transport Industry Ombudsman (Victoria)
2007	Australia: Energy Ombudsman Queensland (EOQ), which became the Energy and Water Ombudsman Queensland in 2011
2008	Australia: Financial Ombudsman Service (name change on merger of BFSO, Insurance Ombudsman Service and FICS, above)
2008	Australia: WorkCover Ombudsman South Australia

Attachment 3

Essential criteria for describing a body as an Ombudsman

Policy statement endorsed by the Members of the Australian and New Zealand Ombudsman Association (ANZOA)

The institution of Ombudsman has proven itself adaptable to a variety of roles and settings.

In Australia and New Zealand today, there are several types of Ombudsman offices:

- Parliamentary Ombudsmen who take complaints from citizens and constituents about government agencies
- Other statutory Ombudsmen/Commissioners who investigate complaints about particular agencies or professional services — such as health
- Industry-based Ombudsmen who take complaints from customers of companies providing particular services — such as telecommunications, banking, insurance, investments, energy, water and public transport.

The development and popularity of the Ombudsman institution has come about for one reason — the office is renowned for independent, accessible and impartial review and investigation. In increasing numbers, the public turns to Ombudsman offices for assistance and support.

It is important, therefore, that members of the public are not confused about what to expect when they approach an Ombudsman's office — public trust must not be undermined.

Many of those who approach an Ombudsman feel vulnerable, wish to do so in confidence or make serious allegations or whistle-blower complaints.

Public respect for the independence, integrity and impartiality of Ombudsman offices is at risk if bodies that do not conform to the accepted model are inappropriately described as an Ombudsman office.

It is a contradiction in terms, for example, to describe a body as an 'internal ombudsman' or to apply the description to a body that is subject to the direction of a government minister or industry body.

The Australian and New Zealand Ombudsman Association (ANZOA) is concerned to ensure appropriate use of the term Ombudsman. Our view is that a body should not be described as an Ombudsman unless it complies with six essential criteria addressing independence, jurisdiction, powers, accessibility, procedural fairness and accountability.

Independence

- The office of Ombudsman must be established — either by legislation or as an incorporated or accredited body — so that it is independent of the organisations being investigated.
- The person appointed as Ombudsman must be appointed for a fixed term — removable only for misconduct or incapacity according to a clearly defined process.
- The Ombudsman must not be subject to direction.
- The Ombudsman must be able to select his or her own staff.
- The Ombudsman must not be — or be able to be perceived as — an advocate for a special interest group, agency or company.
- The Ombudsman must have an unconditional right to make public reports and statements on the findings of investigations undertaken by the office and on issues giving rise to complaints.
- The Ombudsman's office must operate on a not-for-profit basis.

Jurisdiction

- The jurisdiction of the Ombudsman should be clearly defined in legislation or in the document establishing the office.
- The jurisdiction should extend generally to the administrative actions or services of organisations falling within the Ombudsman's jurisdiction.
- The Ombudsman should decide whether a matter falls within jurisdiction — subject only to the contrary ruling of a court.

Powers

- The Ombudsman must be able to investigate whether an organisation within jurisdiction has acted fairly and reasonably in taking or failing to take administrative action or in providing or failing to provide a service.
- In addition to investigating individual complaints, the Ombudsman must have the right to deal with systemic issues or commence an own motion investigation.
- There must be an obligation on organisations within the Ombudsman's jurisdiction to respond to an Ombudsman question or request.
- The Ombudsman must have power to obtain information or to inspect the records of an organisation relevant to a complaint.
- The Ombudsman must have the discretion to choose the procedure for dealing with a complaint, including use of conciliation and other dispute resolution processes.

Accessibility

- A person must be able to approach the Ombudsman's office directly.
- It must be for the Ombudsman to decide whether to investigate a complaint.
- There must be no charge to a complainant for the Ombudsman's investigation of a complaint.
- Complaints are generally investigated in private, unless there is reasonable justification for details of the investigation to be reported publicly by the Ombudsman — for example, in an annual report or on other public interest grounds.

Procedural fairness

- The procedures that govern the investigation work of the Ombudsman must embody a commitment to fundamental requirements of procedural fairness:
- The complainant, the organisation complained about and any person directly adversely affected by an Ombudsman's decision or recommendation — or criticised by the Ombudsman in a report — must be given an opportunity to respond before the investigation is concluded.
- The actions of the Ombudsman and staff must not give rise to a reasonable apprehension of partiality, bias or prejudice.
- The Ombudsman must provide reasons for any decision, finding or recommendation to both the complainant and the organisation which is the subject of the complaint.

Accountability

- The Ombudsman must be required to publish an annual report on the work of the office.
- The Ombudsman must be responsible — if a Parliamentary Ombudsman, to the Parliament; if an Industry-based Ombudsman, to an independent board of industry and consumer representatives.