



Ombudsman Remedies

John McMillan

Australian Information Commissioner (Designate)

Commonwealth Ombudsman (2003-10)



The importance of remedies in law and dispute resolution

- Origin of the common law – the grant of a remedy by a court
- Development of the law – ‘no right without a remedy’
- Nature of a remedy – a binding order (‘hard edged’)
- Implications for dispute resolution – the focus in litigation is upon reaching a practical outcome that finally resolves the dispute

Remedies and the ombudsman

- Initial theory – ombudsmen don't grant remedies, they only give advice or make recommendations
 - Cf Industry ombudsmen – determinative powers
- Implications for ombudsman method – eg, initial focus on whether complaint sustained, error found
- Current thinking – ombudsmen do grant remedies tailored to the nature of the problems they encounter
- Implications for ombudsman method
 - Broader concept of remedy
 - Focus on practical resolution of disputes

Remedies used by ombudsmen

- Better explanation/improved communication
- Reducing delay
- Suspending or postponing action
- Agency reconsideration or variation of decision or action
- Financial compensation
- Agency apology

*(See Commonwealth Ombudsman, Fact Sheet 3,
“Providing Remedies”)*

Guiding principles

- Focus early on the issue of remedy/practical resolution
- If appropriate, seek a remedy that restores a person to their former situation
- If multiple agencies are involved, ensure that all agencies are agreed on the remedy
- Follow up: ensure that the agency honours its commitment
- Keep statistics on the remedies granted
- Look beyond remedies – to systemic issues; expressing an opinion/finding on propriety of agency action; lessons to be learnt; cultural change

Ombudsman remedies and alternative dispute resolution

- Where these two issues intersect: the current emphasis on ADR
- Reasons for caution:
 - The emphasis on confidentiality in ADR
 - Legal colonisation of ADR