

TRANSCRIPT

**Radio interview: Mr Paul Bluck, Director Legal Policy, Commonwealth Ombudsman;
Mr Doug Humphreys, Principal Registrar, Administrative Appeals Tribunal;
Mr Peter Maywald, Secretary to Government
Radio Norfolk – George Smith
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GEORGE SMITH: We have three special guests in this morning. First we have Paul Bluck, we have Doug Humphreys and Peter Maywald. I'd like to welcome the three of you into the studio this morning. I'll give you a bit of background. Paul Bluck has worked in his current position since 1997. His duties involve dealing with complaints about Freedom of Information and complaints relating to Commonwealth court administration, tribunals, Privacy Commissioner and Australian Human Rights Commission, providing internal legal advice and services to other areas of the office and advising on policy developments affecting the Ombudsman. He is the Director of Legal Policy at the Office of the Commonwealth Ombudsman.

Doug Humphreys is the Principal Registrar responsible to the President of the Commonwealth Administrative Appeals Tribunal (Justice Garry Downes) for the administration of the Tribunal and the position is that of the Chief Executive Officer of the Tribunal and includes overall responsibility for information technology, finance, human resources, property, registry functioning and procedures, professional development and training.

Now with that short introduction can we turn to you first, Paul. Tell me what all that means.

PAUL BLUCK: Thanks very much. The Commonwealth Ombudsman is an organisation that was established by legislation in 1976. The ombudsman institution has been around since 1809 in Sweden, so it's 200 years. The Ombudsman is based in Canberra; he is a statutory appointee by the Governor-General. One of the effects of this is that over his five-year term he's pretty well irremovable. He can be removed in about the same way as a judge can be removed. So he's entitled to be as independent as he wants – and he usually is. There's absolute impartiality.

The Office is assisted by two Deputies, who are also statutory appointees with the same conditions, and as well by about 140 public servants. It sounds like a lot of people, but spread over the range of responsibilities we have, it's not a large organisation. The Office is based in Canberra, but we have regional offices in the state capitals and small outposts as well in Alice Springs and Darwin.

The Office deals with complaints mostly about Commonwealth agencies. The main agencies that attract complaints would be Centrelink, Immigration, Australia Post, Child Support Agency is a fairly large contributor and the Tax Office. For some reason, people don't like paying money to the government or paying money to people they've divorced from – it's a strange thing!

We get complaints – in the last year about more than 120 agencies. Some of them will attract one complaint in ten years. Some we'll hear about once and never again. The total complaint load last year was just under 20,000 – it makes Australians quite good at complaining. It means roughly one Australian in a thousand made a complaint. We investigate about 5,000 of those. In the other cases, we suggest that people raise the matter and sort it out as far as possible with the agency.

GEORGE SMITH: And that works?

PAUL BLUCK: In most cases, yes. Most of the larger agencies in particular – Centrelink and the Tax Officer are really good examples – have very high quality internal complaint systems. We helped to develop them, we conduct regular inquiries into them to make sure that they are still working as effectively as they should be and so we're quite confident about sending people back through those systems. If they come out at the other end still unhappy, they come out with at least the agency having reconsidered the matter, having produced an ostensible, stable and coherent statement of what it's done and we can work out fairly quickly based on that whether it's something we need to pursue or whether it's just someone being picky about a small issue.

GEORGE SMITH: So, when you go through that process, does the Office go back to that agency and say, "You've really got to fix this up". Do you have that power?

PAUL BLUCK: We make enquiries. We try to do things as informally as possible. We receive complaints in any way people can make a complaint, in effect – they write letters, they make phone calls, they send emails, they can send text messages – we're as informal as we can be about that. And we do our investigations in much the same way. In a typical case – for example, my team investigated something Privacy Commissioner's Office – we would send an email to our contact there – who I believe was here last week, Mark Hummerston – send an email to him and ask him for their account of events and perhaps for electronic copies of some of the letters that they have sent out. When we get that back, we'll examine it and decide whether we need to take any further steps or whether in all they have done what we believe to be a reasonable job. And then we'll inform the person.

Most of our complaint investigations work like that - Email, telephone, writing letters – snail mail is something that's a little slower. In most cases, agencies

cooperate when we just ask questions. We have powers to require compliance, but we very seldom have to use them. We can require any person, typically an official but it can be anyone, to provide information - in other words a statement - to provide us with documents or to attend one of our offices and answer questions and we can administer an oath or an affirmation. We have to do that so rarely – we have the power to do it and perhaps the reason people cooperate is that we have the power to do it. If people want the assurance of being compelled to do something, we can compel them. Then at the end of the day after we've done an assessment, we inform the individual of our views, we also might progress it and if we make criticism of the agency, we give them an opportunity to make comments back, consider them and then we can report to the agency and to its minister and then escalate the matter further as we need to. That's how we work in the Commonwealth.

GEORGE SMITH: That seems a good way of working - from informal as you were saying to very formal I guess.

PAUL BLUCK: The idea of informality is the only way we can deal with 5,000 investigations a year. If we had to go to the formal step, we would probably be prepared to do it, but it would be very very time consuming, much slower than it is and much less effective for the public, and also for the agencies which are left hanging while these slow processes are occurring. No one wants that to happen.

GEORGE SMITH: No. Are many of the complaints frivolous?

PAUL BLUCK: There are a few. There are a lot which are sincere, but misguided. There are a few people, who, once they receive an adverse decision, will take any step they can to progress the matter, to push it to what to most of us might seem ridiculous extents but they are very rare. We take the view that we get 20,000 complaints, which is about one person in a thousand in Australia. Of those, maybe one in several hundred will apply for an internal review, which is an informal thing we do just to make sure if someone's unhappy, just make sure that we've done a reasonable job, that the delegate's done a reasonable job. And the number who take it to that point is relatively few, it's a couple of hundred a year and the number that take it beyond that is very small – you are talking 1% of 1% or something like that.

GEORGE SMITH: So that's really quite successful, isn't it?

PAUL BLUCK: It is, and it's a tribute to the staff that we've got who are mostly experienced, they're well trained, they're well supported with a very good investigation data base and electronic tools, but also to the commonsense of people at the other end either in the agencies who are prepared to listen and say "Oh dear, we could have done that better" and fix it and also to complainants – and the number of times when a complainant says after receiving a proper explanation from an agency, often for the first time as a result of our

investigations, “oh, I understand now”. It’s a good feeling – that’s a remedy we’re quite happy with. It’s whether we’re happy, by the way, not whether the complainant is happy – we’re not going to order death sentences just to make people happy!

Remedies that we can recommend would include things like explanations, apologies – and getting an apology out of a large Commonwealth agency is difficult but terribly satisfying for everybody involved – and sometimes other things like changed decisions, or on occasions financial compensation. The amount for that ranges from \$20 for someone who’s been put to a little bit of inconvenience or lost some copied documents or something to a noted case some years ago which involved several million dollars because an agency attempted to limit what an exporter was entitled to export and they were not entitled to do it. In other words, we’re flexible and can deal with the big things. We deal very successfully with big and small.

GEORGE SMITH: Which agencies are the worst – but that’s probably not a good word to use...

PAUL BLUCK: The big complaint agencies are the ones that have most dealings with the public. Centrelink, the Tax Office – everyone on the Australian mainland pays tax. A lot of them deal with Centrelink about family payments, pensions and benefits. Inevitably there are rub points – they do something wrong or believe they have been badly treated or they deal with an official who’s been having a bad day or hasn’t been well trained or simply shouldn’t be in the job. Because of the number of contacts, those are the ones that produce a lot of problems. Immigration, because there is so much at stake for the individuals, and child support, because as I indicated, telling someone that they have got to pay money to the person that they probably dislike most in the world for children they possibly aren’t all that happy about (if they’re teenagers) is unlikely to make them happy. There’s no way of sugar coating that pill sufficiently to make people content with it.

GEORGE SMITH: No. Before we turn to Doug – how did you get into this job?

PAUL BLUCK: It’s a sad story. In 1975, when I was a law student, I studied a subject called Public Law – this is before the Ombudsman came into existence - but we looked at the report of the Kerr Committee which recommended the Ombudsman and I thought at that stage that it sounded like a terrific idea. When I joined the public service, I dealt more and more with the Ombudsman. I moved there in 1985 as an investigator for four years, I left, worked in another complaint agency, then spent six years as the Ombudsman’s policy officer in Prime Minister and Cabinet. Then, when the job that I’ve currently got became vacant I thought it looked pretty well perfect, and it has been for the last 12 years.

GEORGE SMITH: And here you are. Thank you Paul.

PAUL BLUCK: Well, it's got me to Norfolk Island.

GEORGE SMITH: I should have said that, too – welcome to Norfolk Island, both of you. Now Doug, tell us about your role please.

DOUG HUMPHREYS: I want to talk about what the Administrative Appeals Tribunal is and what it does. The Tribunal is an independent merits review body that reviews decisions of Commonwealth departments, officials, and in some cases, Commonwealth Cabinet Ministers. We have a very broad range of jurisdiction, and in fact there are over 400 separate pieces of legislation or regulation that provide a right of appeal to the Administrative Appeals Tribunal. So what we do, if there is a right of appeal and somebody's unhappy with a decision that has been made in respect of their rights or entitlements they can then appeal to the ATT and we then conduct a merits review of the decision. By merits review, what I mean this. We stand in the shoes of the original decision maker, we are able to hear additional evidence, the parties may or may not be represented by lawyers, we have a hearing, and then the Tribunal can either affirm the original decision, it can vary the original decision or it can actually set aside the original decision and substitute the Tribunal's own decision in lieu of the original decision made by the Commonwealth department or the official. So we have a very wide power, and we see ourselves as being a check and balance in Commonwealth decision making to ensure that the decision making which occurs is the best possible decision in all of the circumstances. So we provide a protection for people's rights and entitlements under Commonwealth law.

The Tribunal is quite interesting, because it came about as a result of the Kerr Report, which Paul just referred to and it has been in existence for some 30-odd years. We are headed by a President, who is a Federal Court judge. So, from that point of view, we are very independent of government although we are remaking government decisions in some cases. We have about 80 Members. Now, we've got both part-time and full-time Members. One of the benefits that the Tribunal offers is that we can bring special knowledge to decision making. So, within the Tribunal we have a very wide range of people – there are certainly quite a few lawyers within the Tribunal, but we also have medical practitioners, we have veterinary surgeons, we have pharmacologists, we have aviators, we have retired defence personnel, actuaries – there's an incredible range of people who we can actually bring to a hearing and we can have a panel sitting on a hearing of one, two or three Members. So, if for a matter that may involve, say, a veteran's entitlement where there is both medical evidence and evidence in relation to operational service, we might constitute a panel with a lawyer sitting in the middle who will deal with any legal questions that might arise, but they may be assisted by a medical practitioner on one side and a retired defence person on the other.

So we hold a hearing, we have evidence, and we deliver a decision. We are not a legal body in that we don't decide matters of law - that's a matter for courts. But there is a right of appeal from the Tribunal to the courts on matters of law. And we can do what we call the correct or preferable decision. The correct decision, if there is only one decision that's available within the legislation; the preferable decision is where there may be a range of decisions, because there are discretions available to the original decision maker and we can select what we think is the preferable decision of all of the options that are open to the original decision maker.

So, that's basically what the Tribunal is. We hear about 6,000 matters a year. We have extensive alternative dispute resolution processes that we go through to try and see if we can settle matters prior to going to hearing. And they're very successful, and in fact only about 20% of our matters go to a hearing. And at the end of the hearing, we will issue a written decision, which then becomes the decision of the department who originally made the matter, and they are then expected to implement that decision.

GEORGE SMITH: And they do?

DOUG HUMPHREYS: And they do. And that's part of the success of the system, because there is confidence in the Tribunal and they then implement whatever the decision is that we have made because it is in fact their own decision, because we stand in their shoes.

GEORGE SMITH: What sorts of things do people appeal on? I realise that's fairly broad...

DOUG HUMPHREYS: Oh, it's incredibly broad. Because of the range of jurisdiction we have, we deal a lot with social security matters, social security entitlements, we do a lot of Commonwealth workers' compensation matters, we do veterans' entitlements, we do a lot of tax work. Talking about tax work, the Commissioner has a very large discretion to impose administrative penalties and interest payments and things like that - they're the sorts of matters that can be appealed, as well as whether or not a matter may be a tax scheme or something like that. But then, we get into a broad range of other things that can include corporations areas, customs and excise, environmental protection, we do quite a bit of freedom of information work as to whether or not people can access documents, we do heritage protection, some education work in terms of access to various things, immigration - we have a particular jurisdiction in relation to matters involving character, so deportations involving a finding of bad character or issues like that, that's another area - industry assistance, some corporations work in relation to directors, for example the Australian Prudential Regulation Authority can ban a person from being a director of an insurance company for a number of years. People can appeal against that to the AAT. We do some national security work, so if someone's passport is revoked or cancelled on the

basis of national security grounds, people can appeal that decision to the AAT. Professional qualifications, in terms of recognition of professional qualifications, it's an incredibly broad and incredibly interesting area to work. And it's a body that is held in very high regard both nationally and internationally.

GEORGE SMITH: And you have offices throughout Australia?

DOUG HUMPHREYS: Yes, we have an office in every capital city, including Canberra. We deal with Darwin from our Brisbane office, but we travel to locations if we have to hold a hearing somewhere, we will travel to that location. So it's quite usual for us to go up to Newcastle and Wollongong in New South Wales or go up to Albury and Wodonga in Victoria. Canberra does the Wagga and the south region. In Brisbane, for example, they circuit to Townsville and Cairns on a regular basis. So, we regard it as very important that we will go to where the work is. Some people prefer to come into the city, and if they can't come into the city but they want to do a hearing by telephone or they want to do it by video, we can arrange that as well. So we are very informal – we try to be informal but we try to ensure that we are rigorous in what we do - so that we get the best possible decision.

Interestingly, the department will appear, and their role is not to justify the original decision that they made, but the role of the department is to assist the Tribunal in coming to the best decision, so it's a very unique role that they play.

GEORGE SMITH: And they work along quite well with you with that?

DOUG HUMPHREYS: I think that the departments have come to see the Tribunal as value adding to the decision making process, and not being a place that they go to when they have been naughty, in fact that they see it as a place where they can go along and, in many cases, show that they have made a very good decision.

GEORGE SMITH: Of course. Can people appeal from here?

DOUG HUMPHREYS: At the moment, there are some rights of appeal in relation to what I will call Commonwealth entitlements. Norfolk Islanders have passports. If an Australian passport was cancelled, they would do. And I think it's a matter of negotiation at the moment between the Norfolk Island Government and the Australian Government as to whether or not the AAT would have an expanded jurisdiction in Norfolk Island, and I think that's one of the reasons why we are here.

GEORGE SMITH: Now, while you are here – you didn't just come here to have a radio interview with us – you must be doing other things, and perhaps you could let the people know what you are doing.

DOUG HUMPHREYS: Can I say, apart from enjoying the glorious scenery and the hospitality of the Norfolk people, we've had meetings with the Administrator, we've had meetings with the Chief Minister, we had a meeting with the Members of the Legislative Assembly, we went to a public meeting, we've got, obviously, this radio interview and then we are having some meetings with the legal profession and then some other meetings this afternoon.

PAUL BLUCK: There are some individual people who have decided to come along and talk to us.

DOUG HUMPHREYS: It's been pretty full on.

GEORGE SMITH: Peter, is there anything you want to say...?

PETER MAYWALD: I've got a provocative question, George. What does it all mean? We've got privacy, FOI, AAT, Ombudsman – how does that all fit together and how does that make things better? I know I shouldn't ask public servants for an opinion, but I'm sure you'd be happy to give me one.

PAUL BLUCK: In the Commonwealth, and once again we have no idea about what model might be applied to Norfolk Island, there is no doubt that as a result of 30 or so years of these developments, public servants are making better decisions, they are making decisions in a more open and transparent way, they are explaining their decisions much better, they're not writing stupid things on files which later come out to embarrass themselves, the agency and the individual. In other words, it's been an overall improvement – there's certainly been some cost to Commonwealth administration, and sometimes it's been resisted – but for the most part I think it has improved the quality for the public and it has created a public service which serves the public, rather than a public service that simply conducts a process.

DOUG HUMPHREYS: For the Tribunal, we think that we offer people the opportunity of having a hearing. They can come along, they can put their case as to why they think a decision should be changed. It's accountable and we have a couple of success criteria. First of all, we want to make sure that we make the best possible decision in the light of the material that's available to us. Now on occasions, people will not get the decision changed or reversed in the way that they wanted. But what our success criteria is that the person goes away first of all thinking that they have had an opportunity to be heard and they have been listened to. Second of all, they understand why the decision has not gone the way that they would necessarily want it. So what it means is, we offer people an open, accountable and transparent way that they can seek to change government decisions. And we provide written reasons, and they are available, and we put all our decisions up on the Internet. So it's a very transparent way that we can improve government decision making.

GEORGE SMITH: And that's always important, forever important. Does that answer your question, Peter?

PETER MAYWALD: Pretty much I think, George. What we are looking at here is a slightly different focus than perhaps the traditional one on outcomes – we're looking at good outcomes, not necessarily at process or who made decision, but what's the appropriate outcome for the individual and for the community. In terms of the Norfolk Island Government role, we want to work with the Commonwealth to implement these sorts of transparency and accountability measures in the interests of better outcomes for everybody. It's not creating new structures and new processes and lots of cost and bureaucracy, but rather ensuring that members of the community receive the services they should in the way that they should and their entitlements and that they get proper explanations for why things happen.

GEORGE SMITH: There we go. Thank you for that, Peter. And thank you Doug and thank you Paul for coming in this morning.

Ends