

## Chapter 9

# Ombudsman Litigation: The Relationship between the Australian Ombudsman and the Courts

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This chapter examines the use, frequency and the nature of legal actions initiated by litigants against Australian public and private Ombudsmen.<sup>1</sup> As the traditional role of an Ombudsman is to assist in the resolution of complaints the notion of the institution as a defendant, where it is itself a source of complaint is a poignant juxtaposition. The aim of this chapter is to explore why and when a complainant may commence litigation against an Ombudsman and to investigate the frequency and reasons for Ombudsman initiated litigation as plaintiff/appellant.

## Introduction

Australian Ombudsman institutions are not courts. However, they are intimately related to the court system through both cause and effect. As litigation is expensive and slow, the Ombudsman institution has been created, to provide both more proportionate remedies and to increase access to justice. In this sense the very act of litigation creates and maintains the Ombudsman institution as an alternative dispute resolution mechanism to courts. The Ombudsman institution also supplements the courts, providing redress for poor service or rudeness or tardiness, areas where there is otherwise no legal cause of action to pursue. Given that the traditional dispute resolution role of Ombudsmen is to alleviate and supplement the judicial system it is paradoxical that Ombudsmen

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1 The term 'Ombudsman' (in the singular) and 'Ombudsmen' (in the plural) are used throughout this chapter. The absence of gender neutrality in such use is noted and should not be mistaken for endorsement.

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