



Presenter – Chris Ilsley

Guest – Chris Field, Western Australian Ombudsman

[PART ONE OF AUDIO]

Chris Ilsley: Time to catch up with the State Ombudsman, who pops in every so often to have a chat to us. Always appreciate your time Chris Field. Welcome along.

Chris Field: Chris, pleasure to be here.

Chris Ilsley: Of course, if you've got some problems with government departments, communications problems. You know the old line, where you're standing trying to communicate with a government department, trying to get across your point of view, they're trying to get across theirs, and you're sitting there thinking that old line from the movie 'what we have here is failure to communicate', and you're thinking, I just don't believe we are going to resolve this problem. I'm not going to surrender. It appears they're not going to surrender. What can I do? Well the State Ombudsman, Chris Field is one of these people who helps you out. I suppose in some ways you kind of act as a cross between a mediator and an adjudicator, don't you?

Chris Field: Yes well, certainly, we are an independent umpire. Certainly impartial to all the parties in the dispute. You are absolutely right. We use those sort of mechanisms that people often refer to as alternative dispute resolution to resolve complaints, investigate them in the most timely, efficient way possible.

Chris Ilsley: Generally speaking, what are the most common complaints that you receive?

Chris Field: We tend to get complaints across a range of agencies. Of course often about the larger agencies, which makes sense because of course they see more people. And complaints will be very wide in their nature. 'I wasn't given reasons for a decision that was made, I don't understand those reasons, I'd like a greater explanation, something's taking too long, something happened too quickly without what I thought was a proper consultation'. So I have to say the reasons for people coming to my Office are very wide and very varied.

Chris Ilsley: Interestingly I've always said to people, whenever departments hear the 'O' word, often a dispute that seems completely intractable – one of those scenarios where you think this is never going to be solved – the 'O' word is mentioned, and quite often you find that somebody just decides to stand back for two minutes, draw breath, have another look at the situation. And all of a sudden, it can be resolved.

Chris Field: There is certainly, in public administration there is always the possibility, whether it involves our Office or not, to take that one step back, to take that breath and say, is there a way that we can solve this that's going to be fair and reasonable for both parties at hand. And of course all tax payers because we all value the fact and get benefit from the fact that disputes don't occur in the first place, or are resolved as quickly as possible.

Chris Ilsley: Beautiful. Well, let's have a chat to some people and find out what their issues are. If you'd like to have a chat to Chris Field the State Ombudsman, joining us for his periodic segment, 9221 1882 the number. G'day Martin.

Martin: Hey mate, how are you?

Chris Ilsley: Yeah, good.

Martin: I've got an ongoing problem with an electricity department. When I sold a property, we supposedly shut down the electricity there, and got it put on at the new house. But the people that bought our house, kept our power going for several months, and we got an outstanding bill for them. And we didn't know about it till several years later, when I went to borrow some money and I had a default on my name.

Chris Ilsley: I see what's happened here. You didn't pay the bill that you didn't know about, which ostensibly wasn't your bill anyway. Then when you went to take out a loan, you found that you'd been registered as a defaulter.

Martin: Yes, exactly right. So I would have thought that when we told them to turn the power off at this house when we sold it, and bought the new place and got the power put on at the new place, they would have done that. But they didn't.

Chris Field: Martin, thank you so much for your call. One of the things that I do, that my office does, in addition to being the State Ombudsman is also the Energy and Water Ombudsman for Western Australia. So we certainly can deal with complaints that consumers have about their electricity companies. What we ask people to do is to take those issues in the first instance to their companies. Have you done that in this instance?

Martin: Yes. My wife has been handling it, and she's had several phone calls. They've gone back through their records, even though it was maybe 7 or 8 years ago. And they have got a record of a conversation they had about turning the power off. But we haven't got any paperwork on it.

Chris Field: Well Chris its good advice for all the listeners, that in the first instance – this applies to government agencies and certainly applies to electricity and water companies that the best thing to do in the first instance is to take your issue back to either the government department or the company and see if they can resolve it for you. That's generally the cheapest and quickest way to resolve a dispute. But certainly we exist to assist people where that hasn't worked to resolve the dispute.

Chris Ilsley: Can I suggest if I may, the first thing that I would like to see happen for Martin, is that some steps be taken to remove his name as a debt defaulter?

Chris Field: Well what we can certainly do, and Martin if you wanted to off air provide your details to Chris's producer, then we'd certainly be happy to give you a call in the next day, and talk to you about any issues that relate to this particular matter. It's certainly the case that debt default, debt collection can be an issue, and is an issue for people, including having that debt removed where it's appropriate to do so. So perhaps in the first instance we should get to the bottom of the issue in relation to the payment. But as Chris has absolutely correctly said, if it is appropriate to do so, to look at getting the debt removed.

Martin: It's only about \$500 or \$600, so I was at the stage where I was going to nearly pay it. Because we've had several discussions with the power company, and it just goes nowhere.

Chris Ilsley: Martin, can I suggest at this stage, that you don't pay it. I'll tell you why, and this is a consumer speaking. If, as it would appear, they've registered you as a debt defaulter, if you pay it there could be an interpretation that you've admitted the debt by paying it. Clearly as you've said, it wasn't your debt. I think, especially since you want, obviously, any registration that might have been made, any adverse registration to a credit reporting agency, I think it's in your best interest not to pay that at this stage, but to work with the State, in this case the Energy Ombudsman, which is in the same office that Chris Field is in, and work with them to resolve the issue. Because once you do that, if you get the energy company to acknowledge that you didn't owe the debt in the first place, then they will have no option, but to remove the adverse credit report.

Martin: Oh that's great. I'm really happy I was listening tonight.

Chris Ilsley: I'll get you to hang on if you will, because what we'll do is, we'll pass you back to Royston, and he will get the information for you. I think that's one of the most important things there, is the fact that somebody finds themselves with an adverse credit report. Because obviously over time, you can resolve whether or not the money is owed to the energy.

Chris Field: Certainly adverse credit reports can be a serious issue for people in relation to getting further credit and other matters that they make application for. So they are serious, and its ones where they can't be resolved, the source of the original debt is one which people do need to, and can pursue.

Chris Ilsley: Is resolving these sorts of issues, if they appear to be straight forward where somebody had passed on some information that obviously wasn't acted upon, are they the easiest disputes to resolve for your office?

Chris Field: Well, its often the case that that which seems straight forward may not necessarily be straightforward once we look into it.

Chris Ilsley: I should qualify that by saying I understand there are always going to be two sides to every story, that I do understand.

Chris Field: There will be always two sides, and that's really important of course, in our absolutely impartial way that we consider both very carefully. But it's certainly the case that where there's a clear answer, then we find that both the government departments and the companies within the Energy and Water Ombudsman jurisdiction are very clear and very good in working through to make sure that that clear answer and resolution comes immediately.

Chris Ilsley: Something that I also mentioned to Martin, which I think is absolutely correct. If you believe that you do not owe a debt, then it's in your best interests not to pay it, because payment can be seen as an acknowledgement of the debt. Unless you go to great lengths to put in writing that you are simply paying this debt, but the debt does not constitute admission of liability, and is done on a without prejudice basis. Because clearly that then can be an issue that if you pay a debt without saying anything, it could be interpreted that you are simply paying something that you've now acknowledged you owed.

Chris Field: Certainly if a person has a dispute which can't be resolved, and that may be as you say in relation to a debt issue, then it is sensible to come to the Ombudsman's office and see if that can be resolved for them. In the meantime of course, at the end of that it may well be that various other processes might flow from it. Including for example, the removal of a debt.

Chris Ilsley: Well certainly if a person never opened the debt in the first place, it would be absolutely incumbent on them to remove any adverse credit reporting, surely?

Chris Field: Well as I say, it would depend on the circumstances of every case and whether in fact that's actually the case. The removal of credit reporting is done not by the companies or government agencies themselves but actually by the credit reporting agencies. And indeed there is actually separate mechanisms one can pursue if you are concerned about the fact that those debts haven't been removed.

Chris Ilsley: Obviously that's how Martin found out about that. Chris Field is the State Ombudsman. If you'd like to have a chat to Chris, if you've got some issue with a State Government department or agency, in whatever form that issue comes, we'd certainly be more than happy to point you in the right direction. One of the things Chris does is gives you an idea of where to go. Sometimes you feel a bit powerless, especially when you look at one of these giant government organisations and you think to yourself, what can I do? As Chris pointed out, the State Ombudsman's Office is independent. They do not work for the public service or government departments. They do not work for you. They work for both of you. In other words they look at the issue. In fact it would probably be fair to say they work for the issue. They look at the collective issue. They look at both sides of the argument. They try and mediate, and if necessary, and I think if I'm not correct Chris, any decision you make is binding upon government departments.

Chris Field: The decisions we make as Energy and Water Ombudsman are absolutely binding decisions. In relation to government agencies our decisions are recommendatory only, which is the case for all ombudsmen. But it is true to say that certainly in my time, the last 7 years, each recommendation we have made has been accepted by government departments.

Chris Ilsley: It's probably not really in their best interests to go against it because that ultimately becomes a weapon somebody could use say for example with their local member. How come Department X failed to act on the recommendation of the State Ombudsman on the 9th of September 2014? Can the Minister please explain? Not the kind of questions that Ministers I would imagine like to get in Parliament.

Chris Field: Well certainly recommendations from our office we find are taken seriously, and I think the principal reason is at the end of the day, my staff put very considerable time into making sure that recommendations are fundamentally sound, evidence based, and are the correct, fair, appropriate, lawful answer at the end of the day.

Chris Ilsley: Beautiful, if you'd like to chat to Chris Field, 9221 1882 the number.

[PART TWO OF AUDIO]

Chris Ilsley: We are joined by Chris Field who's the State Ombudsman. If you'd like to have a chat to Chris, 9221 1882. Now you mentioned Water Ombudsman, and Energy Ombudsman also through your office. Why are they defined as different? Why do they have a different name, even though they are ostensibly run through the same office?

Chris Field: That's an excellent question. Around the country there are a range of, a number of Energy and Water Ombudsmen, so most jurisdictions have them. In Western Australia it's partly a size issue. The Office, Energy and Water Ombudsman is undertaken by the Parliamentary Ombudsman - that is the State Ombudsman, my Office. So it's a very efficient and sensible thing for everyone that my Office is able to undertake that other function basically. But in other states, they are actually separate offices.

Chris Ilsley: Is there anything unique about them or is it the sheer volume, the size, the fact that most people deal with people like energy and water, they are logically going to generate more complaints?

Chris Field: Certainly the sort of complaints you get in the Energy and Water area are different to the ones in the Parliamentary Ombudsman. The principle thing that people of course come to the Ombudsman, like the Telecommunications Ombudsman and the Energy and Water Ombudsman, are around billing, and disputes around billing.

Chris Ilsley: Yeah, money. And whether or not a bill is correct, and all that sort of stuff.

Chris Field: That's exactly right.

Chris Ilsley: Other departments I suppose it comes down in many respects more to their actions I guess.

Chris Field: Yeah it does. So basically the Ombudsman exists in relation to public administration, the administration of the responsibilities of those departments. So they have a range of laws and policies and procedures under those laws, and they have to administer those. And how they administer them is something that the Ombudsman, both through our investigations of individual complaints and investigations of our own motion can examine.

Chris Ilsley: Beautiful. Alright, Dale would like to ask you a question. I think this is a really good question actually. G'day Dale.

Dale: Oh hello. The situation is, in 2012, it was considered that I may have a decision making disability, so under the Act the Public Trustee proceeded with an application so I would be looked at. And anyway I went to a hearing, and I was put in interim, and then I appealed and the whole thing was removed, dismissed, thrown out whatever you like to say, as if it should have never taken place. And I'm not sure whether I tackle the Attorney General or whether I tackle the Public Trustee. In other words, what I'm saying is that any person can make an application to the State Administrative Tribunal and put reasons in, and call anybody in for evaluation or to see where they sit under the Act.

Chris Ilsley: That's a really good question.

Chris Field: Dale, thank you so much for your call, which we appreciate. There's a couple of things there Dale, just to also talk generally to Chris's listeners, a couple of things in there of interest. In relation, you've mentioned the State Administrative Tribunal. Courts and tribunals aren't in the jurisdiction of the Ombudsman, nor are decisions of Ministers. But certainly the State Trustee's office is, and as I said before to listeners, we would generally obviously suggest that people try to resolve those in the first instance with the particular department, here the State Trustees. But it sounds to me like, Dale, you've certainly over a period of time dealing with them, you've asked about how you might be able to pursue an issue that you understand you have, and I would certainly be happy to have in relation to your particular case, one of my staff call you over the next day or so just to talk to you about what the particular issues are. And remember once again, an office like mine, even if we are not the ones to resolve the complaint, we also have a lot of experience and my staff are very experienced and have an expertise in ensuring that you can be directed to the right place to resolve your issue if it's not our office. So usually a call to us is valuable for either the reason because we can investigate and resolve the complaint, or we can make sure you're not on a merry go round, you can go to the right place next. So we'd certainly be happy to talk to you, and assist you in that way.

Dale: I don't think the Public Trustee have got an important role to play, but sometimes they can have it incorrect, and for the wrong reasons.

Chris Ilsley: I understand that Dale. So by all means, once again, we will get some information off you, from Royster. And what will happen there is, we'll find out exactly what is going on. I suspect what, I don't know what you took from this Chris, but certainly from the nature of Dale's call I think, and it might be something that reaches just outside your area. I think he was concerned about the mere fact that it can be brought about in the first place.

Chris Field: Yes, and this is certainly not commenting upon Dale's case at all, that office, the State Trustee, plays a very important role, and I think generally speaking do a good job of it of course. But that doesn't mean that issues might not arise from time to time as they do for all of us, and an office like mine can assist where those sort of issues do occur.

Chris Ilsley: It certainly can present some challenges, of that there is no doubt. Right, if you'd like to have a chat to Chris Field, who's the State Ombudsman, presents challenges and acts as an adjudicator, acts as a mediator, performs miracles occasionally, and goes out and finds information for you. 9221 1882.

[PART THREE OF AUDIO]

Chris Ilsley: It's also a case of 'Ombudsman Tonight', or 'State Ombudsman Tonight'. Chris Field joins us, 9221 1882 is the telephone number. G'day Sarge.

Sarge: Hi Chris's, how are you?

Chris Ilsley: Yeah very well, Chris is listening to you.

Chris Ilsley: Now Sarge, you'll have to say that again, because I don't know where you are but your phone just almost completely dropped out that time.

Sarge: Chris, how are you Chris?

Chris Ilsley: Very well, now, Chris Field is listening to you.

Chris Field: Hi Sarge

Sarge: [Broken noise]

Chris Ilsley: Sarge, we've got a problem that your phone keeps dropping out. I don't know if you are mobile or on hands-free, or if you're somewhere where you could be. If it's possible for you to pull over somewhere that would be really good, because what's happening is we are getting [broken noises].

Chris Field: We might need to get the Telecommunications Ombudsman onto that.

Sarge: Is it clear now?

Chris Ilsley: It is, don't move!

Sarge: Ok, I'm going to stand here.

Chris Ilsley: Good man.

Sarge: I'm just calling in regarding a Department of Transport issue. This is to do with [broken noise].

Chris Ilsley: It's crook again.

Sarge: I will move.

Chris Ilsley: Let's try again.

Sarge: Can you hear me better now?

Chris Ilsley: Yes.

Sarge: I will come into the open now.

Chris Ilsley: Just ask again.

Sarge: This is to do with a Department of Transport issue. They have to charge us \$107.62 every year for an administration fee. Now this year around, they've increased it 93% to \$200 flat. And I complained about it, but no proper response has been received from them.

Chris Field: Well Sarge, thanks so much for your call. The Department of Transport, one of the major government departments, is certainly within the jurisdiction of the State Ombudsman's office. This particular issue of yours I'm not familiar with in relation to the particular fee. But can I simply say this, that if it's a matter that you've taken to the Department, and like a range of the larger departments they have people who are dedicated to resolving complaints that are brought to them. But if that hasn't been able to be resolved by the Department, we'd certainly be happy to talk to you if you wanted to leave your phone number with Royston then we'd certainly be happy to call you in the next day or so, and see if there's an easy resolution to this. And I'm sure there would be a fairly quick and simple answer to this particular issue that you're raising.

Sarge: Yeah sure Chris. I understand if there is an increase of \$5 or \$10, or you know to a certain extent up to whatever the interest rate or whatever the thing goes, like 3.5% or 3.6%. That's not a \$97 increase in a year you know?

Chris Ilsley: That's a hell of an increase.

Chris Field: All I would simply say Sarge is, I'm not talking about this particular fee, because it's not one that I want to comment upon without the details. It's certainly the case that when we're looking at matters, we're looking at how government is administering law and policy. So certainly if there was a particular legislative or policy issue around that, that wouldn't necessarily be one that we would be substituting our views for. But certainly the administration of it is something we can look at, and we would be delighted to look at, to see what the appropriate outcome is.

Chris Ilsley: Do you understand fully what Chris was saying there Sarge?

Sarge: Yes, I did. No problems. If you don't mind looking into it for me, and I can get in touch with you.

Chris Ilsley: No problem Sarge. What we'll do is we'll pass you back to Royston, and he'll grab your information and we'll certainly pass that on. Actually you made an extraordinarily valid point there, and it's one of the reasons why Sarge fully understood that. If you have, say for example the government decides to increase a fee and you complain about a department which then says, I'm terribly sorry but the fee for whatever has increased by 100%. And you think to yourself that sucks, which by the way I agree with you it does, what Chris is saying is that his Office, that's effectively a government directive to that department. His Office doesn't have the power over that. The only thing you would have power over is the way they administrate it, is that correct?

Chris Field: Yes that's correct. So we're not superior to Parliament, we are subordinate to Parliament. We certainly don't substitute our views for the elected officials of this state. I'm an unelected official. I'm here just to ensure that the laws of the state and the policies that are made under them are administered fairly, correctly, lawfully. That's my job. It's an important job, but it's certainly not one that's for me to substitute my views for those who make the law.

Chris Ilsley: Understood. Charlie.

Charlie: How are you going?

Chris Ilsley: Good mate.

Charlie: I've got an issue with Fines Enforcement. I had a company and what happened is, I got a fine in the courts, and the Fines Enforcement people then take over registration if you don't pay the fine. Now it clearly states on the website, that you are able to enter into an arrangement with Fines Enforcement, even on a company. Yet if you ring up and say look I've got to enter into a negotiation, if I can't pay that lump sum, it's impossible. They say bad luck, we don't do it. We will not enter into an arrangement. And therefore the vehicle, which is essential to the company, is not licenced.

Chris Ilsley: So, what you're saying is, I know that as a private citizen if you've got a fine and you haven't paid it, it's your driver's licence they suspend. You're telling me as a company, what they do is they de-register your vehicle.

Charlie: Correct.

Chris Field: Charlie thanks for your call, which we value. In relation to Fines Enforcement that is something my Office could look at. There will be different circumstances with Fines Enforcement. Sometimes the most appropriate way for those matters to be resolved are to exercise the right you have to take matters to court. In other cases it will be appropriate for us to look at. It all depends on the circumstances of the particular case. In a case like yours, the only way we can really make sure we are giving you the correct answer is for you to talk to my staff. And we are always delighted, if you wanted to leave your number for us to be able to pursue that. But certainly generally speaking, Fines Enforcement is an area where if we ourselves aren't the agency who will be looking at that and giving you the answer certainly we can assist you with where you ought to go.

Charlie: Yeah, because they've just basically said, bad luck.

Chris Ilsley: That sounds odd doesn't it?

Charlie: And then they've left it to the Sherriff to take action and confiscate the vehicle. Now I don't own the vehicle, the finance company owns the vehicle. I'm paying for it, but I don't actually own it. So it's a silly situation. Anyway, I've lodged a complaint with them, but I've had no response, so I'd like to contact your office tomorrow.

Chris Field: Charlie that's exactly the right time to contact our office. When you have pursued a matter, you haven't either got a response or a response which you believe appropriately resolved the matter. Look sometimes, not talking about your case in particular Charlie, but sometimes the answer from a government agency will be sorry there's nothing we can do, and that may well be an appropriate answer, but sometimes it won't be. It will depend on the circumstances, and we'd be delighted to talk to you about it.

Charlie: The complaint is also, that you need to read the website, and it clearly states on the website an incorrect fact.

Chris Ilsley: Charlie can I make a suggestion? The first thing I'd do is do a screen capture of the website. Do a screen capture, save it as a file, so if there's ever any dispute about whether or not it was on the website in the future, you'll be able to say here's the screen capture, and this was the date I took the screen capture.

Charlie: Ok, no worries.

Chris Ilsley: Good Stuff. Do get onto the Ombudsman. Clearly there are some issues there, there is no doubt. G'day Steve.

Steve: G'day Chris, how're you going?

Chris Ilsley: Yeah good. Chris and Chris – it's the other Chris you want to talk to.

Steve: Hi Chris.

Chris Field: Hi Steve.

Steve: I'm in the process of building a new home. I'm having all sorts of issues with the builder. I just want to explore, how could I tackle the misrepresentations being made by the builder? Is it Building Commission, Ombudsman, or a civil action through court?

Chris Field: Good question Steve. Certainly allegations of misrepresentation, misconduct whatever it may be in relation to a builder that's not doing the job that you understood you were going to get, that you paid for etc., they're not ones that can come to my office. So the State Ombudsman deals with government departments, with local governments and with universities, as Energy and Water Ombudsman with energy and water companies. So we don't take complaints about private individuals, and that includes builders and those contracts that people enter into with builders. You've asked about other places you can go. It will depend on the circumstances. There are a range of things you can do if you have an issue with a builder as you have indicated, court, other public authorities and other government departments. So it depends on the circumstances. We are always happy to assist with those sorts of issues. I won't tell you over the air which particular place you might want to go, and we certainly don't give you legal advice about it. What we can say is this, beyond what Chris also wants to share with you. We'd always be happy if you want to ring up and quickly explain the details, we'd be able to direct you to the right place to go, or where we think would be the right place for you to go.

Chris Ilsley: Steve, as luck would have it, based on your phone call, our representative from the Master Builders Association will be on the program just after 9 o'clock tomorrow evening.

Steve: Ok I'll call in.

Chris Ilsley: That would be a very good person to call and to ask those questions.

Steve: Ok then.

Chris Ilsley: Alright. Because I can see exactly what Chris said. Predominantly you deal with State Government departments, you don't go out into the private sphere, although as you said, you can direct people into different areas. You can say, this isn't our area of expertise, this is not an area in which we deal, however if you speak to so and so they will be able to help you.

Chris Field: Exactly Chris, and some of the areas, for example those who regulate, and those who take complaint about builders, some of those agencies are within the jurisdiction of the Ombudsman. So sometimes once it gets to that stage it may be something we need and can look at.

Chris Ilsley: Is there a dispute you have had that you were never able to resolve, for either party?

Chris Field: I don't believe we would ever say – well certainly we have no cases that we haven't been able to close after investigation. What our aim is to try to do at the end of an investigation is ensure that all parties feel as though the matter has been resolved in the most timely way, the most efficient way, and in a way where they feel as though it's been a fair, a scrupulously fair process. That doesn't always mean that everyone thinks they got the outcome that they wanted necessarily, although largely we try to make sure that people are satisfied at the end of the complaint.

Chris Ilsley: I was going to say though, sometimes the art of compromise is knowing that you haven't got 100% of what you want, but also knowing the other side hasn't got 100% what they want. And in some instances, even if you walk away and you've only got 80% of what you wanted, if you're able to look at it pragmatically, and if you're able to look at it truly objectively, you might sit down and say, well on reflection, I did pretty well out of that.

Chris Field: My reflection after 7 years in the job is this. The vast, vast majority of people who come to our office making complaints are incredibly reasonable in the pursuit of those complaints and very reasonable about their resolution. And similarly, on virtually every instance, government agencies want to sensibly, efficiently resolve complaints that are brought to them. That has been my experience. People generally come with a lot of good will and a lot of good sense. And that's on both sides, both the government and the citizen.

Chris Ilsley: Do you have a particularly hard job sometimes, do you think?

Chris Field: I think a lot of people in the community have much harder jobs than I do.

Chris Ilsley: It's always a pleasure. We look forward to having you on again next time.

Chris Field: Chris, absolute pleasure always.

Chris Ilsley: And it's nice to know that we can be in contact with people like yourself, and that you make yourself available and come in, and allow yourself to be questioned and provide information that people otherwise wouldn't know. If you'd like to get in contact with the State Ombudsman, you may do so online at ombudsman.wa.gov.au, or by telephone, 9220 7555.

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