

## **Speech by the Western Australian Ombudsman Chris Field to the 2008 Australian and New Zealand Ombudsman Association Conference**

### **Introduction**

It is a pleasure to be here today to speak to attendees at the inaugural 2008 ANZOA Conference. My thanks to Fiona McLeod for her kind invitation to attend this event and her work in organising this conference.

The organizers have titled this session “Public Sector” and, in particular, asked me to address how Ombudsman ensure that the services they provide to the community are done effectively and efficiently. In particular, the organizers have asked that I provide insight to attendees on the performance of the office of the Ombudsman – how performance is monitored, measured and demonstrated to stakeholders.

To do so, I want to start today by examining the history and purpose of the office of the Ombudsman, with particular reference to the role of the Parliamentary Ombudsman – the Ombudsman of the public sector. I will then go on to discuss some of the challenges that face the office of the Ombudsman, including the growth and change in the office of the Ombudsman. I will then turn to examine the relationship of the Ombudsman with the public sector, including discussing the role of the Ombudsman in working to ensure integrity in the public sector. In doing so, I will explore how the Ombudsman ensures that the services it provides are done effectively and efficiently. Finally, I will share some thoughts about the future role of the Ombudsman and the public sector.

I plan to speak for approximately 40 minutes, which hopefully will allow a good period of time for questions, but also given the experience and expertise of the attendees here today, some discussion about any of the issues I have discussed.

### **The office of the Ombudsman – History and Purpose**

As you heard yesterday, the office of the Ombudsman has a considerable history. Indeed, Western Australia led this country in creating the office of the Ombudsman in 1972. Outside of Australia, the office of the Ombudsman has a longer history again. While this year is the 35th anniversary of the Western Australian Ombudsman, in 2009, the Swedish Ombudsman will celebrate its bicentennial. Indeed, alongside ABBA and IKEA, the Ombudsman is the great Swedish export.

The Ombudsman began as a parliamentary inspector of the actions of the bureaucracy and has continued in this role through to today. Indeed, the formal title of the Western Australian Ombudsman is Parliamentary Commissioner for Administrative Investigations.

It is instructive to go back and read the Hansard debates on the creation of the Ombudsman’s office – in fact, they make for particularly interesting reading. Back in 1972, the establishment of the Western Australian Ombudsman was a highly controversial matter, vigorously opposed by many parliamentarians.

The forces that led government to set up the office of the Ombudsman are no less compelling now than they were then. Foremost among them was an awareness of the growing powers of public authorities to affect people's daily lives. Coupled with this, was the need to make agencies more accountable, by having a quick, accessible and low cost process for resolving people's concerns about the decisions and actions of officials. The Ombudsman continues to play an important role in providing access to administrative justice for ordinary Australians.

The office of the Ombudsman is well accepted and widely known, within government and the community. This is a great testament to various Ombudsmen, and their staff, as well as the willingness of successive governments, and public servants, to embrace the office.

As is evident from what I have said, in this speech I am focusing on the work of “public sector” Ombudsman. While I have just outlined the historical, traditional Ombudsman model, the Ombudsman model has grown and changed – the name of the Ombudsman has been appropriated by a range of dispute resolution schemes operating within the private sector. Schemes such as the Telecommunications Industry Ombudsman and Banking and Financial Services Ombudsman are major pathways to access to justice for Australians. Furthermore, a number of businesses employ a staff member known as an Ombudsman who assists consumers in resolving disputes as well as improving the practices of the business.

Indeed, the role of the Parliamentary Ombudsman, historically limited to the public sector, has been extended to the private sector. The Commonwealth Ombudsman and the Western Australian Ombudsman concurrently hold industry-based Ombudsman roles. The Western Australian Ombudsman, for example, is also the Energy Ombudsman for Western Australia – an office that is established in a similar way to the private Energy Ombudsman in Victoria, New South Wales, South Australia and Queensland.

### **What is the role of the Ombudsman?**

Although, the role of the Ombudsman is not exactly the same for each of the public sector ANZOA members, the office of the Ombudsman generally undertake two principal functions. First, we seek to resolve complaints that people have with the public service, local governments and public universities.

Second, we aim to improve public administration for the benefit of citizens. To do so, we undertake a range of activities, including education and liaison with public administrators, investigations arising from complaints made to us, investigations of our own motion and participation in activities designed to improve the delivery of public services.

Traditionally, the Ombudsman has focussed on issues of procedural fairness but this role has also changed and expanded, such that we can now examine, in certain cases, the merit of cases.

## **Challenges for the office of the Ombudsman**

The context of the work of the Ombudsman has changed dramatically since the office was first established, and as government structures and priorities evolve, so the Ombudsman faces new challenges if its is to remain relevant and effective. I now want to turn to four of these challenges.

### **(1) Increased complexity of cases**

The office of the Ombudsman faces a number of pressures on its services over the coming years, arising from a range of matters. One in particular is the increasing complexity of cases – a matter I note from discussion yesterday, is a significant issue for our counterparts in the United Kingdom. Our office, and Ombudsman offices around the country, have reported a significant increase in the complexity of cases they are being asked to resolve. I am not sure that there is particularly rigorous empirical evidence to prove this, and it would not be an obviously easy matter to measure, but certainly the anecdotal view of people with long experience in Ombudsman's offices suggest the trend is correct. There may be many reasons for this. As the complaint-handling processes of agencies improve, you would expect that simpler matters may be dealt with at an early, departmental level – we certainly encourage this process by referring complaints back to agencies in the first instance. We also encourage them to develop these skills and processes as does a range of standards and regulations.

It may also be that matters of public administration are becoming more complex over time, or perhaps complainants are becoming more demanding.

Whatever the reason, greater complexity may lead to less timely resolution, greater cost per case resolved, the possibility of less satisfaction for both complainants and respondents and a need for greater skills for our staff.

### **(2) Awareness and Accessibility**

We will also need to ensure that our offices are accessible all citizens, and, in particular, specific groups of the population, including regional and indigenous communities.

### **(3) Exercise of Powers**

Watchdog agencies have significant powers and operate with a high level of autonomy from executive government. For example the Ombudsman has the powers of a standing royal commission. Without these powers and independence, we could not operate effectively. They are central to our role. I believe that this high level of autonomy must be balanced by appropriate accountability. The Ombudsman and other watchdog agencies operate with taxpayer's money and must be accountable to the Parliament for what they do. We need to be conscious at all times of the trust that is placed in us and that the exercise of our extensive powers are undertaken not just impartially and fearlessly, but also responsibly - with great care and humility.

#### **(4) Costs and benefits of our actions**

I personally place significant importance on the office of the Ombudsman considering the materiality of the matters it pursues. It must also be aware that while revised administrative actions will hopefully be beneficial, revised policies and procedures will have costs – both direct costs and opportunity costs. I think the Ombudsman does have a proper role to consider - in making recommendations for administrative change arising from its reviews - whether the costs imposed on agencies of those matters we recommend are outweighed by greater public benefit.

#### **Growth and change to the office of the Ombudsman**

Consistent with experience elsewhere in Australia, the role of Ombudsman in Western Australia has expanded to encompass a wider range of activities than complaints about public authorities.

Since May 2004, we have operated an industry funded Ombudsman scheme dealing with complaints about gas and electricity. I will come back to this shortly. Following a recommendation of the Ford review of the Department of Community Development, we will soon be taking on responsibility for reviewing child deaths. The Ombudsman also has functions under new terrorism legislation enacted in 2006. We currently audit the use by the Crime and Corruption Commission and Western Australian police of telecommunications intercept powers under Commonwealth legislation. There are proposals to extend our audit responsibilities further to cover surveillance devices and controlled undercover operations.

There is also a prospect that the responsibilities of the Ombudsman may be impacted by new privacy legislation, now before the parliament.

I welcome these developments. The office of the Ombudsman needs to respond to the evolving needs of citizens and government, and maintain its relevance and effectiveness. As an office, we are committed to delivering timely, efficient and effective services in which parliament and the community can have confidence.

#### **Relationship with the public sector**

A strong and positive relationship with the sector is something that I regard as fundamental to the work of the Ombudsman. Sometimes, the importance of what public administrators do, and how well they do it, can be lost when agencies like the Ombudsman necessarily spend time focused on things that have gone wrong. It is important for all of us to acknowledge that the overwhelming majority of public administration is done well, by people committed to doing it well. This needs to be recognised and reinforced, in part to ensure that the community continues to have confidence in government.

## **Role of the Ombudsman in ensuring integrity in public administration**

One of the significant changes that has occurred over recent years has been the growth in the number of watchdog bodies overseeing the operation of government agencies.

In Western Australia, my office, the Crime and Corruption Commission, the Auditor-General and the office of the Public Sector Standards Commissioner have a role in ensuring integrity in public administration. Those four offices together meet as the Integrity Co-ordinating Group. At the heart of all four of our offices is the concept of integrity in government. Individually and collectively, we exist to make government accountable and give the community confidence that it is operating with high levels of integrity. One of the purposes of the ICG is to help ensure that we give consistent messages to the public sector, that we share information within the limits imposed by our respective legislation and take a coordinated approach to our activities.

## **Performance of Ombudsman**

How is the performance of Ombudsman monitored, measured and demonstrated to stakeholders?

Before asking this question, we might sensibly first ask why we care about performance? First, the role of an Ombudsman is one of giving Parliament confidence in the proper administration of the public sector – we have a special responsibility to Parliament to demonstrate our performance. Second, the Ombudsman is a respected institution and this respect is based, in part, on our ongoing high performance. Third, we oversee the public sector in terms of their performance and we should expect of ourselves monitoring and reporting of our performance. Fourth, we are spending taxpayers' money – we are obliged to them to perform the best that we can and keep them informed of our performance.

Ombudsman measure performance in key areas such as cases closed, time to close cases, number of recommendations leading to administrative change among others. We set, and report against, Key Performance Indicators. We benchmark our performance against ourselves and also with other agencies. We undertake internal reviews, customer surveys as well as training and accreditation.

## **How do Ombudsman ensure that the services provide to the community are done effectively and efficiently?**

The twin criteria of efficiency and effectiveness were discussed yesterday, but obviously a range of the matters I have referred to in relation to the monitoring and measuring of performance are relevant to considerations of effectiveness and efficiency.

Interestingly, effectiveness and efficiency can be a way to think about the work we do as Ombudsman, for example, am I providing the most possible closed cases for the least possible expenditure? They can also be a way to think about how the administrative policy

changes we achieve, the disputes we resolve and, perhaps, the changes we don't make and disputes we don't resolve, reflect efficiency and effectiveness criteria.

Here we can enter very interesting terrain – perhaps controversial – involving economic thinking about access to justice, the benefits, but also the costs, of administrative change and the idea of competition between Ombudsman (as well as other dispute resolution mechanisms).

## **Conclusion**

In a recent speech given to the Commonwealth Ombudsman's 30th anniversary conference, the Secretary of the Department of Prime Minister and Cabinet, Peter Shergold, welcomed the conference as "an opportunity to present my personal view that the Ombudsman is a pain in the bum".

In fact he goes on to give what I think is this very good analysis of the role of the Ombudsman. He states:

The existence of the Ombudsman acts as a powerful reminder to public servants that they have an obligation to ensure that their actions are not infected with administrative error, beyond legal authority, lack proper appropriation, deny natural justice, breach parliamentary convention or undermine public service values. It is a heavy responsibility to bear. Beyond that, the informed evaluation of the Ombudsman helps to drive higher administrative performance. His activities help to improve the quality of government service delivery and to ensure fair and impartial treatment of recipients – in an environment in which the ever-present danger of internal red-tape, poor record-keeping, bureaucratic and inadequate governance can find expression in administrative drift. The pain in the bum is a small price to pay for identifying and remedying defective administration. It might even increase the trust which citizens need to have in their governments, parliaments and public services.

At the heart of the Ombudsman's office is a simple, but fundamental notion – we exist to serve Parliament and we exist to serve the community. We do so by resolving the complaints and we do so by working to improve public administration. Principles of administrative law are at the heart of our credibility and processes, but I also take the view that economics and other social sciences underline and enrich how we understand our role.