

Speech by Western Australian Ombudsman Chris Field to the Legal Counsel Conference 2008

Introduction

It is a great pleasure to be here this morning to speak to attendees at the Legal Counsel Conference 2008. I value the time you have taken to attend this conference and your interest in the important topics that will be discussed today.

I'm not completely certain, I must say, that everybody in the community would consider it an unreserved pleasure to be asked to speak to a room full of lawyers. I, however, genuinely consider it a pleasure for at least two reasons. First, I am a lawyer, my wife is a lawyer, and, given her predilection to sophisticated questioning of some of my parenting decisions, the odds are rapidly shortening on my daughter's future vocation. Second, as the Western Australian Ombudsman, I am able to observe the very important work that lawyers in my office, lawyers in the public sector and lawyers advising the public sector, undertake on behalf of this state's citizens.

The conference organisers have titled this session "Transparent and accountable government: future challenges for Western Australia". The title of my presentation allows me to roam reasonably widely across a range of issues relevant to transparency and accountable government that I have, from my observations as a Parliamentary Ombudsman, come to think are important.

To give some boundaries, however, to what is, of course, a very wide topic, I have separated my presentation into four main sections.

First, I will attempt to answer the question why does accountability and transparency matter.

Second, I will set out what the Ombudsman does, including briefly 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.

Third, I will discuss the accountability framework in Western Australia and where the Ombudsman fits into this framework. In particular, I will discuss the importance of a collaborative/integrated approach to ensuring government integrity, including the work of the Integrity Co-ordinating Group.

Fourth, and finally, I will share some thoughts about the future role of the Ombudsman, including a discussion of our improvement initiatives.

I plan to speak for no more than 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.

Why does transparency and accountability matter?

Why then, does transparency and accountability matter? At first glance, it seems scarcely necessary to explain why transparency and accountability matter – it would be assumed, I think, that transparency and accountability are vital, indeed indispensable, elements of modern good governance.

I take the view, though, that it is almost never wasted energy to go back to first principles and ask questions like, Does what we do matter and if it does matter, is the way we are going about it the most efficient and effective way of achieving it? I think this is always all the more a valid exercise when you are spending someone else's money pursuing what you think matters – in this case, taxpayers' money.

In short, my view is that accountability and transparency mechanisms do matter, and indeed they are a proper investment on behalf of the citizens of this State in ensuring that the power that governments exercise is properly held to account. The forces that, for example, led government to establish the office of the Ombudsman in this State thirty-five years ago 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 – the breadth of government's reach into the lives of citizens is very wide. Governments make decisions on a daily basis that shape how people spend their money, exercise their property rights and, in fact, variously encourage, permit, licence, direct or restrict ways in which they may wish to live their lives. With the freedom to regulate such a wide range of society's activities, comes the need for responsibility and accountability. In the words of the Commonwealth Ombudsman, John McMillan, "[i]n short, the power of government is pervasive, and accountability is an indispensable check on how that power is exercised."

What the Ombudsman's Office does

The office of the Ombudsman – History

Second, then, let me talk about the history and purpose of the office of the Ombudsman. 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 public administration 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 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?

The office of the Ombudsman generally undertakes 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.

Accountability Framework – where the Ombudsman's office fits

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

For example, 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. Although each of these offices has a distinct and important mandate, each also has a role in, and unique perspective on, issues regarding ethics and integrity in public administration. Where there are multiple agencies involved, there is no question in my mind that there is a critical importance in ensuring a collaborative and integrated approach to ensuring government integrity. The reasons for this are probably quite obvious, but it is worthwhile mentioning that there are several efficiency and effectiveness reasons why so-named integrity agencies may wish to collaborate and co-ordinate their activities. These include:

- The avoidance of duplication and creating opportunities for collaborative work;
- Providing consistent messages to the public sector;
- The sharing of information within the limits imposed by our respective legislation.

The Integrity Co-ordinating Group – The organisations involved and how they go about sharing information

As I have said, the four principal agencies in Western Australia that are often referred to as “integrity agencies” are the Auditor-general, the Crime and Corruption Commission, the Commissioner for Public Sector Standards and the Ombudsman. These four offices together meet as the Integrity Co-ordinating Group or ICG for short. The ICG was formed to promote and strengthen integrity in Western Australian public bodies. The ICG members collaborate to support integrity in public bodies by encouraging coordinated research, evaluation and monitoring and fostering operational cooperation and consistency in communication and education.

Indeed, while the work of each office is different, and each office has quite distinct and separate jurisdictions, 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.

Practically then, what does the ICG do? The ICG members, represented by the head of each agency, meet on a quarterly basis. These meetings are supplemented by ICG working group meetings where senior level officers of the agencies meet to advance the agendas set in these quarterly meetings. The ICG undertake a range of activities to promote integrity in government. For example, we undertake ICG Forums attended by the public sector to explain our role and further understanding on integrity and ethics issues. Last year we held a Forum where the head of each agency attended and made a presentation – this particular Forum was extremely well attended with a very high level of representation from CEOs and Director-Generals. This year we will hold a hypothetical Forum designed to deliver to public servants a range of practical examples of how integrity issues might arise, how they might be

identified and how they might be resolved. This will include particular emphasis on the respective role of each agency. This Forum will be recorded on DVD and then made available to a number of rural and regional centres – a particularly important matter in a state as vast as Western Australia. Of course, the ICG has a website and produces a number of publications.

So what does the ICG mean by the word integrity? We use the word integrity to mean earning and sustaining public trust by:

- Serving the public interest;
- Using powers responsibly;
- Acting with honesty and transparency; and
- Preventing and addressing improper conduct.

It is important to note that there are many mechanisms beyond the four agencies I have mentioned that have an important role in ensuring accountability and transparency – you need look no further than today's program to find bodies that act to hold governments of the day to account.

Indeed, the scope of an accountability framework can be considered to be very wide, including the parliament, the opposition and minor parties of the day, the judicial and executive branches of government, independent regulators, watchdog agencies, whistleblowers, the media, academia and non-government organisations all have a role to play in maintaining the open, accountable democracy that we enjoy.

Before leaving this part of my presentation, I want to touch briefly on another aspect of accountability – accountability for those who keep others to account. In our role as the office of the Ombudsman in promoting, overseeing and investigating issues of integrity and ethics in government, watchdog agencies like mine 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.

We must ensure that we continue to be accountable for our own performance. There are many reasons why this is the case, but a few are worth mentioning in particular. 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.

Looking to the Future – our improvement initiatives

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. In this last part of my presentation, I will briefly discuss our approach to improvement initiatives as we look forward to the future.

My office has recently undertaken a major organisational restructure aimed at ensuring that we are best placed to meet the future needs and expectations of the community for our services and role. We have created two investigation teams that will work together to achieve the most timely, cost-effective and high quality complaint resolution outcomes possible. Additionally, we have also created a new, dedicated administrative improvements team. This team, lead by a newly appointed Assistant Ombudsman will undertake investigations of our own motion, collaborative investigations with public sector bodies, education and other activities aimed at improving over a period of time the quality of public administration. This team, and our overall organisational focus on this area, is a demonstration of the sort of accountability process that the community expects of an Ombudsman's office.

Awareness among citizens of the office of the Ombudsman, and ease of access to the office, are critical considerations. We must also, of course, ensure that we, and our fellow integrity agencies, have a high level of visibility and accessibility for the public sector itself. We must be trusted, accessible, consistent and reliable sources of information about ethics and integrity in government, and able to be recognised by all as a place for the investigation of questions about integrity by all of those in public administration. The ongoing visibility and accessibility is a critical challenge for the office of the Ombudsman.

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.

Ultimately, as we embark on these improvement initiatives, we must not lose sight of our purpose. 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 complaints and we do so by working to improve public administration. These are the areas that we will seek to do better as our contribution to enhanced transparency and accountability.

Conclusion

Western Australian public bodies include several hundred government departments, statutory authorities, local governments and other bodies, varying in size from those employing a few people to those employing many thousands. Together these bodies employ about 147 000 people. They generate a combined revenue and expenditure in excess of \$36 billion annually, in providing a range of services, and are responsible for assets valued at over \$70 billion.

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. I firmly believe that 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.

Similarly, I also believe that our accountability framework generally works well. This is not to suggest, of course, that our accountability mechanisms are perfect or costless. Of course, they are neither. Our accountability and transparency mechanisms cost money, albeit a fairly modest amount. Sometimes those who hold others to account can cause inefficient or unnecessary costs, particularly where they do not properly consider the materiality, implementation cost, compliance burden or unintended consequences of changes they believe are desirable. We must also be careful, that in promoting very high levels of accountability, that we do not remove appropriate risk-taking and innovation by the public sector. This risk-taking and innovation can be highly desirable. Nor should our accountability frameworks be immutable – they should be subject to review and ongoing improvement.

But overall our accountability and transparency mechanisms do hold to account those exercising public power and they do so in a way that is largely appropriate, both in terms of their direct costs and the costs their regulatory impost creates on taxpayers.

Our system, although not perfect, can be compared to other accountability systems. To paraphrase Winston Churchill - modern parliamentary democracies, hallmarked by robust transparency and accountability mechanisms such as that which we enjoy, are the worst form of government, apart from every other form of government that has ever been tried.