

Keynote address by Western Australian Ombudsman Chris Field to the 1st Annual Public Sector Governance Conference, Canberra 19-20 November 2008

“Accomplishing successful leadership through integrity”

Introduction

It is a great pleasure to be here this morning to speak to attendees at the 2008 Public Sector Governance Conference. I value the time you have taken to attend this conference and your interest in the important public sector governance issues that will be discussed here over the next two days.

The conference organisers have titled this session “Accomplishing successful leadership through integrity”. I am indebted to them for doing so as it is a topic I think of clear importance and of continued topicality. There are very few areas so obviously important to any public sector leader than their own integrity, the integrity of their agency and the integrity of the public sector more generally. This, I would suggest, is even more clearly the case with officers such as the Ombudsman – an office regularly referred to as an integrity agency.

The title of my presentation is broad and does allow me to roam reasonably widely across a range of issues relevant to public sector governance, integrity and leadership that I have, from my observations as 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 five main sections.

First, I will set out what the Ombudsman does, including briefly examining the history and purpose of the office of the Ombudsman. Second, I will set out what I consider to be a working definition of the word integrity and ask the question why does integrity matter? Third, I will discuss how to create a culture of integrity, including reflecting upon the work of integrity leaders to achieve effective public sector governance. Fourth, I will discuss how we ensure that integrity agencies are held accountable. Fifth, I will investigate the benefits and costs of public sector governance.

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.

The role of the Ombudsman

I want to turn first to the role of the Ombudsman. I am aware that many of you in the audience will be well aware of the role of the Ombudsman. Nonetheless, I do not want to assume that all of you are completely familiar with the office of the Ombudsman. As

such, I will try to accommodate all by highlighting the key issues, without labouring them. First, let me talk briefly 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 now 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.

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.

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.

What do we mean by the word integrity and why does integrity matter?

I now want to turn to the issue of what we mean by the word integrity and why integrity matters. I expect that over the next two days, by both explicit reference, and by implication, a commonality of understanding of what we mean by public sector integrity will become readily apparent. For the purpose of my paper, I will 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.

Integrity is demonstrated by a public sector who:

- Serve the public interest with integrity by appropriately addressing real or apparent conflicts of interest and not allowing decisions or actions to be inappropriately influenced by personal or sectional interests.
- Use powers for the purpose, and in the manner, for which they were intended.
- Act without bias, make decisions by following fair and objective decision-making processes and give reasons for decisions where required.
- Behave honestly and transparently, disclosing facts, not hiding or distorting them. This includes preventing, addressing and reporting corruption, fraud and other forms of improper conduct.¹

This gives us some idea of what we mean by integrity, but does public sector integrity matter? If integrity doesn't matter, it would cast doubt on the importance of governance frameworks designed to protect and enhance integrity – a particularly concerning thought given you are only one session in to two intensive days of discussion on the value of public sector governance.

At first glance, it seems scarcely necessary to explain why integrity matters – it would be assumed, I think, that it is a vital, indeed indispensable, element of modern good government.

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

¹ This is the definition of integrity utilised by the Integrity Co-ordinating Group, see <http://www.opssc.wa.gov.au/icg/>

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 integrity does matter, and indeed our public sector governance frameworks - designed as they are to protect and promote integrity - are a proper investment on behalf of citizens to ensure 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 Western Australia 35 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.”²

How to create a culture of integrity

Having determined that integrity is important, then how do we promote a culture of integrity in the public sector. In my view, there is no one set of values, ethical imperative, mechanism, action, regulation, framework or insight that will, by itself, create a culture of integrity across the public sector.

It seems clear that creating a culture of integrity requires a range of different approaches – governance frameworks, audits, oversight, investigation and prosecution, cultural awareness, incentives, disincentives, regulation and education are a few that come to mind. Indeed, the scope of our accountability mechanisms designed to enhance public sector integrity can be considered to be very wide, including the parliament, the opposition and minor parties, 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 creating and maintaining integrity within the public sector. There will also be a range of ways of implementing these mechanisms – one size is unlikely to fit all, in the same way that one intervention at a given point of time will not create an enduring culture. These mechanisms will also not be immutable – they will evolve and need to be tailored to new learning and challenges. I do not want to spend further time in this speech about the variety of mechanisms that we can utilise to create a culture of integrity or the variety of ways that they may be sustained, because having read your conference program, I am confident that there will be substantial exploration of these issues, including case studies, given by people closer to these issues than I am. I do, however, want to mention two further matters before I move on to the next section of my paper.

² John McMillan, 'Accountability of government', AboveBoard Accountability Forum, Australian National University, Canberra, 12 May 2007

First, it seems clear to me that the most successful, sustainable leadership in public life comes from a range of personal commitments – a commitment to rational, evidence-based policy analysis, a commitment to spend other people's money wisely and, of course, an overriding commitment to the public interest. These commitments are underpinned by a strong set of personal values – of which integrity and humility stand out in my mind for particular mention. Those that have leadership roles in the public sector, must set for themselves a high standard of integrity upon which their employees can model successful behaviour. This challenge is probably even more important for the leaders of integrity agencies who should seek to take leadership on integrity issues which can be a model for not only the staff of their own organisation, but also leaders of other public sector agencies.

Second, I want to mention a very successful leadership initiative that the Western Australian Ombudsman is involved in that I think is of significant value in terms of inculcating a culture of integrity across the Western Australian public sector.

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. These four agencies are often referred to as "integrity agencies". Together we 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. Over 170 public sector employees attended the 2008 ICG Forum held late last month at Government House Ballroom. For the 2008 ICG Forum, influenced by feedback to the 2007 Forum, we took a very practical approach, adopting hypothetical-style scenarios utilising professional actors. As the key messages discussed at the Forum are enduring, the Forum was recorded and we will be producing a DVD. The DVD will also be an important mechanism to facilitate the ICG's shared commitment to communicating about integrity issues throughout the State.

Ensuring accountability agencies are held accountable

Before moving on to considering the benefits and costs of governance frameworks, I want to touch briefly on another aspect of integrity – the integrity of 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. I believe that this high level of autonomy must be balanced by appropriate accountability. 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 oversight 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.

The benefits and costs of public sector governance

Public sector governance, insofar as it seeks to protect and promote public sector integrity, clearly has very significant benefits. We must also be aware however that governance can impose costs. Governance frameworks, be they through the encouraging of different organisational cultures, ethics and values education, regulatory controls, incentives or disincentives to change behavioural patterns, can impose regulatory costs on public sector agencies, and by implication, on taxpayers. They may also act undesirably to have a stultifying effect on welcome innovative behaviour, to appear to encourage total risk adversity, where some risk taking is actually desirable, or simply burden efficient, timely decision making with excessive red-tape. When adopting, or imposing, new governance frameworks, I suggest that it is always important to have a very clear idea of what the benefits and costs of these frameworks are, so that we are in the best position to be confident that they will have a net benefit to the public. In part to deal with this problem, I suggest that when we adopt new public sector governance frameworks we should always be clear:

- (1) there is a demonstrated need for the framework;
- (2) the proposed framework will actually remedy the problem;
- (3) the proposed framework will preserve as much as possible independent decision-making; and
- (4) the costs imposed by the framework are outweighed by the benefits of the framework.³

³ Adapted from a framework suggested by me to consider the need for regulation in Chris Field, 'Competition, consumer protection and social justice – providing a consumers' voice', 33 *ABLR* 2

In short, although it is not always typical to think of them as such, public sector governance frameworks, impose regulatory costs and we should be able to clearly demonstrate that the costs are outweighed by the benefits of our actions. Before leaving this section of my paper I want to touch upon one last aspect of assessing the efficacy of governance frameworks – unintended consequences.

The problem with unintended consequences

In a recent episode of the ABC television program the Hollowmen, the Prime Minister has announced a “National Carbon Challenge”. The Prime Minister’s office responds by introducing initiatives to reduce their carbon emissions. After a week of the initiatives being in place, Holly, the Office Unit Manager, hands the results of their work on the “carbon challenge” to Tony, the Principal Private Secretary:

Tony: That can’t be right?

Holly: It is, our energy consumption has actually gone up.

Tony: Up? What happened to low-watt fluoros? What happened to freezing for the last week?

Holly: Well it turns out that to get the temperature down to 18 degrees the air conditioning was kicking in ... Which chewed up twice as much power as the heater.⁴

Tony: So for all of our efforts we’ve actually managed to increase emissions. Imagine if we ran the country like that.

Unfortunately some regulation and government activity in our society occurs for the wrong reasons. Ultimately, there is only one good reason for government activity and regulation – what will enhance the long-term interests of the Australian public. Despite this we see actions taken at the behest of rent seekers and powerful interest groups, rather than in the long-term public interest. Further still, some regulation and public sector activity occurs for other types of wrong reasons – corruption, conflicts of interest or serious misconduct. But a very large amount of government activity occurs for the right reasons, conceived and executed with considerable good intent. Whether you are inclined to the Hollowmen or Hayek, however, not all that is done with good intent actually achieves good outcomes.⁵

When we design and implement governance frameworks for the public sector we will almost invariably have very good intentions in mind. We must be aware, however, that some of our intended outcomes may not be realised and some unintended outcomes may be achieved. The key here is to exercise caution and care in our approach – seeking to define what we do by rigorous evidence-based analysis that demonstrate net benefits. Most of all we should always act with humility that we can simply get it wrong,

⁴ Script from Series 2, Episode 5, *A Waste of Energy*, transcribed from a podcast of the show at <http://www.abc.net.au/tv/hollowmen/#/watch>

⁵ See, generally, F.A. Hayek, *The Road to Serfdom*, Routledge, 1944

and indeed more wrong than the current situation we are in. Here I am reminded of a quote from Adam Smith's famous work, *The Wealth of Nations*:

The statesman who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted, not only to no single person, but to no council or senate whatever, and which would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.⁶

After all it is clear that it is the existence of imperfect human behaviour that leads to a lack of integrity. We should never begin to think that those who seek to remedy and prevent this behaviour will be possessed of some Platonic perfection – governments, regulators, watchdogs, academics and Ombudsman are imperfect and make mistakes.

Conclusion

Let me turn now to my concluding remarks. A lack of integrity in the public sector damages us all. Governments hallmarked by integrity retain the confidence of the public and contribute significantly to what, by most measures, is our remarkably stable and successful democracy. Conversely, governments hallmarked by a lack of integrity, a lack of an ethical underpinning, corruption, conflict, secrecy, undue favours and unaccountable to its citizens, risk losing their confidence and threatening the very stability of the society we take for granted. Further still, there is clear correlative evidence linking economically underperforming nations with lack of integrity and corruption in government. In short, integrity in our public sector is essential for our ongoing economic prosperity, to protect individuals from overbearing governmental activity and to optimise the way they exercise their powers.

Here then, is the clear need for clear, considered and sustained leadership on public sector integrity. Leaders can begin this process by integrating strong values and high standards of ethical behaviour in their personal and professional lives. This in turn promotes and leads the way for those around them. When it comes time, as from time to time it inevitably will, for these integrity leaders to act on others who have failed the integrity test, their actions will be much more readily accepted by the public at large. Leaders must similarly collaborate and collectivise their approach to integrity issues – a common front reinforces and makes consistent what we all expect from the public sector.

By and large, I think that Australian public sector governance and accountability frameworks work well. This is not to suggest, of course, that these frameworks are perfect or costless. Of course, they are neither. These frameworks cost money, albeit a fairly modest amount. Sometimes those who hold others to account can cause

⁶ Adam Smith, *The Wealth of Nations*, Books IV-V, Penguin Classics at 33 available at <http://books.google.com/books?id=LfZYW5hI5rsC&pg=PA33&ipg=PA33&dq=the+statesmen+who+should+attempt+to+direct+private+people+in+what+manner+they+ought+to+employ+their+capitals+would+not+only+load+himself+with+a+most+unnecessary+attention+but+assume+an+authority+which+could+safely+be+trusted+to+no+council+and+senate+whatever+and+which+would+nowhere&source=web&ots=TBb95eaNP9&sig=5JGgJHU9stRyrfkszAhu1TnpIms#PPA32,M1>.

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 these frameworks do promote largely unarguable ethical and governance precepts, whilst holding 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 systems around the world. To paraphrase Winston Churchill - modern parliamentary democracies, hallmarked by robust frameworks to protect and promote public sector integrity such as that which we enjoy in Australia, are the worst form of government, apart from every other form of government that has ever been tried.⁷

⁷ I have adapted this view from that expressed by Stanley Fischer in his paper 'Globalisation and its challenges', *Ely Lecture*, 2003, at 33. The lecture is available at <http://www.iie.com/fischer/pdf/fischer011903.pdf>