

29th Australasian and Pacific Ombudsman Region Conference

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Introduction

Her Excellency the Honourable Kerry Sanderson AC, Governor of Western Australia, my fellow Directors of the World Board of the International Ombudsman Institute Connie Lau, JP, and Judge Peter Boshier and all of my Ombudsman colleagues. I am absolutely delighted that you have been able to join us for the 29th Australasian and Pacific Ombudsman Region Conference.

Before I commence, I thank Dr Richard Walley for his wonderful welcome to country. I acknowledge the traditional owners of this land, the Wadjuk Noongar people. As we join here today near the banks of the Swan River, a place of great cultural significance to the Wadjuk Noongar people, I pay my respects to elders past, present and future. Like Connie, I am particularly pleased that we will today dedicate a full session of this Conference to examining how Ombudsman institutions can better serve First Peoples – we have much to regret of our past, and we have much to do in the future.

During my term as Ombudsman, I have had the great privilege of holding the office of the President of the Australasian and Pacific Ombudsman Region (APOR) of the International Ombudsman Institute, or IOI for short, and more recently, as Second Vice President of the IOI. In both roles, I have worked closely with colleagues throughout APOR. On behalf of the office of the Western Australian Ombudsman, I warmly welcome all Conference delegates from the Australasian and Pacific region. In particular, the proximity of Australia and its Asian and Pacific neighbours is not simply geographic. Our cultural, governance and trading bonds are deep and strong. These bonds are no more strongly felt, or valued, than by Western Australians.

In my opening address, I want to briefly outline four IOI initiatives that I think will be of interest to APOR delegates, connecting these initiatives with our conference themes today and the principles that underpin the work that we as Ombudsmen undertake.

Initiative One: Human Rights

The first initiative I want to discuss with you is the role of the IOI in the protection and promotion of human rights.

The Ombudsman's principal role remains the receipt, investigation and resolution of complaints from citizens about government maladministration. This role ensures

free, timely, independent and impartial access to justice – a critical basic human right. Beyond our complaint resolution work, which is essentially a reactive role, many of our offices have evolved to have a very significant proactive mandate, particularly the ability, of our own motion, to undertake major investigations into matters that involve human rights issues. Ombudsmen offices, on a daily basis, investigate how the state, through its instrumentalities, affects the rights that inherently reside in individuals to exercise their economic and personal freedoms.

It is very much with the idea of our human rights role in mind, that the IOI is currently examining an initiative to build upon and strengthen our human rights mandate at the international level. Building upon previous UN Resolutions on Ombudsmen and the World Forum of Human Rights in Marrakech in November 2014 and the Marrakech Declaration, the IOI has been undertaking considerable work to further our human rights commitments. It is intended that the IOI Secretary General and the four members of the Executive Committee, namely President Peter Tyndall, First Vice President Diane Wellborn, Treasurer Viddavat Rajatanun and myself will meet with United Nations counterparts in New York in April next year, immediately prior to our 2018 IOI World Board meeting in Toronto. This development is, I think, a very important one for the IOI and Ombudsman, as we seek further commonality and collegiality at the domestic and international level to further our human rights work.

Initiative Two: The IOI and democratisation, the rule of law and good governance

The second initiative is the role of the IOI in furthering states transitioning to democracy, the rule of law and good governance. In the shadows of the 800th anniversary of the Magna Carta, the resonance of the rule of law with our work in mediating the relationship of power to those governed has only grown over the centuries.

Although the classical formulation of the rule of law belongs to the great legal theorist Dicey, perhaps the most succinct formulation can be found in the writings of Austrian economist, Friedrich Hayek. Hayek considered that the rule of law:

[s]tripped of all its technicalities means that government in all its actions is bound by fixed rules and announced beforehand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge. A central component of the rule of law is to 'reduce the complexity, arbitrariness and uncertainty of the administrative application of law.

In my view, this very clearly describes the day to day work performed by the Ombudsman. Although most importantly, and quite properly, oversight of the administration of the rule of law is a role for our courts, wherever Ombudsmen exist, they have become, in my view, strong protectors and promoters of the rule of law.

The rule of law is also critical to the continuation of economic development and the opportunities for raising the living standards of citizens that development brings. Ultimately, I have the same view of the rule of law that my daughter once held about One Direction – you just can't get too much of it.

It is for these reasons that the IOI continues to undertake extensive work in supporting Ombudsman institutions that are providing ballast for processes of democratisation and embedding the principles of the rule of law in their nation states, particularly through formal letters of solidarity and visits to countries by members of the IOI Secretary General and the IOI Executive Committee wherever it may be appropriate to do so.

Initiative Three: Membership Fees

The third initiative relates to IOI membership fees. Some years ago, during the period that I was Treasurer of the IOI, it was determined that the flat fee charged for membership was, as a matter of principle, unfair and, as a matter of practice, led to many smaller Ombudsman offices in regular default of membership dues. Following extensive research, analysis and consultation undertaken by my office, we developed a proposal for IOI World Board consideration regarding a change to membership fees. It was particularly pleasing to see this initiative receive unanimous support at the General Assembly of the IOI World Conference in Bangkok late last year and formalised at the meeting of the IOI World Board in Vienna earlier this year.

In summary, the IOI's flat membership fee of 750EUR has been abolished. For the first time, IOI members will pay annual fees which are tailored to their institution's budget. The new membership fee system is considerably more equitable - for the first time it reflects an Ombudsman institution's capacity to pay. In short, Ombudsman offices with a large budget will pay higher fees, Ombudsman offices who have historically struggled paying IOI membership fees will pay less and those in-between who can afford to pay the historical rate will be charged the same rate as before.

The tiers apply to a member's budget converted from their local currency to international dollars. The new membership fee system is made up of three tiers, Tier 1 applies to members with a budget over 6 million international dollars who will pay 1,500EUR, members with a budget 1.5 to 6 million international dollars will pay 750EUR and members with a budget under 1.5 million international dollars will pay 375EUR - exactly half the current rate. Each membership fee tier will be adjusted every four years to account for the effect of inflation. Importantly, IOI members will also be able to apply for a partial or full exemption from paying their fees in times of particular hardship.

Initiative Four: IOI Organisational Reforms

The fourth and final initiative is reform of the IOI Bylaws (the Bylaws). The Bylaws regulate the work of the IOI. The Bylaws, however, also set out the IOI's core purpose and principles. More specifically, the Bylaws:

...affirm the IOI's core purpose and elaborate a set of principles which reflect the Principles relating to the Status of National institutions for the promotion and protection of human rights, i.e. the Paris Principles, and United Nations Resolutions on the Role of the Ombudsman.

The Bylaws establish two key objectives for the IOI to inform its purpose and work. The first objective relates to inclusion, more specifically:

[t]he Institute recognises the diversity of Ombudsman institutions which in turn reflects the diversity of the countries and regions which individual Ombudsman offices serve. Different models of legislation and accountability underpinning Ombudsman offices are also emerging which can reflect particular constitutional arrangements and cultures and the IOI for its part wishes to reflect this diversity in its membership. The second objective of the IOI is to enhance the Ombudsman role and secure the core values of independence, objectivity and fairness which underpin each Ombudsman institution and importantly inform its work.

During the 2016 IOI World Board meeting in Bangkok and the General Assembly of the IOI at the 11th IOI World Conference also in Bangkok, a range of issues arose that require the IOI World Board to consider the Bylaws, and if appropriate, propose amendments to the Bylaws for consideration of the General Assembly of the IOI at the 12th IOI World Conference in Dublin in 2020.

To undertake a review of the Bylaws, the IOI World Board established a Bylaws Committee at the 2017 IOI Board meeting in Vienna. The Committee is comprised of myself as Chair and a number of Directors of the IOI Board, including fellow APOR Director, Judge Peter Boshier.

The review is examining several major reforms, but for today's purposes can I simply say that all of these reforms are aimed at ensuring the IOI is meeting its objectives of being thoroughly inclusive and fully supporting the core values of the office of the Ombudsman, including independence, objectivity and fairness.

In particular, given the IOI's key objective to be inclusive and its related aspiration (as articulated in the Bylaws) to promote "the concept and institution of ombudsman and encouraging its development throughout the world", we will consider ways of encouraging and welcoming membership of Ombudsman institutions that are playing a central role in the development of human rights and fundamental freedoms, adherence to the rule of law, effective democracy, administrative justice and procedural fairness in public organisations, improving public services, open and accountable government and access to justice.

In short, the IOI would not want to limit membership to established Ombudsman institutions, lest we not consider those institutions aspirational in terms of their purposes and principles or those Ombudsman institutions that are positive contributors to nation states that are democratising their governance.

Nonetheless, several important characteristics are widely accepted as essential to the function of Ombudsman institutions, including independence, impartiality, objectivity, fairness, credibility and confidentiality. One of the key objectives of the IOI is to “enhance the Ombudsman role and secure the core values of independence, objectivity and fairness”. Ensuring that certain characteristics are a feature of any potential member is essential to retaining the integrity and legitimacy of the IOI and of the institution of the Ombudsman. Accordingly, there are importance balances to be struck in considering these matters.

We will also consider the constitution of current IOI Regions, of which APOR is one. The Regions are considered critical to representation of Ombudsman institutions from different geographical areas in the work of the IOI, important to ensuring a bottom-up organisation without excessive centralised control and strongly accords with the key IOI objective of inclusion.

We will consider the importance of ensuring that populous regions are adequately and respectfully represented, but equally non-populous regions are not inappropriately underrepresented, particularly those with such (relatively) small populations that they could have significantly reduced representation if there were to be significant change from existing arrangements.

We will also consider that, in representing the interests of members, it is desirable that the Executive Committee of the IOI World Board can bring the widest possible knowledge of the interests of all members and regions to its decision making. To do so not only improves the quality of decision making but supports its legitimacy for all members.

A major discussion paper on all areas for possible reform was completed recently by my office. The discussion paper will be made available for extensive consultation with all members of the IOI, with very considerable time provided for ongoing consultation. As I noted earlier, any possible reform will not be presented for member endorsement until 2020 in Dublin.

I personally claim no credit for this major discussion paper, our consultation paper on membership fees, nor any aspect of this conference. All of these achievements are the result of an extraordinary team of staff, in particular Nicola Jamieson, Lindon McKenna, Kyle Heritage, Anu Besson, Matthew Rowe and Lisa Webb. I reserve for special recognition my Executive Officer, the indefatigable Rebecca Poole. Rebecca is an outstanding senior member of my staff, unfortunately for her, far too respectful of the office of the Ombudsman to run away sensibly from my office whenever I say to her, with absolutely no humility, “I’ve just had a great idea”!

I also acknowledge the funding for this Conference provided by the IOI and the Offices of the Commonwealth Ombudsman and the New Zealand Ombudsman, without which this conference would not have been possible – Michael and Peter, thank you.

Conclusion

In conclusion, as we all know in this room, an institution that began in Sweden has spread throughout the world. The IOI now represents over 180 Ombudsman institutions. Ombudsmen are now woven into the governance fabric of more than 90 countries around the world. At the same time that the Ombudsman has spread throughout the world, Ombudsmen now undertake a much wider range of activities than was the case traditionally, which can include such matters as undertaking inspections of telecommunications intercepts, investigation of public interest disclosures, investigation of complaints from overseas students, reviews of child deaths, fatalities arising from family and domestic violence, monitoring of the control of criminal organisations, monitoring of criminal code infringement notices, OPCAT functions, monitoring out of home care standards, investigating mandatory reports of child abuse, an FOI role, custodial inspections and the role of industry Ombudsmen. Indeed, a single office may undertake an advanced hybrid of merits and judicial review, exercise both recommendatory and determinative powers, perform inspectorate, monitoring and rapporteur functions, all at once across both the public and private domains, and all with the powers of a standing Royal Commission.

We could go further and note those offices that not only consider the sort of maladministration that is the subject traditionally of prerogative judicial review, but those who concurrently examine serious misconduct and corruption powers. The Ombudsman has also proved adaptable to its constitutional context. Ombudsmen fit exceptionally well into Parliamentary Westminster systems of government. But, of course, there are many variations of how to separate the accretion and exercise of the power of the state. For example, the traditional Chinese system of government had five branches, including an integrity or control branch. Our APOR colleague, the Control Yuan is a modern embodiment of this branch.

The institution of the Ombudsman has unquestionably evolved to meet changes to the socio-political environment in which it exists, particularly the growth of the coercive powers of government and the desire by citizens to ensure that these powers are performed with integrity, transparency and accountability.

The Ombudsman has evolved to become an inseparable, indeed through Europe and increasingly more jurisdictions, a constitutionally-protected part of the modern notions of good government, access to justice, the protection of human rights and the maintenance of the rule of law. Although not all Ombudsmen have yet been endowed with constitutional dignity, as officers of the Parliament, or indeed their own branch of control, Ombudsmen continue to adapt successfully to the vast variation of systems of government around the world.

The IOI will continue to work to advance these matters of fundamental principle.

Before I finish this morning I propose to end with an indulgence. I was asked a little while ago to consider the top 10 learnings that I had gained in undertaking my role for 10 years. The request may have spoken to somewhat of a lack of confidence in my imagination or achievement – 10 matters in 10 years seems a rather unambitious project. The request was made however in utter good faith. As it so happens, I actually do have many reflections about good public policy and public administration, but for today's purpose, one matter immediately sprang to mind.

During the last decade, the genuine sense of warmth and generosity I have personally observed, and experienced, from my Ombudsman colleagues has been unparalleled in terms of any other of my professional iterations. The international Ombudsman family is diverse, numerous and still evolving. Within our large number, despite diversity and that our models of service are still subject to development, we have a powerfully strong shared sense of purpose.

I count myself privileged to be a member of the Ombudsman family and to be in the company of so many colleagues and friends today – I welcome you and I thank you for travelling great distances to be with us. On behalf of President Peter Tyndall and the World Board of the IOI, though public service is its own reward, I thank you for your work in serving so well the citizens of your states and nations - ensuring the relationship of citizens to power is one that is as free as possible, as fair as possible and, always, as dignified as possible.

Thank you.