

Speech by Western Australian Ombudsman Chris Field at the Ethical Leadership and Governance in the Public Sector Conference 2008

Introduction

It is a pleasure to be here this morning to speak to attendees at the 2nd Annual Ethical Leadership and Governance in the Public Sector conference. I value the time you have taken to attend this conference and your interest in the integrity of public administration that we are discussing today.

I should say that it is a particular pleasure to be here today. While the office of the Ombudsman is involved in a wide range of activities, there is no one aspect of our work that is more obviously important than ensuring integrity and ethics in the performance of public service. The opportunity to meet a range of people with an interest and significant expertise in this area of our work is a very useful opportunity for me.

The conference organisers have titled this session “Collaborating to Ensure Integrity in Government” and, in particular, asked me how the Ombudsman works together with other Western Australian agencies to ensure integrity in Government.

The title of my presentation allows me to roam reasonably widely across a range of issues relevant to ethics in government that I have, from my observations as a Parliamentary Ombudsman come to think are important.

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

First, I will provide some background to the office of the Ombudsman 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.

Second, 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 particular, I will discuss the importance of a collaborative/integrated approach to ensuring government integrity as well as the Integrity Co-ordinating Group – The organisations involved and how they go about sharing information.

Third, and finally, I will share some thoughts about the future role of the Ombudsman and the public sector and, in particular, how the Ombudsman will tackle future challenges facing Western Australia in relation to the integrity of Public Sector Administration

I plan to speak for no more than 45 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

First, then, 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 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?

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 focused 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.

The Ombudsman and the public sector

I now want to 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 particular, I want to discuss the importance of a collaborative/integrated approach to ensuring government integrity as well as the Integrity Co-ordinating Group – The organisations involved and how they go about sharing information.

Western Australia 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.

A strong and positive relationship with the public 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 in public administration over recent years has been the growth in the number of watchdog bodies oversighting 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;
- Easier facilitation of possible coordinated approaches to investigations to our activities.

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.

Integrity is demonstrated by a public sector who:

- Serve the public interest with integrity by avoiding real or apparent conflicts of interest and not allowing decisions or actions to be 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.

How the Ombudsman will tackle future challenges facing Western Australia in relation to the integrity of Public Sector Administration

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 want to turn to how the Ombudsman will tackle future challenges facing Western Australia in relation to the integrity of Public Sector Administration. As there are potentially many challenges I could discuss, I have decided for this morning's presentation to focus on five issues.

(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 to be a significant issue for our counterparts in other offices around the country, indeed internationally. 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. It is also potentially presents an opportunity cost to our time in examining broader integrity and ethics issues. Our capacity as integrity agencies to carefully balance the need on one hand to undertake individual investigations that are increasingly more complex whilst on the other hand ensuring sufficient time to undertake a range of work dedicated to promoting integrity across government will be a real challenge for the future.

(2) Awareness and Accessibility

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.

(3) Exercise of Powers

In our role 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.

Similarly, 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 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.

(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.

Conclusion

In a recent speech given to the Commonwealth Ombudsman's 30th anniversary conference, the former 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. A critical and ongoing role of great

importance is our work to promote ethics and integrity in government – a role that is informed by more traditional principles of administration, but I also take the view that economics and other social sciences underline and enrich how we understand our role.