

## **Final Remarks from the IOI**

Speech to the 30<sup>th</sup> Australasia and Pacific Ombudsman Region (APOR) Conference

Chris Field, IOI Vice President, Ombudsman Western Australia<sup>1</sup>

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### **1. Introduction**

I am absolutely delighted to provide final remarks from the IOI at this our 30<sup>th</sup> APOR Conference. It is particularly pleasing to do so in the year that we celebrate the 40<sup>th</sup> anniversary of the IOI.

Can I also say how delighted I am that we are joined at this conference by the President and Secretary-General of the IOI, as well as observer institutions, the Ministry of Internal Affairs and Communications, Japan, the Tuvalu Ombudsman Commission and the Solomon Islands Leadership Code Commission.

In my final remarks, I want to offer brief thoughts on both of today's themes – social and political change and climate change. To do so, I will first discuss two new frontiers for the IOI community brought about by social and political change. Next, I will reflect on the role of the IOI with regard to climate change, before going on to make some concluding observations.

### **2. Ombudsmen in a climate of social and political change**

I commence my final remarks by considering two aspects of how the modern Ombudsman institution is responding to a climate of social and political change.

#### **2.1 Human Rights**

The first new frontier is the characterisation of the work of Ombudsmen as human rights protectors. Of course, Ombudsmen have undertaken the role of complaints investigation, realizing a basic human right to access justice, for over 200 years.

But in those 200 years, great societal shifts have occurred that have seen not just the exponential growth of the office of the Ombudsman, but also similar growth in the scope of the Ombudsman's role. This has been particularly the case in the post second world war compact of universal human rights.

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<sup>1</sup> Western Australian Ombudsman, Second Vice President, International Ombudsman Institute, Chair, State Records Commission and Adjunct Professor, School of Law, University of Western Australia.

The fact is that we live in a changing climate, and a climate that is being changed, challenged and interrupted on a near daily basis. In such circumstances, successive governments and Parliaments have identified an increasing need for our offices to undertake human rights work, coupled with a strong desire by Ombudsmen to do more, and more innovatively, to protect the basic and fundamental rights of citizens.

While legislation around the world that creates Ombudsmen does not always specifically enliven a human rights mandate, the institution of the Ombudsman deals on a daily basis with fundamental human rights. Of course, it is also now the case that many Ombudsman institutions have been further ennobled as National Human Rights Institutions.

Whether it is providing access to justice, major Ombudsman investigations focused on the most vulnerable members of society or a range of newer roles, such as National Preventative Mechanisms, Ombudsmen are protectors of human rights. Ombudsmen offices, on a daily basis, investigate how the state, through its instrumentalities, respects and protects the rights and dignity that inherently reside in all of us. Be it the the Office of the Ombudsman Samoa's, just-released landmark national public inquiry into family violence, the Control Yuan's investigation into the protection of rights of people living with dementia, the New Zealand Ombudsman's investigation of care and management for prisoners considered to be at risk of suicide and self-harm or an investigation by the Ombudsman of Ireland into the administration of the Magdalen Restorative Justice Scheme, they are all investigations to monitor and protect fundamental human rights. I could name such reports from every institution in this room today.

It is with this increasing, and increasingly relevant, human rights role in mind, and as the President referred to in his Opening Address, that earlier this year the IOI participated in a side event at the United Nations in New York and that the Executive Committee of the IOI World Board at its meeting held in October in Brussels, agreed to establish a UN Working Group to develop a draft strategy for UN engagement to be presented to the IOI World Board meeting in Mexico next year.

While we must retain complete impartiality and independence in the exercise of human rights functions, I think it is not just appropriate, but in fact desirable, that we are unashamedly and transparently partial about certain matters of human rights. For example, I investigate family and domestic violence fatalities in Western Australia and I do so without pre-judgment, with complete impartiality and make findings exclusively on the evidence before me. I am not, however, the slightest bit impartial about the need to end the reprehensible crime of violence committed against women by men.

Our colleague Deborah Glass has stated this more succinctly than me. In her most recent Annual Report, Deborah notes "Being an independent officer of Parliament does not mean I am neutral. I am not neutral about human rights and social justice".

## 2.2 Citizen Participation

The second new frontier is the role of the Ombudsman as a catalyst for participatory democracy. Discussion of citizen participation has largely been invoked due to the changing climate, particularly the rise of political populism and the desire to make democracies more robust and sustainable through citizen participation.

The participation of citizens is at the very heart of the relationship between the state and society – it is, of course, the ‘demos’ of democracy. That citizen participation is not just a good thing, but a demonstrably essential part of well-governed states, is a proposition so utterly uncontroversial that it would hardly warrant discussion. But the question now being raised is not the merit of citizen participation, rather, the idea of the Ombudsman as a catalyst for citizen participation. For my part, here are just a very few questions that arise when we consider this theme:

- What do we mean as Ombudsmen when we refer to the concept of citizen participation? Are we referring to working to ensure citizens participate in our processes (for example, citizen’s panels that might help identify and inform our own-motion investigations?) or do we mean that the institution of the Ombudsman is acting as a catalyst for the participation of citizens in the broader polity? Or both?
- What is the practical role of the Ombudsman in catalysing such participation and how might such a role be established, resourced, managed and reviewed?
- What are the expected outcomes of such participation and how might we measure and report on these outcomes?
- If an essential element of the Ombudsman institution is to mediate the relationship between citizens and the state in a way that is impartial, independent and not as an advocate, how might this circumscribe the role of the Ombudsman as a catalyst for citizen participation?

In my office, we do encourage and facilitate the participation of citizens, with one very obvious example being the participation of Aboriginal Australians. We do this in part because we ask this question of ourselves: Can an Ombudsman have legitimacy and effectiveness as an institution that promotes access to justice and protects the rule of law and democracy, without activating citizen participation in its work, particularly citizens who may be vulnerable and/or the subject of significant historic government wrongs and societal marginalisation?

### 3. A changing climate

Next, I want to address the role of the Ombudsman in the context of climate change – a key theme of today’s conference.

The communiqué of the Forty-Ninth Pacific Islands Forum held in Nauru in September this year, recorded that:

[r]ecognising that climate change presents the single greatest threat to the livelihood, security and wellbeing of Pacific people, Leaders **reaffirmed** the importance of immediate urgent action to combat climate change.

More recently again, in its major 2018 report, the Intergovernmental Panel on Climate Change states that “regions at disproportionately higher risk include Arctic ecosystems, dryland regions, small-island developing states, and least developed countries.”

The Ombudsman community must collectively engage with a troubling truth – climate change impacts disproportionately on those who are least able to bear its burden. It is a particularly cruel irony, that the threat is the greatest for those who are the least responsible for its creation. The IOI acknowledges the particular threat that climate change represents to the peoples of the Pacific nations. The IOI must and will stand with, and support in practical ways, our colleagues in nation states who face the greatest threat from climate change, particularly the great nations of the Pacific Islands.

### 4. Conclusion

Let me conclude by first thanking our hosts. The 2018 Lowy Institute Poll found that Australians view New Zealand most favourably of all countries and it is true that Australia has a longstanding and exceptionally strong friendship with New Zealand. The proximity of Australia and New Zealand is not simply geographic – our cultural, governance and trading bonds are deep and strong – for example, in 2017/18 alone the total trade relationship between Western Australia and New Zealand was worth over 1 billion dollars.

Peter, I have absolutely no doubt that the 40<sup>th</sup> anniversary of the IOI could not have had a more fitting valedictory than this conference. That you have done such an outstanding job should not surprise any of us - the office of the New Zealand Ombudsman is one of the oldest and most respected in the world. Thus far, six New Zealand Ombudsmen have been knighted. One of those is in our number today – former President of the IOI, and former Chief Ombudsman of New Zealand Dame Beverley Wakem. Dame Beverley, it is lovely to have you back with us.

I also want to take this opportunity to acknowledge another friend and colleague – Connie Lau. As APOR members know, Connie will shortly step down as Ombudsman of Hong Kong and, accordingly, as a Director of the World Board of the IOI and APOR President. Connie, you have served the people of Hong Kong with absolute distinction. You have also brought all your gracious intellect and professionalism to lead our region and in your work with the IOI. I will miss you, we will miss you.

In this, the 30<sup>th</sup> APOR Conference we have explored change and with it the great many opportunities, and challenges, that come with change. As Ombudsmen we are extraordinarily privileged - what could be more rewarding than to provide access to justice for citizens, promote democracy, protect the rule of law and investigate matters of fundamental human rights. With this privilege comes a responsibility to meet both these opportunities and challenges. This is a responsibility that I have observed is met with the greatest enthusiasm by all members of APOR. Indeed, as we look forward to our 2020 IOI World Conference in Dublin, I am excited about the ambitious, but I think achievable, vision of the IOI. I am particularly excited to work with all of my colleagues in our region in achieving this vision over the years ahead.

Thank you.