

The role and functions of the Ombudsman: Experiences, development and issues for government lawyers

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1. Introduction

Can I thank Angela for that kind introduction. Can I also thank State Solicitor Nicholas Egan for inviting me to address this seminar. My office has long enjoyed an excellent working relationship with the office of the State Solicitor – a matter to which I will return later in this address.

Before I commence, I acknowledge the traditional owners of this land, the Whadjuk Noongar people. As we meet here at the Perth Convention Centre, near the banks of the Swan River, a place of great cultural significance to Whadjuk Noongar people, I pay my respects to elders past, present and future.

In my address today I will explore the role and functions of the Ombudsman. To do so, I will provide a brief outline of the history and role of the office of the Ombudsman, before paying particular attention to the investigatory role of the Ombudsman. I will then provide an overview of a range of new functions undertaken by my office and the growth of the institution of the Ombudsman generally. Next, I will make some observations about the relationship between the office of the Ombudsman and lawyers, before considering the role of the Ombudsman in promoting good governance and the rule of law. I will then consider new frontiers for the Ombudsman institution, followed by my concluding remarks.

2. The history of the Ombudsman

First, I want to consider the history of the Ombudsman. The first office of the Ombudsman, or more precisely, an office approximating the modern office of the Ombudsman, was created in Sweden over 200 years ago. In our region, New Zealand's office of the Ombudsman is nearly 60 years old, Western Australia, the first office created in Australia, is nearly 50 years old. The development of the Ombudsman in Australia closely aligns with the development of the new administrative law in the 1970s and increased concerns regarding access to justice. In its very recent OECD report, *The Role of Ombudsman Institutions in Open*

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Government, to which my office both contributed and is featured, the OECD states that:

The term “ombudsman” is an English translation of the Swedish word *ombudsman*, gender-neutral in origin, which means “representative” or “proxy”. Back in the 19th century, the figure of the ombudsman was incorporated into the Swedish Constitution and became an important body that provided the Parliament with the necessary means to supervise the conduct of government administration.

The International Ombudsman Institute states that the role of the Ombudsman:

is to protect the people against violation of rights, abuse of powers, unfair decisions and maladministration. They play an increasingly important role in improving public administration while making the government's actions more open and its administration more accountable to the public. In most countries around the world parliamentary control bodies are established, which monitor and implement the rule of law, the fight against corruption and good public administration. Although the specific role of the Ombudsman institution may vary, the holder of this office is legitimized by parliament – either through direct elections or through appointment by the head of state or government by or after consultation with parliament.

I will return to explore a number of aspects of this role later, but in the first instance I want to turn to the Ombudsman’s investigatory role.

3. The role of the Ombudsman in investigations

The Ombudsman’s legislation is the *Parliamentary Commissioner Act 1971*. The long title is an:

Act to provide for the appointment of a Parliamentary Commissioner for Administrative Investigations with functions relating to the investigation of administrative action taken by or on behalf of certain departments and authorities and to the deaths of certain children and for incidental purposes.

There are three mechanisms by which the Ombudsman’s investigatory mandate can be enlivened, first, through receiving complaints by citizens, second, through undertaking investigations of the Ombudsman’s own-motion or, third, through reference by Parliament. The third of these mechanisms has not been extensively utilised in Australia, with the notable exception of Victoria, and, as such, I will focus my attention on the investigation of complaints and own-motion investigations. All investigations are undertaken with the powers, privileges and obligations provided for in the *Parliamentary Commissioner Act 1971*, and by virtue of the Act, all the powers, privileges and responsibilities provided for in the *Royal Commissions Act 1968*.

3.1 Investigation of complaints

The Ombudsman receives complaints from citizens. In short, the Ombudsman can investigate complaints about the vast majority of government agencies as well as local governments and universities. There are a range of qualifying factors to make a complaint and also discretions granted to the Ombudsman in relation to whether to investigate a complaint. The investigation of complaints is undertaken in private, the Ombudsman has discretion to disclose information arising from investigations subject to certain matters and investigations are protected by a privilege akin to public interest immunity, namely that documents sent to the Ombudsman or by the Ombudsman in the course of, or for the purposes of, an investigation and prepared specifically for the purposes of the investigation, shall be privileged and are not admissible in evidence in any proceedings other than proceedings for perjury or any offence under the *Royal Commissions Act*. The Ombudsman is also not subject to freedom of information laws.

At the completion of an investigation, the Ombudsman can form an opinion regarding the actions to which the investigation relates. These will be familiar to all lawyers in the room and include such matters as actions taken contrary to law; that are unreasonable, unjust, oppressive, or improperly discriminatory; improper purpose or on irrelevant grounds, irrelevant considerations; or mistake of law or fact. At this point the Ombudsman can report his opinion, reasons and recommendations. In the past 11 years 100% of recommendations arising from investigations have been accepted.

The Ombudsman may request that she or he is notified, within a specified time, of the steps that have been, or are proposed to be taken, to give effect to the recommendations, or, if no such steps have been, or are proposed to be taken, the reasons therefor. Where it appears to the Ombudsman that no steps that seem to be appropriate have been taken within a reasonable time of his making any report or recommendations, and after considering the comments made by the principal officer to whom the report or recommendations were made, may send to the Premier a copy of the report and the recommendations together with a copy of any such comments and having done so, table the report in Parliament.

Investigations are undertaken in accordance with the laws of procedural fairness, the specific requirements of the Act and, more generally, on a 'no-surprises' basis. For example, the Act provides that the Ombudsman shall not in any report make any defamatory or adverse comment unless an opportunity of being heard is given and any defence is fairly set out in the Ombudsman's report.

Through the investigation of complaints, the Ombudsman in Australia has become a significant pathway to access to justice. For example, the Productivity Commission has identified that Ombudsmen deal with a similar number of complaints to courts and tribunals, and do so in a timely and cost-effective way. The office places a strong emphasis on timely investigations – justice delayed is justice denied. In the last

financial year, we finalised 94% of complaints within 3 months and since 2007 we have decreased the age of complaints from 173 days to 33 days. At the same time, we have reduced the cost of investigating complaints by 36% or about 2 million dollars a year for Western Australian taxpayers every year.

3.2 Own-motion investigations

As I have said, a fundamental role of the Ombudsman is to receive, investigate and resolve complaints. Ombudsmen in Australia have extensively utilised own-motion investigations, although it is worth noting that not all Ombudsmen in other countries have the legislative mandate to undertake own-motion investigations. These investigations are tabled in Parliament and include reporting of the reasons why investigations were undertaken, the methodology used in the investigation, a review of the literature considered in undertaking the investigation, the evidence gathered, analysis of evidence, findings and recommendations. The investigations represent a significant repository of information that arises from literature review and data analysis that is used in Western Australia, but also nationally and internationally by academics, policy makers and legislators.

In all of our work, we do consider the potential for our recommendations to create inappropriate regulatory burden – a burden that is ultimately borne by the taxpayer. In his speech, ‘Law – Complexity and Moral Clarity’, His Honour Chief Justice French described a ‘galloping growth in regulation’ including a ‘growth of less visible soft law’ in the form of administrative guidelines. It cannot be overstated that, insofar as any oversight agency was to believe that public administration could necessarily be improved in every instance, without regard to cost, opportunity cost or unintended consequence, would be mistaken. Simply put, designing public administration with perfectly good intentions is easier than implementing those intentions perfectly, as a range of public policies from American prohibition onwards bears testament.

4. The expansion of functions of the office of the Ombudsman

I now turn to discussion the expansion of functions of the office of the Ombudsman. In its report, the OECD states that:

Ombudsmen have become a common feature of most countries’ institutional frameworks. However, their role, mandate and scope of intervention can differ from one country to another as they take into account different political, institutional and historical contexts. Since the establishment of the first ombudsman institution in Sweden in 1809, the mandates of ombudsman institutions have evolved based on countries’ specific needs (for example, following civil wars, independence, consolidation of democracy and the evolution of international human rights law). As countries have transitioned towards the consolidation of democracy and the protection of civil rights, Ombudsmen have rapidly spread throughout the world.

Since its creation in Sweden, the Ombudsman has indeed spread throughout the world to be represented in over 100 countries. The International Ombudsman Institute comprises 190 institutional members from six different regions: Africa, Asia, Australasia & Pacific, Europe, the Caribbean & Latin America and North America.

At the same time that the Ombudsman has spread throughout the world, the expansion of the Ombudsman institution has not been one of just scale, but also scope. Ombudsmen now undertake a much wider range of activities than was the case traditionally. To use my office as an example, in addition to the “classical” Ombudsman functions of investigating citizens complaints, we undertake inspections of telecommunications intercepts, investigation of public interest disclosures (more popularly referred to as ‘whistleblowers’ complaints), investigation of complaints from overseas students, reviews of child deaths and fatalities arising from family and domestic violence, monitoring of the control of criminal organisations, monitoring of criminal code infringement notices and the role of Energy and Water Ombudsman. Indeed, over the past decade the budget and staffing of the office of the Western Australian Ombudsman has more than doubled. This rapid expansion, through the addition of a diverse range of functions, can be observed in Ombudsman offices around the world.

The highly adaptive nature of the institution of the Ombudsman can be seen in the fact that 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 the subject traditionally of prerogative judicial review, but those who concurrently examine serious misconduct and corruption.

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. The Control Yuan of Taiwan is a modern embodiment of this branch. 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.

5. Relationship of the Ombudsman with lawyers

I now turn to the relationship of the office of the Ombudsman with lawyers. This relationship exists on many levels. First, it is typical for Ombudsmen themselves to be lawyers. In Scandinavian countries, for example, it is common that their Ombudsmen are former Judges, or Judges on leave, from their most senior courts.

But it is certainly not essential that Ombudsmen are lawyers and a legal qualification or years of practice experience not being specified in most Ombudsmen's legislation. To exemplify this, in New Zealand, the current Chief Ombudsman is Peter Boshier, former Chief Judge of the Family Court in New Zealand. His predecessor, Dame Beverley Wakem was a distinguished broadcaster. Emily O'Reilly, the European Ombudsman and former Ombudsman of Ireland, is a very well-known journalist.

Second, the legislation of Ombudsmen will typically provide for legal representation. For example, the *Parliamentary Commissioner Act 1971* provides that complainants may be represented.

Third, and very relevantly for those in the room today, advice provided by government lawyers working in government agencies the subject of investigation by the Ombudsman. It is, of course, absolutely proper, and can indeed be very helpful, that an agency the subject of an investigation of my office may seek legal advice from in-house counsel or the State Solicitors Office.

There are perhaps only two further general remarks to make about this. There is no such thing as a free lunch - legal advice by any government agency, including mine, has an actual cost to taxpayers, so it should always be sought where it is considered the benefits of doing so outweigh the costs. Second, as Ombudsmen are officers of the Parliament with the powers of a standing Royal Commission, it is critical that all government agencies, particularly in light of model litigant rules, conduct any dealings with the office of the Ombudsman accordingly. I am pleased to say from a Western Australian perspective, that in eleven years as Ombudsman, I have never encountered anything other than the most respectful behaviour from government agencies and government lawyers dealing with our office. While some credit may be due to us, I suggest that this is a great credit to each person in this room today.

Fourth, Ombudsman may seek legal advice in undertaking their work. In Western Australia, this is always done in the first instance by contacting the State Solicitors Office. Now it is true that I subscribe to the maxim 'never ask a lawyer a question to which you do not know the answer'. I have, nonetheless from to time, asked various holders of the office of State Solicitor to confirm the accuracy of my answer!

Fifth, the State Solicitor may provide advice on potential new jurisdictions for the office of the Ombudsman.

Before moving to the final part of my speech, during my time in Western Australia, I have worked with three State Solicitors: Tim Sharp, Paul Evans and Nick Egan. My successor as Member of the Economic Regulation Authority, following my appointment as Ombudsman, was former State Solicitor Peter Panygeres.

In Victoria in 1995, when I was applying for articulated clerkships, with absolutely no disrespect intended to the Victorian Government Solicitors office of the day, the general view was that the absolutely first choice for law graduates was either Arthur

Robinson & Hedderwicks or Mallesons (and an observation, Nicholas Egan and I both arrived at the former).

The situation for Western Australia law graduates is quite different. The very best students graduating law school in this State see the State Solicitors Office as a first choice. That this is the case is an enormous credit to respective State Solicitors, the rewarding range of work that is undertaken by the Office and the respect that governments of all persuasions have, for good reason, had for the Office.

6. The role of the Ombudsman in promoting good governance

Let me now turn to the role of the Ombudsman in promoting ethical behaviour, good governance and the rule of law. In its report, the OECD states that:

An open state, according to the OECD Recommendation of the Council on Open Government is: “when the executive, legislature, judiciary, independent public institutions, and all levels of government – recognising their respective roles, prerogatives, and overall independence according to their existing legal and institutional frameworks – collaborate, exploit synergies, and share good practices and lessons learned among themselves and with other stakeholders to promote transparency, integrity, accountability, and stakeholder participation, in support of democracy and inclusive growth.” Specifically, the role that Ombudsmen can play in open government is twofold. First, as an actor of a country’s or territory’s institutional framework, Ombudsmen can apply open government principles to their own functioning. This can include enhancing the transparency and accountability of their activities, management and budget, but also engaging stakeholders in pursuing their mandate more effectively. Secondly, as an institution that interacts with citizens, oversees if their rights have been respected and provides policy recommendations, Ombudsmen can not only contribute to, and inform the country’s or territory’s open government strategies and initiatives, but they can also monitor and contribute to the implementation of these reforms and hold the government accountable for them.

Good governance and ethics in our polity is directly correlated to good societal outcomes. In my view, history has decisively demonstrated that societies that enshrine ethics, integrity and good governance in their public institutions are the ones that are the most stable and successful. They are the societies where, among other things, prosperity is the greatest, living standards the highest, opportunities for advancement their strongest, health and education outcomes the best and safety-nets the most generous. Put simply, high levels of governance are directly correlated with high performance in economic and social indicators.

The institution of the Ombudsman has a central role to play in promoting good governance. It does so by ensuring that decisions of governments can be subject to citizen redress, by ensuring that decisions are transparent, by ensuring that series of decisions or whole areas of government activity can be subject to Ombudsman

investigation. In doing so, the impartiality and independence of the Ombudsman is essential – it ensures that the Ombudsman's consideration of decision-making owes no debt other than to the law and the facts.

More generally, societies continually change, and as a general rule, the role of government grows. It is particularly critical in these circumstances that the institution of the Ombudsman continually evolves to meet changes to the socio-political environment in which it exists and particularly the growth of the powers of government and the desire by citizens to ensure that these powers are performed with integrity, transparency and accountability. As you know, the Ombudsman fits within a governance framework bequeathed from the past but of absolute relevance today. Indeed, in all of its constitutional forms, the Ombudsman supports the well-being of the state and its citizens by promoting efficient, effective, fair and honest governance at all levels of government.

7. The role of the Ombudsman in promoting the rule of law

Let me turn to the relationship of the Ombudsman and the rule of law. Every person in this room will be very familiar with the concept of the rule of law. Still in the long shadows of the 800th anniversary of the Magna Carta, its resonance with our work in mediating the relationship of power to those governed has only grown over the centuries.

It is not a rule of the law, but a rule about what the law should be. I am sure this didn't apply to anyone in this room, while on its face it can seem like an anodyne legal and political doctrine, in anything beyond its most prosaic formulations, it can be like approaching a James Joyce novel - brilliant, important, but bordering on the impenetrable.

The classical formulation belongs, as you would know, to the great legal theorist Dicey. 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. 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.

Although oversight of the administration of the rule of law is most importantly a role for our courts, wherever Ombudsmen exist, they have become, in my view, strong protectors and promoters of the rule of law. 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 International Ombudsman Institute undertakes 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. This is done by the Institute through a whole raft of measures including monetary grants undertaken as part of a major regional subvention program, formal

letters of solidarity and visits to countries by the Institute's Secretary General and the Institute's Executive Committee wherever it may be appropriate to do so, and advice provided by the Institute's Secretariat.

8. New frontiers: Citizen participation and human rights

In this final part of my address, I want to consider new frontiers for the Ombudsman, and in particular two, citizen participation and human rights.

Citizen Participation

First, the role of the Ombudsman in relation to the participation of citizens. The participation of citizens is at the very heart of what we understand is the relationship between the state and society – it is, of course, the 'demos' of democracy. The compact that exists between those that govern, and the governed, relies on the existence and effectiveness of a participatory citizenship. Participating citizens give the necessary imprimatur to decisions made about them, and more broadly, to the legitimacy of those who make these decisions. What we mean by citizen participation is a matter of great study – it can range from participation in cyclical elections of parliamentary representatives, through to a whole array of mechanisms for direct participation, many of which have been created or facilitated by new technologies. 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 so much considering the merit of citizen participation, rather, the idea of the Ombudsman as a catalyst for citizen participation. This is I think this theme is incredibly worthwhile and timely and is likely to engage and enliven debates in our offices for years to come. 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?

- Are there any other risks for the institution of the Ombudsman in being such a catalyst?

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?

Protecting and promoting human rights

The second new frontier for the office of the Ombudsman is the characterization of its work as a human rights protector.

Three centuries ago, English poet John Milton wrote:

For this is not the liberty which we can hope, that no grievance should ever arise in the Commonwealth, that let no man in this world expect; but when complaints are freely heard, deeply considered and speedily reformed, then is the utmost bound of civil liberty attained that wise men look for.

In more recent times, former Commonwealth Ombudsman, and one of Australia's leading administrative law scholars, Professor John McMillan, has observed: "the right to complain, when securely embedded in a legal system, is surely one of the most significant human rights achievements that we can strive for".

Beyond our complaint resolution work - essentially a reactive role, our offices have evolved to have an increasingly proactive mandate, particularly the undertaking of inspections of the exercise of coercive powers or of places where those detained by the state are held, and the ability, of our own motion, to undertake investigations into matters that involve human rights issues.

While legislation around the world that creates Ombudsmen will not necessarily speak of a human rights role, the institution of the Ombudsman deals on a daily basis with fundamental human rights. Whether it is the right to complain and seek access to justice, whether it is the right to freedom from government overreach from Ombudsman-achieved redress or through Ombudsman investigation of government actions that effect the most vulnerable members of society, Ombudsmen are protectors of human rights. 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.

Protecting human rights at the global level

To explore this further, I will first discuss the role of the Ombudsman in protecting human rights at the global level. The International Ombudsman Institute, of which I am privileged to be Second Vice President, is currently undertaking 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 Institute has been undertaking considerable work to further our human rights commitments. In April this year, I and International Ombudsman Institute colleagues, attended a formal side event at the United Nations hosted by the Permanent Representative of Austria to the UN and the Permanent Representative of Ireland to the UN. More recently, as part of the celebrations of the 20th anniversary of the federal ombudsman of Belgium, 40th anniversary of the International Ombudsman Institute and quadrennial European region of the Institute conference, the Executive Committee of the World Board of the Institute resolved to further develop the Venice Principles that will enumerate and enshrine the role of the Ombudsman, including in protecting human rights.

This development is, I think, a very important one for the Institute and the institution of the Ombudsman, as we seek further commonality and collegiality at the domestic and international level to further our human rights work and recognise that in many nation states the Ombudsman is, on a daily basis, playing a vital role in the transitioning of those states to democratic governance.

Protecting human rights at the local level

Second, I want to discuss the protection of human rights at the local level, in this case, the work of the office of the Western Australian Ombudsman. Today I want to mention three areas of focus in my office on the protection of human rights.

Our first area of focus in our human rights work is the promotion of child well-being and the prevention of child deaths. Since 2009, my office, has undertaken three major own-motion investigations regarding the rights of some of the most vulnerable members of our community. The first investigation was dedicated to the prevention of deaths of children by suicide. The second investigation was dedicated to the prevention of deaths of children by drowning. The third investigation was dedicated to the prevention of the sudden deaths of infants. Collectively, these investigations, all tabled in the Western Australian Parliament, have made 70 recommendations to prevent child deaths. Each one of these recommendations has been accepted.

Next month, I will table in Parliament a report on giving effect to the recommendations arising from the *Investigation into ways to prevent or reduce deaths of children by drowning*, that was tabled in Parliament 12 months ago. We also report extensively in our Annual Report on the steps taken to give effect to the recommendations arising from our investigation of family and domestic violence fatalities and child death reviews.

We have most recently expanded our work to include visiting places of out of home care for children, both in government and non-government care as well as increasing our visiting to juvenile detention facilities and secure care.

Our second area of focus in our human rights work is the promotion of women's human rights. In particular, this work has been focused on the fundamental and inalienable human right for women to be safe in all circumstances and always free from violence. Among a range of other activities, my office has undertaken a major own-motion investigation, again tabled in Parliament, dedicated to preventing family and domestic violence fatalities. The report made 54 recommendations about ways to prevent fatalities. Each recommendation was accepted. Most recently, we undertook a further major report, again tabled in Parliament, into the implementation of these recommendations.

Our third area of focus in our human rights work is the promotion of the rights of the first Australians. As you all know, following an extraordinary continuous connection to culture and land for over 70,000 years, colonisation's calamitous consequence, was in the words of Justice Deane, "a legacy of unutterable shame". Our office undertakes a major visiting program to regional Western Australia to bring our services to Aboriginal Australians. Our aim is to listen to, work with, and respectfully include in every aspect of our decision-making the views of Aboriginal Australians. To this end, we have developed a comprehensive Aboriginal Action Plan to guide our work. We will also shortly recruit a new position of Assistant Ombudsman, Aboriginal Affairs who will lead a team of staff dedicated to Aboriginal policy issues and all of our investigations will, wherever relevant, include early, specific and comprehensive consultation with Aboriginal Australians.

I make two final points about the work that Ombudsman do that may be characterized as human rights protection. First, in outlining these new frontiers, insofar as they might fall outside the current legislative mandate of the Ombudsman, it is important to observe that the Ombudsman is an unelected official and does not give unto themselves new roles. The Ombudsman is an officer of the Parliament and her or his role is determined by Parliament. Suffice to say, like all public officers, the essential quality of a good Ombudsman, is that they are characterized by humility, not hubris.

Second, in undertaking any role, regardless of its characterization, the Ombudsman must be impartial. In my personal case, as an example, I was appointed to the Economic Regulation Authority by a Labor Government and appointed as Ombudsman by a Labor Government. I was then reappointed as Ombudsman twice by a Liberal Government. I am completely impartial, completely apolitical and serve only Parliament, its Committees and heed only to my legislation.

I can never be an advocate for either government or complainants to the Ombudsman. Here then is the challenging intersection for Ombudsman as human rights institutions. Whether formally recognized as National Human Rights

Institutions (or NHRIs) by their national governments, or simply performing functions which can be characterized as human rights functions, we must retain complete impartiality and independence in the exercise of these functions.

Having said that, let me also be clear, while I am unambiguously impartial, I am unashamedly completely and transparently partial about certain matters of human rights. For example, I investigate the family and domestic violence fatalities in this State and I do so impartially. I am not, however, the slightest bit impartial about the need to end the risible crimes of violence committed against women in our community.

Conclusion

In conclusion, an institution that began in Sweden over 200 years ago has now spread throughout the world. The International Ombudsman Institute now represents over 190 Ombudsman institutions. Ombudsmen are now woven into the governance fabric of more than 100 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, a freedom of information role, custodial inspections and the role of industry Ombudsmen.

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 be an inseparable, indeed through Europe and increasingly more jurisdictions, a constitutionally-protected part of the modern notions of good government, access to justice, declared NHRIs protecting human rights as well as the maintenance of the rule of law.

Although not all Ombudsman have yet been endowed with constitutional dignity, as officers of the Parliament, or indeed their own branch of control, Ombudsman continue to adapt successfully to, and be adopted by, the vast variation of systems of government around the world.

Although, of course, I declare my clear bias, I think the development and growth of the institution of the Ombudsman has been a good thing – not just for access to justice, but as an integral component of countries transitioning to democracy and ensuring that all nation states respect human rights norms and the rule of law.

Thank you.