

LOCAL GOVERNMENT ASSOCIATION OF SOUTH AUSTRALIA

CEO'S Residential Seminar - 24 September 2009

RICHARD BINGHAM

SA Ombudsman

Speech Notes

I have been reflecting recently on the fact that my first trip to South Australia for work purposes was in I think 1983. I certainly remember that it was the first time I'd made what felt like a major presentation. It was to the national conference of what was then the Institute of Municipal Management being held at Tea Tree Gully, and it was on role of local government councillors.

I was working for the Advisory Council for Intergovernment Relations, which was a Fraser government initiative based on a US model. The Australian version survived until 1986, and the US one slightly longer, till 1996.

The Australian one had a reference on the relationships which should exist between State and local governments. As well as the role of local government councillors I also worked on constitutional recognition of LG. In some ways, nothing's changed in over 25 years.

Anyway, it's a pleasure to be with you today.

I was told that you are keen to make these "working and discussion sessions", so in this relatively brief introduction I've been invited to cover

- My approach to the role as Ombudsman,
- the relationship that is appropriate between my office and councils
- the approach to investigation of complaints that will be adopted under my leadership
- my early impressions of key issues that Councils need to address

...and anything else I'd like to speak about.

I will leave plenty of time for questions and discussion at the end.

Firstly, my approach as Ombudsman.

Just over 2 weeks ago, on 8 September, it was 100 days since I took up this job. It's a good time for reflection. I'm expected to have my feet under the desk and an understanding of where we're going.

Traditionally an Ombudsman's job is just about complaint handling. But an Ombudsman shouldn't take sides. I don't represent the State Government, and I don't represent local government, and I don't represent individual complainants.

Our focus is on representing the public interest.

As I perceive it, whilst there's an interest in resolving complaints, the broader public interest is in improving public administration.

So my focus is not just on resolving complaints. That's only part of the story.

I came here from a small State, and as a former CEO I used to be a 'poacher' before I became an Ombudsman 'gamekeeper'. I recognise the complexity of Governance and Compliance obligations, and I understand the difficulties for small organisations in particular in coping with them.

Further, I believe that an Ombudsman ought to be able to provide some guidance on what his or her expectations are. In some ways it's comfortable not to have to do that, but I believe it's better for everybody if we all understand how the judging is being done.

Fairly obviously, compliance with the law is a not-negotiable starting point. But there are other ways of demonstrating good governance, and I see it as a part of my job to articulate those standards and expectations more clearly, and to provide some explanation of them.

Turning to the second point that I was asked to address....the appropriate relationship between my office and councils.

An Ombudsman needs to be independent and prepared to 'shine a light' on administrative deficiency. Nobody else can do that in the same way, and it's what the Parliament has asked me to do.

Often organisations can become internally focussed, and it's the role of the Ombudsman to bring some external values to bear. I'd draw on my Corrections experience here.

I believe that corrections administrators have a really tough job, and there are some excellent ones. But they can also tend to be out of sight, out of mind for the community at large, and the messages they pick up about expectations are not necessarily positive ones.... and the external values need to be reinforced occasionally.

However, an Ombudsman is also a public sector agency, like each of yours. One of the key attributes of modern, high performing public sector agencies is that they're open and collaborative¹.

They are also client-centred and accountable.

The appropriate relationship between us needs to reflect a balance between these two factors.

Professor John McMillan put it very well in 2003, coincidentally about 100 days after he took up the office of Commonwealth Ombudsman. He said:

Already in the short period I have occupied the office, I see clear-cut examples of where the public can be helped more effectively if the Ombudsman has the trust, confidence and respect of the government agency under investigation. An agency will be less guarded, more open and even prepared to go the extra mile in exploring the dimensions of a problem and the solution if there is a cooperative relationship. The point needs no elaboration that a relationship built upon belligerence and hectoring will be unproductive².

I share that view.

¹ http://www.accenture.com/Global/Research_and_Insights/Outlook/By_Alphabet/TransformingSector.htm

² Professor John McMillan, Commonwealth Ombudsman, *Address to the Australian Public Service Commission, 25 June 2003*, p4, [http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/speeches_2003_02/\\$FILE/lookingforwards-APSC-syd25june03.pdf](http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/speeches_2003_02/$FILE/lookingforwards-APSC-syd25june03.pdf)

The third topic I've been asked to address is my approach to investigations.

We don't have historical data on the number of times we deal with members of the community, but it's a lot. I estimate we receive in excess of 10,000 approaches per year (but I don't actually know for sure).

We are often the first port of call for complainants, even if their matter is totally outside our jurisdiction. There's something about the brand name 'Ombudsman' that's working pretty well.....

We have to refine those approaches down into complaints.

Of these contacts, 1959 were accepted as complaints in 2007-08:

- 1365 against State agencies
- 594 against local governments i.e. 30%

So Councils are important to us, but they're not our sole focus. Our most frequent flier is Corrections, followed by Housing and Transport. This is entirely understandable given the nature of their businesses.

When we get an approach, we normally try to resolve it informally through the initial assessment process. Assessment Officers handle the majority of all incoming complaints, More complex matters are referred to an Investigating Officer.

The legislation sets out the bare bones of the process we need to follow once an IO takes over a file. There's a preliminary, and only sometimes a full, investigation. Even more rarely, there's a formal report of some kind.

The investigative techniques are very similar for preliminary and full investigations, but the notification requirements are something that has been raised with me.

The default position under the Act is that if a full investigation is undertaken, I must first contact the mayor, as the Principal Officer. However, I know that managers want to manage, and different arrangements apply for State Government agencies because the CEO is the Principal Officer. I'm not obliged to notify the responsible Minister at the commencement of a full investigation.

So to the extent the legislation permits, I would be prepared to look at the arrangements between us about initial notification and contact...but I need to reserve the right to conduct investigations as I see fit.

One important factor is the confidential nature of the investigation, until one reaches the stage of report. But I also have an obligation to keep the complainant advised of what's gone on.

And just before leaving this topic I should note that if a complaint is within jurisdiction, I have the powers of a Royal Commission to investigate it..... though I trust that I can continue to use those very sparingly.

My final topic is some early impressions.

First, some initial impressions about local government issues as I've found them so far.

It's often the basic 'systems' issues which cause difficulty – things like delegations, decision-making frameworks and record-keeping.

On the other hand, the good news is that people have generally been keen to fix these types of issues when they're discovered.

I know that some of you run quality assurance programs of various kinds, and they seem to me to be helpful in ironing out basic system issues. But they can also lead to overkill, too, so we need to be careful to apply them sensibly.

Quite a number of complaints I'm seeing involve property developments. I have sympathy for complainants who are adversely affected by a bad process, because they often end up living with a constant reminder every day.

They are often high stakes issues for councils too, with big consequences if things go wrong.

I've worked for a planning and environment agency and I know there's not too many win-win situations to be had in this area, but the basic administrative systems are crucial.

The next issue I want to mention is the *Whistleblowers Protection Act 1993* ('the WPA').

This is really by way of fore-warning – after all, we may all be recipients of a public interest disclosure. Whilst the Ombudsman is mentioned by name, you are all of course 'responsible officers' for a disclosure relating to 'a matter falling within the sphere of responsibility of a local government body' WPA s 5(4) (i)

We are finding that we need to refer more complaints to the Anti-Corruption Branch of SA Police ('the ACB') than in the past, because of recent legal advice that we should err on the side of caution if we receive a complaint that may relate to fraud or corruption.

That means that a complaint to the Ombudsman may result in an investigation by the ACB.

It's important to note that a person disclosing possible fraud or corruption doesn't have to specifically refer to the WPA. If the disclosure involves possible fraud or corruption, that's enough to require referral to the ACB.

It's also important to note that a complainant doesn't need to specifically claim the protections of the WPA for them to apply i.e. protection of identity, protection against victimisation and protection against liability.

Turning to my next set of impressions, an important focus for me at present is making sure our own house is in order.

I believe it's a reasonable expectation that we should be doing ourselves what we ask others to do, and currently we have an excellent opportunity to review our processes with the implementation of a new case management system.

So we're putting a lot of effort into that at present, but we still have some way to go.

To conclude, some brief views about some longer term issues.

- Outreach by our Office needs to add value. It's not just about duplicating what others are better resourced to do. As I said earlier, our particular role is 'the public interest'. We're not providing legal advice, nor the Government's view about the way agencies should operate.
- We are all aware that 'professional' complainants' can be difficult, though we will always consider individual complaints on their merits.
- Also, it's important to me that all South Australians should get a 'fair suck of the sauce bottle' so far as my Office's resources are concerned.

Finally, some very brief observations about Freedom of Information ('FOI') and open government.

There are currently reviews of FOI Acts underway in many jurisdictions, and we are following them with interest. I believe in transparency in Government as a virtue in itself.

We are also following opportunities like Web 2.0 and it's impact on the way Government does business. My Office needs to be aware of the opportunities, but not necessarily at the cutting edge. I'm very mindful that it's a limited – though increasing - slice of the community who engage in the technology, and it's not necessarily the segment of the community that would benefit most from access to an Ombudsman.

Thanks for your attention. I'm very happy to take any questions or comments.

Richard Bingham
Ombudsman

24 September 2009