

# COMMONWEALTH OMBUDSMAN 30<sup>TH</sup> ANNIVERSARY SEMINAR

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Deirdre O'Donnell

Telecommunications Industry Ombudsman

## LESSONS FROM the PUBLIC AND PRIVATE OMBUDSMAN DIVIDE

I am delighted to be able to address this group today, and I thank the Commonwealth Ombudsman for the invitation.

Having spent five years on either side of the divide, I am very happy to speak about common issues. The topic allows me to explore some of the ways approaches diverge, as well as common lessons. My considered view, I should state at the outset, is that there is more to unite than to divide, and my starting point is that as statutory ombudsman I was enriched and strengthened by my industry ombudsman experience. Conversely, returning to the industry sphere after five years in a statutory role, I have been greatly encouraged by some of the good administrative practices (that do not, I must stress, equate to additional bureaucracy) that I bring with me. So I feel I have learnt a great deal from both perspectives that, in my view, helps me do my job better. I cannot ask for more.

This talk gives me the chance to give my opinion on common lessons across the 'divide'. My experiences are quite specific to me, so the lessons may not translate to all circumstances. I will briefly outline them. My statutory experience comes from five years in a state jurisdiction, in Australia's first Ombudsman (still called 'Parliamentary Commissioner for Administrative Investigations', a title I became very fond of. It certainly trips off the tongue with equal facility to 'omnibusperson', 'oddsbottom' and other delightful expressions). Anyway, as PCAI, my office had to receive complaints in writing; we had a small, elegant and flexible Act; we possessed 'own motion' powers and had a strong relationship with the Speaker of the Legislative Assembly. Complaint volumes were under 2,000 per annum, staff numbered around 30 and the cost to the State was around \$3 million p.a.

My industry experience comes from three years in the TIO as both Deputy Ombudsman before I headed west and now as the new Ombudsman. I also include two years or so as Energy Ombudsman for WA, a role I held concurrently with my statutory role. In that role I worked with a team of three, and we received around 700 complaints p.a.

The TIO, to the best of my knowledge, is the biggest ombudsman game in town. We receive over 4,000 calls per week, handle over 110,000 complaint issues per annum, have around 115 staff, cost approximately \$11m to run, have around 1,200 members (telecommunications companies and internet service providers ranging from Telstra to one and two man operations). Common aspects to both industry roles are that the schemes are governed by a Constitution and Articles of Association, and have the power to make binding determinations, with industry members being required by law to be members of the schemes.

From these experiences I will point first to what I consider to be a fundamental linkage across the divide – the fact that both types of schemes (public and private) exist to promote confidence in the sector or industry they belong to. I have a personal view that ombudsmen are a barometer for public confidence in the sector they are involved in.

As state ombudsman, my mission was to assist the parliament to have confidence that the public sector had good and fair administrative processes, decision-making and practices. As industry ombudsman, my mission is to provide ‘free, just, informal, speedy resolution of complaints from end users of carriage services’.

One way that both types of business can be characterised is to say there has been a transaction between a service provider (government agency or company), which has left the consumer/citizen dissatisfied. This dissatisfaction has not been handled well by the service provider, and the individual brings their complaint to an ombudsman. In my experience, in by far the majority of cases, that individual does not have confidence that the service provider has heard or listened to them properly, and they are not confident that they will be treated fairly without the intervention of an independent ombudsman.

So – how do we establish our role and relevance for organisations within jurisdiction and for the public? For me, it boils down to two very simple things – adding value and making a difference – or, as I like to put it – ‘doing stuff’. In other words, by virtue of the ombudsman’s independence, which is the foundation for all our actions, we can speak with authority and credibility and achieve changes in industry or sector behaviour, and redress for grievances – either on a system-wide or individual basis.

For consumers/citizens, it seems to me one of the most important aspects of an ombudsman’s service delivery is timeliness. This spans the divide. For issues that appear relatively simple, the public has a right to expect that these are dealt with promptly. Organisationally this is not always easy to deliver, and I’m sure each of us look to our offices improving in this respect. But this is very high on my list.

In terms of expectations ombudsmen can rely on, I find these remarkably consistent across the divide. The ombudsman, in my opinion (and as industry ombudsmen specifically state in their constitutions) will investigate a complaint having regard to the law, good industry practice, and what is fair and reasonable in all the circumstances. Good industry practice can include the International Standard on complaint handling, which is highly relevant and an excellent benchmark to apply and a great yardstick for assessing whether an organisation is ‘fair dinkum’ about good complaint handling. As well there is the suite of standards around corporate governance by Standards Australia. These complement those examples familiar to all statutory ombudsmen.

Whether as ombudsman you are the watchdog or the umpire, you expect good customer service, consistency, fairness and efficiency in an organisation’s complaint handling, and you expect that organisation to undertake root cause analysis where patterns of complaint emerge and are highlighted by the ombudsman.

Similarly, in your own operations, it’s a given that your office is accountable to its stakeholders, demonstrates good administrative practices and sound decision making processes, and has arrangements in place to safeguard its independence.

Common too is the 'office of last resort' challenge. For those of our staff with a customer service background, the desire to jump in and solve the complainant's problem can be very strong. The challenge of maintaining an independent stance or an independent tone can be very significant for ombudsman staff.

Sometimes the public reacts badly to this 'last chance for your service provider' approach, and it can be a battle to educate them about their part of the bargain in an alternative dispute resolution process.

I will comment briefly on some of the advantages and disadvantages of different regulatory approaches before making my final comments.

Some people see an industry ombudsman, with power to make binding determinations, as having more 'teeth' than a statutory ombudsman. We're all familiar, I am sure, with the 'toothless tiger' criticism. But having had Royal Commission powers as statutory ombudsman, I must say I'm a big fan of both. I see both of these as appropriate to their context. In the commercial world of the telecommunications industry, where there is now a recognised condition of 'bill shock', to have the power to make binding determinations up to \$10K and recommendations up to \$50K is useful. In the public sector, the Royal Commission powers were fantastic.

Finally, let me turn to the challenges. These are common, and they are both internal and external. The biggest one for me by far is in terms of governance, and of maintaining the ombudsman's independence. I am learning now how very hard this can be and yet how vital it is. Without it, all is lost, so in my view it's the most significant of the issues we face.

Looking internally, I think one of the great challenges for ombudsmen is in terms of our own accountability. Again this is an idiosyncratic perspective, but I believe that organisationally for ombudsmen to display all the characteristics we require of members/organisations can be a huge challenge. The sort of office I want to lead is one that demonstrates in everything it does and every interaction it has with the public, members and stakeholders that it is fair, accessible, efficient, effective, independent and accountable. Striving to achieve that as CEO is my mission. Achieving that, as an office, will mean that the public and industry can have confidence we are very well placed to fulfil our role.

Finally, I find common themes in terms of recruiting staff. I say that I look for three things in staff, and this has not changed in either office. I look for people who are very strong communicators – in terms of listening, hearing, speaking and writing; strong thinkers, since strong analytical skills are required for investigations, and who care – this is how I demonstrate a passion for justice and independence.

It has been a great privilege to share these thoughts with you.

Happy Birthday once again to the Commonwealth.