

**“At Least Every Three Decades’:
Acknowledging the Beneficial Role of the
Commonwealth Ombudsman”**

**30th Anniversary of the
Commonwealth Ombudsman**

**Dr Peter Shergold, Secretary,
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I am delighted to have been invited to this dinner to celebrate the 30th anniversary of the Commonwealth Ombudsman. I am particularly pleased to have been asked to speak.

It provides me with an unexpected opportunity to present my personal view that the Ombudsman is a pain in the bum. I hope this does not sound too personal. I have no particular grudge against John McMillan. Indeed the vernacular expression of my discomfort applies with equal force to the Ombudsmen who preceded him – Dennis Pearce, Alan Cameron, Philippa Smith and Ron McLeod. I imagine that their progenitor, Jack Richardson, was just as much of a nuisance. He'll get a chance to tell us soon.

The big O's have had the law on their side. When the Ombudsman Act was passed in 1976 it was supported by other legislative enactments designed to make public administration more demanding – the Administrative Appeals Tribunal Act and the Administrative Decisions (Judicial Review) Act.

Over the last 30 years the Ombudsmen, sequentially, have conspired to make my working life much harder. The programmes and services that my agencies have delivered, directly or through the contracting of third parties; and the grants made to community organisations, have on occasion been subject to rugged Ombudserial criticism. The present Ombudsman is in my portfolio so he treats me more kindly – that or, more likely, he has little interest in my department because it doesn't actually deliver anything that anybody but the Prime Minister cares about.

He did last year examine on his own motion how PM&C (and other departments) handled the processing of FOI requests. “With great diversion of resources” is my simplistic answer. Since the Freedom of Information Act passed into law in 1982, the volume of FOI applications has risen considerably. In my department requests keep pouring in seeking documents on everything from industrial relations reform to the impact of red tape on business and the memorial service for Kerry Packer.

The burden of response to administrative review comes on top of appearing before Senate committees and answering the flow of Parliamentary questions on notice. I’m presently disaggregating the cost of food, alcohol, other beverages, entertainment, hire of marquee, floral arrangements, permanent domestic staff, casual domestic staff and other costs of the PM’s recent function at Kirribilli House. I have a strong sense that I’m so busy being audited, evaluated, reviewed, monitored and investigated that I’ve got very little time left to wield covert influence for the benefit of the nation!

Which, to put it another way, is to say that the system is working – perhaps not in a smooth or coordinated manner, probably not as originally anticipated, but nevertheless to beneficial effect. The Ombudsman, in particular, provides assurance to citizens that the workings of officialdom are subject to expert scrutiny, particularly of the myriad of small decisions that can have such a large impact on their lives. The Ombudsman’s office is a vital part of the network of integrity that ensures public accountability for the way in which a public service uses public funds in the public interest.

The Westminster system, as the APS values make explicit, requires public servants to be responsive to elected government. Yet there are significant constraints on the avowed obeisance and fealty that journalists imagine epitomises the contemporary relationship between secretaries and the ministers they serve. Rather I talk here not of the robust policy advice that is provided, quite appropriately, behind closed doors. Rather I talk of the necessity to ensure that neither executive power nor administrative authority are overstepped.

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 dangers of internal red-tape, poor record-keeping, bureaucratic territoriality and inadequate governance can find expression in administrative drift. The pain in my 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.

Other consequences are less obvious. The increased scrutiny of

which the Ombudsman is a central part has made senior public servants less anonymous than they used to be. With that has come more public commendation or criticism of individuals. Justice can be rough. A public servant can now be condemned in the media not for inappropriate action or inadequate performance but for poor judgement.

So let me clear the decks. My public service career has been littered with incidents on which, with the reflective wisdom of hindsight, I consider I exercised poor judgement. I imagine many of my colleagues believe they have made similar errors. It goes with the territory of being frank and fearless, exercising courage in the prudent management of risk and being passionately committed to ensuring that government services are delivered on time, on budget and to government expectations. The person who imagines that one can be a good public servant without on occasion displaying poor judgement has no judgement at all.

And judgement, of course, is subjective. The press has reported comments that I lacked political judgement in proposing the establishment of a Royal Commission into whether the Australian Wheat Board, in particular, breaches UN requirements for the Oil-for-Food programme. I don't accept that. In contrast, I think the Prime Minister showed considerable wisdom and commendable courage in thoroughly investigating the matter. For myself, and a number of my senior colleagues, it imposed great pressures but Justice Cole's findings did put paid to the popular mythology that public servants purposefully turned a blind eye to, or deliberately withheld information on nefarious activities.

The most important thing is that the individual public servant and, collectively, the Australian Public Service learns from the mistakes. Some have been grievous: wrongly reporting that children had been thrown overboard by unauthorised boat arrivals or illegally holding Australian residents in detention have become part of the familiar lexicon of administrative failure. Yet even here there is a positive story to tell. If the Australian Public Service has an abiding virtue it is that it has identified such failures and sought to reform itself so that they can never be repeated.

In this task – forensically scrutinising public administration, vigorously ensuring legal compliance and due process, identifying mistakes and providing advice on how to address them – the Commonwealth Ombudsman has played a key role in the last 30 years. His office will inevitably irritate and frustrate public servants who think, at best, that they are spending too much time reporting rather than doing or, at worst, that they are unfairly criticised for doing their best in difficult circumstances. From time to time I have such thoughts myself. But at least every three decades I'm happy to stand up and acknowledge publicly the fine job that the Ombudsman is doing to represent the interests of citizens in the wielding of public administration on their behalf.

To the present and past Ombudsmen who are here tonight, and to their staffs, I have a simple message: Australian democracy is the better for you.