

Integrity agencies: the fourth arm of government

A speech by Commonwealth Ombudsman Allan Asher to the conference
L21 – Public Sector Leadership 2011: *Rethinking and improving service delivery*

Starroom Function Centre, Cockle Bay Wharf, Sydney
Thursday, 12 May 2011

■ ABSTRACT

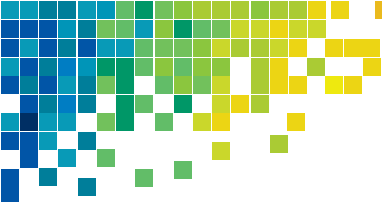
Governments are adopting a new measure of success: happiness. They are asking what makes people happy and how a sense of well-being is affected by policy making and its implementation. Linked to this is a renewed drive to improve public service delivery. The Commonwealth Ombudsman's view is that government agencies have two major challenges on their radar: a public service that is responsive to its customers and willing to be proactive about finding out from them how it can improve services and delivery; and acting as a 'fourth arm' of the government to represent the views of the public, challenge bad practice and recommend changes. The Ombudsman suggests some ways to achieve this, including more attention to the language in which they communicate, stakeholder involvement in policy implementation and the creation of an over-arching integrity function to provide comprehensive supervision of governance standards and investigation of breaches of those standards.

■ ADDING TO HAPPINESS

Suppose I said to you today that I have no wish to deliver a service to the public – that I think public services have had their day. Nor, as it happens, do I want anyone else to deliver public services. What I want is for the Commonwealth Ombudsman – me and my staff – to deliver instead something I'll call 'adding to happiness'. You may decide that I've left my sanity in the car park. You'd be wrong. Look at what's happening in the world: people in Arab nations demonstrating for democratic rights – at huge cost to themselves – and governments in Europe and the USA re-examining their roles in established democracies by asking: 'What will make people happier?' Getting a voice in government will make them happier. That is what we as citizens expect when we vote: a government that will represent us, listen to us and make decisions that add to our collective and individual well-being. This is a dialogue. It is not passive, take it or leave it delivery.

David Cameron, Britain's Prime Minister, has launched a Happiness Index. From April next year the Office for National Statistics will ask people to rate their own well-being and the answers will be used to establish the key areas that matter most. This, according to Prime Minister Cameron, is how to measure national progress and whether life is improving for Brits.

He's not alone in setting this course. President Barack Obama has issued an executive order to federal agencies called 'Streamlining service delivery and improving customer service'. What that order contains are



10 directions to bring the people's views into public policy making and policy implementation. The aim is to add the happiness of consumers to the output from government agencies.

While in Australia, the Government has adopted a public sector reform blueprint called '*Ahead of the Game, Blueprint for Reform of Australian Government Administration*'¹, which picked up the theme of consumer-centric services.

These administrations are accepting that they have to address a democratic deficit. By that I mean it is one thing to vote governments in or out of power and quite another to make sure that those governments deliver what we require them to deliver. Consumer satisfaction is often not an outcome of state or federal supply. To put it another way: public services are delivered but not necessarily in the way we want to receive them.

In a speech last year² by Terry Moran, Secretary of the Department of the Prime Minister and Cabinet, tackled this issue directly, noting that the Australian Public Service does many things well but it needs to be more focused on citizens, and it needs to have a culture that has embedded values. I'm quoting him: *"As public servants, we need to remember that the policy side of our business has a higher goal, and that is serving citizens. Lasting change requires an organisation's leaders to have a clear sense of purpose, a roadmap that sets out a new way of doing things. It's when changes in practice become a habit that the changes in values and attitudes can become anchored and entrenched. The need for accountability is entirely proper, but sometimes leads to undue risk aversion which is often expressed as a pre-occupation with administrative process"*. He stressed the need for vision to identify opportunities and threats before they occur and the ability to set long-term goals.

What has any of this to do with the Commonwealth Ombudsman? I hope to convince you that helping to address the democratic deficit has a lot to do with the Ombudsman and the rest of you as influencers of public policy and its implementation. I hope to convince you that by adopting a new philosophy of public service we will significantly improve the well-being of our customers and our organisations.

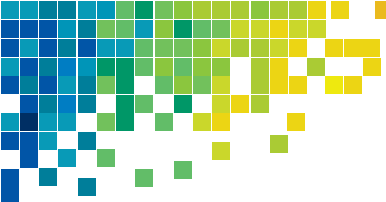
■ A NEW PHILOSOPHY OF PUBLIC SERVICE

But let me quickly address the resume of the Ombudsman role so far. The office safeguards the community in their dealings with Australian government agencies. The ombudsman concept now exists in more than 120 countries and is considered an essential accountability mechanism in democratic societies. We receive complaints and try to resolve them. One of our key roles is to prepare reports on those agencies when we find systemic problems – about 18 to 20 a year. Typically we provide recommendations which are usually accepted and implemented but sometimes not. These reports are about specific agencies, as well as matters of concern that are common to several agencies or the whole of the public sector. One of the discussions I'd like to have is whether the reports should be so limited. Perhaps we should broaden our approach to engage other agencies and external stakeholders to better inform the process of investigation, review and ultimately outcomes for consumers. Rather than just releasing our reports with an agency response to recommendations appended, why don't we "workshop the report" with the agency and stakeholders so that what is published can be an agreed implementation strategy rather than just our hopes? Another is whether we need in Australia an over-arching 'Integrity Agency' to ensure standards in governance and kick up a fuss if they're breached. There are many agencies that can claim to have an integrity role – the Commonwealth Ombudsman is one – but corruption is like water, it flows through all the gaps. I'm sure we all can think of examples of corruption across all levels of government that has received public exposure.

If we were clear about what the public should expect from government and ourselves we would be arming the community with something useful – something they haven't got currently. Without knowing what kind

1 http://www.dpmc.gov.au/publications/aga_reform/aga_reform_blueprint/index.cfm

2 Speech by Terry Moran AO, Secretary, Department of the Prime Minister and Cabinet, *Citizens, culture and leadership*, Institute of Public Administration Australia (ACT), 8 December 2010



of behaviour is acceptable and what is not, how can we as individuals take government and its agencies to task when they fail to deliver. Even if we don't expect individuals to take on the state, their protectors, representatives and advocates – what the Americans call the 'fourth branch' of government – should be in a position to do so. I'll come back to the role of the 'fourth branch or arm' of government. But first let me give you Barack Obama's code³ for improving Federal Government. To summarise:

- A competent, efficient, and responsive service from Executive departments and agencies who must continuously evaluate their performance in meeting this standard and work to improve it. Those that provide significant services directly to the public must identify and survey their customers, establish service standards and track their performance against those standards, as well as benchmark customer service performance against the best in business.
- Government managers must learn from what is working in the private sector and apply these best practices to deliver services better, faster, and at lower cost. Such best practices include increasingly popular lower-cost, self-service options accessed by the Internet or mobile phone and improved processes that deliver services faster and more responsively, reducing the overall need for customer inquiries and complaints.
- Within a prescribed period, each agency shall develop, a Customer Service Plan to streamline service delivery and improve the experience of its customers. The plan shall set forth the agency's approach, intended benefits, and an implementation timeline for the following actions:
 - establishing one major initiative to use technology to improve the customer experience
 - establishing mechanisms to solicit customer feedback on Government services and using such feedback regularly to make service improvements
 - setting clear customer service standards and expectations
 - adopting proven customer service best practices
 - streamlining agency processes to reduce costs and accelerate delivery, while reducing the need for customer calls and inquiries, and
 - identifying ways to use innovative technologies to accomplish these customer service activities.

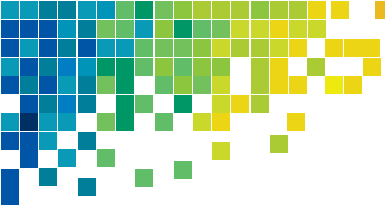
Our own government's public sector reform proposals outline similar requirements, which can be summed up as: talk to the people in ways they understand and communicate between themselves, get their views and feed them back into better performance.

For the Commonwealth Ombudsman, this will mean taking what we discover from talking to people – usually complainants – and turning it into recommendations that can be applied and measured by all government agencies. What is the point in fixing a fault in one part of the federal mechanism if the same fault is causing disruption to the overall service elsewhere? One of the key changes then is to see the whole service provided by government and its agencies as one vast network that aims to work collaboratively and efficiently and is prepared to hunt down and fix all the faults in the system.

■ AUSTRALIAN POLICY AND SERVICE DELIVERY

We don't have this now. Australian policy and service delivery is not sufficiently joined up or accountable. Here's an example: The Department of Families, Housing, Community Services and Indigenous Affairs, or FaHCSIA, wants to support housing construction and renovation in the Northern Territory for Indigenous people. This is an important closing the gap initiative. FaHCSIA provides large amounts of money and passes it on to the NT government or local government to spend. When my office receives complaints about poor delivery, FaHCSIA claims it's not primarily their responsibility as they are not involved in the actual provision of housing. They say greater accountability focus should be on the NT government and

3 Executive Order – Streamlining Service Delivery and Improving Customer Service, 27 April 2011



local government agencies. We say that's not good enough. The agency that initiates the policy and provides funds should make sure that the money achieves the right outcome. They should be more involved in the decision making and also ensure the agencies delivering the services are held to account. They should also know about complaints, have mechanisms to resolve them and crucially implement these lessons to achieve improved outcomes in the future. That's taking responsibility. This is a challenge the Australian government faces when it enters into National Partnership Agreements with state and territory governments.

Another example of where agencies are failing to serve the people is in fixing a problem when it's happened, rather than working out how to avoid the problem in the first place. We all know that papering over a crack in the wall is not going to stop a building from subsiding. Why then are we always on the crisis management track and not on the 'avoid a crisis' momentum? We are seeing this with Christmas Island. Instead of devising a long-term strategy on asylum seekers, the Department of Immigration and Citizenship, or DIAC, has opened more and more detention centres in remote areas. This is a cut and paste scenario which is not sustainable.

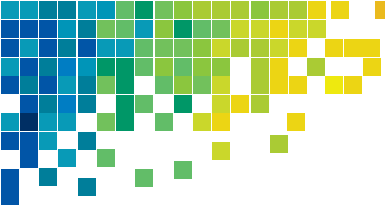
The Commonwealth Ombudsman was first invited to supervise immigration and mandatory detention procedures in 2005 in the wake of the Cornelia Rau affair – a case of wrongful detention of a permanent resident. Following its report, the Government conferred on the Ombudsman the additional title of Immigration Ombudsman. In this capacity, in February this year, I sounded an early warning that unless the bulk of people were moved off Christmas Island immediately the island might implode. Since that warning and the riots in March, the Immigration Minister has announced plans for a new detention centre on the outskirts of Darwin, the expansion of other facilities at Darwin Airport Lodge, and the opening of several other detention facilities.

The Government's stated intention to progressively relocate vulnerable detainees to community detention is a significant step forward. Handling complaints and conducting investigations provides my office a window into maladministration and possible corruption issues across government. We are in a position to expose systemic administration issues that can undermine the integrity and probity in government. We are also able to help agencies to strengthen administrative systems by meeting with them regularly to discuss complaint issues and trends, and to participate in integrity training programs.

It is one of the key functions of the Ombudsman to examine the effects of policy implementation. The asylum issue highlights the kind of serious problem that can occur when policies are developed at one level of government and delivered by another or outsourced. Where the management of detention centres and prisons are provided by private companies, transparency and accountability in the chain becomes stretched. Currently my office is investigating how, in the case of Christmas Island, responsibilities are shared between DIAC, its service provider SERCO and the Australian Federal Police. We are looking at who makes decisions, how they are communicated and how everything is coordinated – where the accountabilities rest.

I was in India recently speaking about how to deliver better regulation – about what we have observed from the many complaints we receive from individuals and small businesses who feel that regulators don't listen or don't care about their issues. We also hear from companies – those who provide employment and add to our economic well-being – about being unfairly treated by regulators or the tax office. They all run up against what I'll call the bureaucratic barrier: a churn of anonymous officials who cite internal directives not available for public scrutiny, fail to return calls or keep information flowing to people who are desperate for some resolution to their particular problem and often make the excuse that they're 'too busy' to do the job properly. That isn't a legitimate excuse. The bureaucratic barrier is a failure of leadership, management and respect for those who are treated as nuisances not customers.

The Commonwealth Ombudsman is working for ethical, fair and open administrative processes by government agencies because we think users of those services are entitled to that. Why should we accept that regulators can lecture to business about good customer service and then fail to deliver it themselves? The answer is that there is often a disconnect between the needs and expectations of the public and the resources or capacity of regulatory bodies. This has to change.



■ WHAT NEEDS TO BE DONE?

I mentioned earlier something called the fourth arm of government. Some of you will immediately think of the term the 'fourth estate', which is used to describe the media. In the American political system, the fourth branch of government refers to a group that influences the three branches of governance: legislative, judicial, and executive. These influencers include the media, interest groups, the public and government agencies like the Commonwealth Ombudsman.

The growth of the concept of the fourth arm of government is partly a response to the increasing complexity of governing human behaviour – such as mass migration and the inter-connectedness of global issues. While the legislature is the key national forum for debate on such matters and for protecting the national interest, it is limited in its capacity to determine whether its laws are correctly interpreted and administered. The fourth arm has a role here in challenging the agencies that implement laws, regulations and judicial decisions.

As an ombudsman I do not have or want the power to make Government policy, but I do want to strongly influence the way it is framed, interpreted and administered. The fourth arm of government exists to guide the executive towards governance that is fair, ethical and transparent. It is our job to protect the rights of the people and give them a voice in a process that can quickly stop listening when not prompted, and get distracted by its own busy-ness and power when not challenged.

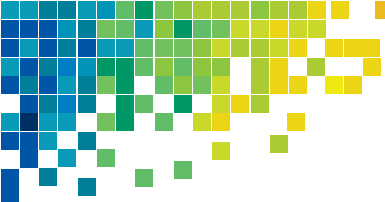
■ 10 SUGGESTIONS

How do we do that? Here are my 10 suggestions for better governance and better public service.

First, **Government services must be accessible**. It is no good having policies or programs that may be well designed if the very people they are targeted to assist have difficulties accessing them. The outcomes government policies and programs seek to achieve won't be realised if there are barriers to accessibility. Sometimes these barriers are found in the complex and formal language government agencies use to communicate with the public. We must use much simpler and better targeted language and we must improve communication with those who are not literate. Given the diversity of our population there is scope for the public service to make us a lot happier by giving up complexity and obfuscation. Sometimes location or disadvantage are identified as barriers to accessibility and they need to be addressed. In this regard it is pleasing that the government announced in the Budget improved access to Centrelink and Medicare for geographically and socially isolated Australians through increasing outreach workers who help the homeless or those at risk of homelessness, and social workers who work with families experiencing difficulty.

Second, **work collaboratively to achieve outcomes**. Government agencies need to work collaboratively – including in partnership with the business and community sectors – to achieve improved outcomes for the public; especially the more vulnerable and disadvantaged members of the community. In doing so, focus needs to be given to taking a citizen centric and social inclusion approach to policy development and program delivery. Appropriate governance and accountability measures also need to be in place to complement this greater collaborative administration. Establishing joint project management boards as well as joint decision-making procedures will provide some of this capacity for tracking progress. Reporting should not be focused on outputs but about outcomes genuinely achieved.

Third, **enable people to seek review and learn from this process**. People need to be given clear pathways and opportunities to seek review of a government decision, action or inaction. This should include clarity about how people can seek redress through a comprehensive and accessible complaints mechanism that enables them to have their matter effectively investigated and dealt with. Agencies that have good complaint-handling systems are doing themselves a favour. Not only do they have the opportunity to clarify or resolve a matter for their customer – thereby making them happier – but complaints are a valuable source of intelligence on how effectively the agency is performing. They also provide an opportunity to learn from any mistakes made and improve systems.



But I would say: go further than collecting complaints. **Solicit feedback – both positive and negative.** If something's working well let's hear about it and share it with colleagues. If consumers have ideas about how we can do our jobs better, let's invite them to give us those ideas.

Fifth, **improve stakeholder engagement.** Without genuine stakeholder engagement, it is a mistake to think that you know what impact your policies and actions will have on people. When we do engage, sometimes the reality of what people think we should be doing or prioritising can be a bit of a shock. There are significant benefits in consulting with a wide audience on organisational work plans. Here's a confession: the stakeholder engagement of the Commonwealth Ombudsman needs to improve – something we are working hard at to achieve. We want to improve the ways in which we stay in tune with the key issues for the community, business groups and the departments whose conduct we investigate. Our aim will be to understand the points of view of our stakeholders and to influence them with our thinking so that we can shape their expectations and we can be more effective in improving public administration. We are considering the creation of a Defence Force Ombudsman consultative forum, to advise on issues that may require intervention and a Taxation Ombudsman consultative committee to provide advice on how we can best influence the Australian Tax Office in its interactions with taxpayers.

Sixth, **tell people what's going on.** The Information Age has brought with it demands to be more open about organisational decisions and policies and to be more careful about how information about individuals is handled and shared. It is vital to keep abreast of these changes and meet new legal obligations.

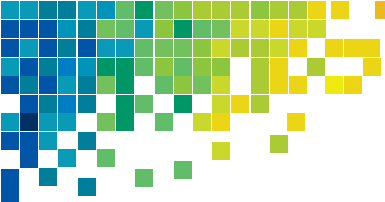
Seventh, **think creatively about how to disseminate and collect information.** Online services provide great scope for people to access information about programs and to transact with government. For example, we receive and redirect complaints through a SmartForm that allows people to send us complaints online. We have to remember that only half the population have functional access to the internet. However, what is to stop us working with other oversight agencies to set up a collective 'fourth arm' internet facility in remote communities and among other disadvantaged groups? Providing outreach services to remote and regional communities maybe another important strategy for collecting and disseminating information.

Eighth, **consider a national integrity agency with the role of preventing or deterring corruption in government.** Parliament is about to debate a new public interest disclosure law to protect whistle-blowers. The Ombudsman's office will have the job of ensuring all agencies have proper whistle-blower policies. We think that this is all good stuff, but the integrity function is spread between agencies and what we need is an overseer with a clear mandate to shape and enforce standards of behaviour across all arms of governance. Merely strengthening legislation is not going to deter corruption. It is complex and pernicious and the result of failure of governance. There is consensus within the international community that anti-corruption legislation and measures should be monitored by specialised bodies with adequate powers, resources and training.⁴

Ninth, **act as a collective and collaborative 'fourth arm'.** There is great scope for my office, as well as other oversight agencies, to work more collaboratively with government agencies to form communities of interest to improve public administration. These may be interagency groups with broad membership working on improvements in specific areas of administration, such as improving complaint handling or administration of executive schemes like the Compensation for Detriment caused by Defective Administration scheme. More recently my office supported a Root Cause Analysis workshop. The aim of such working groups is to get a vigorous group of agencies together who are willing to take ownership of improved service delivery and collaborate on reform.

Finally we come to **customer satisfaction – happiness.** Governments are very keen on this for obvious reasons. They would like to be returned to office and that requires a degree of public confidence in their policy-making skills and service delivery. Policy, as I've outlined, benefits from listening to the critical friends of the fourth arm of government. Satisfactory service delivery depends on listening to consumers of public

⁴ Organisation for Economic Cooperation and Development (OECD), *Specialised Anti-Corruption Institutions – Review of Models*, 2007. p.11



services. More than that, it means having respect for them and the will to add to their well-being and happiness. Even more than that, it means leading organisations that have happy employees who feel they can make a difference and deliver public services in an ethical and empathetic way.

■ CONCLUSION

In a speech only last week to Sydney University's Graduate School of Government, Terry Moran emphasised that to help consumers more effectively, we need to know a lot more about what they expect, want and value from government services. I fully support his proposal to establish a national survey to this end. Further, I agree that we should collaborate with individuals in ways that are meaningful and lead to the development of services that will not only meet their needs but enhance the well-being of the whole community. As he said, "citizen engagement in service and policy design is not only the right thing to do but will provide a rich new source of ideas to government"⁵.

New interest in happiness is partly being driven by new measures of happiness developed by scientists and by behavioural economics, which considers what influences human behaviour. But the belief that happiness has a role in rule and policy-making and implementation is not revolutionary.

The 18th century philosopher, Jeremy Bentham, argued that the proper objective of all conduct and legislation is "the greatest happiness of the greatest number"⁶. In his *Constitutional Code* he suggested that there should be continual inspection of the work of politicians and government officials. And he pointed out that politicians and government officials should be continually reminded that they are the "servants, not the masters, of the public".

5 Address to the Graduate School of Government, The University of Sydney, *Surfing the next wave of reform*, Mr Terry Moran AO, Secretary, Department of the Prime Minister and Cabinet, 4 May 2011

6 *A Fragment on Government*