

KEY FEATURES AND STRENGTHS OF THE OMBUDSMAN MODEL – NATIONAL OMBUDSMAN COMMISSION OF INDONESIA

Seminar and Training on Local Ombudsman

*Keynote Address by Prof. John McMillan, Commonwealth Ombudsman, Australia.
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The office of the Commonwealth Ombudsman in Australia thank you for the honour of allowing me to provide the Keynote Address in this seminar being hosted by the National Ombudsman Commission of Indonesia. I bring with me the greetings and best wishes of the office of the Commonwealth Ombudsman in Australia. It is a proud moment for my office to be able to join with the National Ombudsman Commission, under the Indonesia-Australia Government Sector Linkages Program, in conducting a comprehensive seminar on the role of the Ombudsman in complaint handling in Indonesia.

Indonesia, in developing the Ombudsman concept, both joins and can draw from a long and valuable tradition around the world. The first Ombudsman was established, almost two hundred years ago, in Sweden in 1809. The significance of that step is still reflected today, in the fact that most Ombudsman around the world still adopt as their title the Swedish word, “ombudsman”. Loosely translated, the word ombudsman means agent or representative of the people. Over time, the word has taken on a more specialised meaning, to describe an independent office that can investigate and resolve disputes between citizens and government.

The benefit that derives from having such an office is now recognised around the globe. An Ombudsman office has now been established in over 130 countries, and there are Ombudsman offices in every continent. In our own Asia and Pacific region, there are Ombudsman offices in many countries, including Papua New Guinea, Thailand, Hong Kong, Taiwan, Fiji, the Solomon Islands, Vanuatu, and New Zealand. In Australia, which is a federal system of government with nine different parliaments and governments, there are also nine Ombudsman – one in each system. The appeal of the Ombudsman has also grown beyond government in Australia. In the private sector we now have – to name a few only – a Banking and Financial Services Ombudsman, a Telecommunications Industry Ombudsman, a Water and Energy Ombudsman, and a Private Health Insurance Ombudsman.

As this shows, the Ombudsman is an institution that has crossed language, cultural and political barriers. It has adapted itself to systems of government that are as notable for their diversity as for their commitment to common goals. This is reflected in the names of the different ombudsman offices

around the world that are affiliated with the International Ombudsman Institute. They include the Parliamentary Commissioner for Administrative Investigations in the United Kingdom, the Control Yuan in Taiwan, the Mediateur in France, the National Commission of Human Rights in Mexico, the Defensores del Pueblo in Spain, and the Commission on Human Rights and Administrative Justice in Ghana.

Why has the Ombudsman institution been such a successful innovation? What lessons can we draw from this important theme in the history of government? I will address those questions by looking at six benefits that in my view derive from having an Ombudsman office.

1. An institution that embodies the spirit of democracy

The essence of democracy is that an elected government represents the people and is accountable to them. In a democracy, government exists to serve the community. Elections are an important way of ensuring that government is the servant of the people, but elections alone are insufficient. As government has expanded in size and taken greater control of the lives of all members of the community, there is a corresponding need for mechanisms that can control and supervise government on a continuing basis. The creation of Ombudsman offices (together with courts, tribunals, parliamentary committees, and similar bodies) is a solution increasingly adopted in many countries.

The growth of democracy around the globe has been accompanied by the development of Ombudsman offices. Indeed, the Ombudsman institution has now become part of the institutional architecture of a modern democracy. A trend still followed in some countries is to describe the Ombudsman as the Parliamentary Commissioner, signifying the role of the office in ensuring that democracy works.

This is a symbolic role, but it is an intensely practical role as well. Ombudsman offices can strengthen democracy by communicating to government the thousands of complaints that are received each year from members of the public. The Ombudsman's office calls on government agencies to explain and defend the decisions that are under investigation. A chief concern of an Ombudsman's office is to ensure that government itself obeys the rules it has made and expects the public to observe. By requiring that an explanation is given to a member of the public with a grievance, the Ombudsman's office promotes transparency in government. It is an important stimulus for open government.

In the modern state, our ideal of democracy is linked to a respect for human rights. Here again the Ombudsman institution has a pivotal role to play. One of the most cherished human rights is the right to complain against government. If this right is to have any value, a complaint must be listened to, the complainant must feel confident they will not be victimised for having complained, and if the complaint is a good one then it should be upheld. The Ombudsman institution embodies that right to complain against government.

Ultimately, democracy works only if people have confidence in government. By providing a safe and independent procedure for people to complain against government, the Ombudsman institution helps to bolster community confidence in government. People are reassured that government observes the rules, that it is mindful of the impact government decisions can have on people, and that government is answerable and accountable to the people.

2. Improves but does not threaten democracy

The Ombudsman is not an alternative government. The Ombudsman cannot overrule decisions made by the elected representatives of the people. Nor does the office usurp the responsibility of the legislature and the government for developing policy and legislation, and implementing the mandate given to them by the people at an election.

What power does the Ombudsman have? Ultimately, it is the power of persuasion, of reasoned argument. The Ombudsman's office, in handling inquiries and complaints from members of the public, throughout the year, across the country, on the full range of issues arising in government, is uniquely placed to understand the impact that government has on the lives of all members of the community. The office has a glimpse of how well government is working, and of how suitable the laws of the country are. But the Ombudsman cannot itself change those laws and policies. Being limited to making recommendations, the office has to persuade government to accept that advice.

My view is that this has made Ombudsman offices more rather than less effective and valuable. As an Ombudsman I know that my influence extends no further than my ability to persuade people in government that there is a problem and that it can be solved. To be persuasive it is necessary first to understand why government laws and policies were written in a particular way. It is necessary to gain the trust and respect of people within government. It is then necessary to find solutions that are practical and workable and that do not create a new problem while solving an old one. In that way, the complexity of government is understood, and the precepts of democracy are respected.

3. Focussing attention on the importance of good governance

"Good governance" is a phrase that entered our vocabulary only recently, but has quickly gained a strong foothold. The phrase recognises that the quality and integrity of public administration is central to our success as a society. As I noted earlier, public confidence in a democratic system can depend on people knowing that government is open, rational and accountable. Government respect for human rights and fundamental freedoms is also an important indicator of the strength of a society. Likewise, the economic prosperity of a country can depend on whether government is free of bias, corruption and conflict of interest. Bodies such as the International Monetary Fund and the World Bank draw a direct correlation between governance capacity and economic growth and reform.

Good governance capacity is not an innate feature of government. Nor can we improve government merely by making speeches or signing declarations about how important it is. We must work hard to produce good governance. The Ombudsman plays an active role in that regard. A key objective of the office, in resolving individual complaints, is to examine whether a government agency has acted properly. Did the agency observe relevant laws and policies? Was the decision based on relevant and not irrelevant considerations? Was natural justice observed? Are the clients of government being treated equally and fairly? Have government officers been honest and professional in discharging their functions? Is there any evidence of bias, favouritism or – in exceptional cases – of corruption?

By asking those questions, an Ombudsman's office can promote the values of a civilised society. Only when those values are reflected in the system of government can we be reassured that good governance is a method as well as a belief.

4. Developing effective complaint handling in government

I have been in the fortunate position in Australia that I have worked in the Ombudsman's office at two stages of my career – in 1979, as a young investigation officer, soon after the office was established; and more recently after my appointment in 2003 as Commonwealth Ombudsman. What is most striking to me is the extraordinary improvement over that period of the system of complaint handling in government.

When an Ombudsman's office is first established, it encounters many obstacles. There can be a resistance in some quarters of government to dealing with disgruntled members of the public. Or there may not be an effective system in place for complaint handling. A major achievement of the Ombudsman's office in Australia and elsewhere has been to work with government agencies to establish a system of complaint handling. All the large client service agencies in Australia now have a complaints office, a system of internal review, a published charter that spells out the service standards to be observed by the agency, a training program in complaint handling, policy directions and rules on dispute resolution, and a system for providing compensation to those who are unfairly damaged by government decisions. My belief is that such a comprehensive system would not exist but for the work of the Ombudsman.

5. Accessibility to members of the community

A key strength of the Ombudsman model is to be accessible to all members of the community, and to provide a voice to each of them. Government, as we know, can be bewildering. There are many barriers to cross when a problem arises. It is often difficult to know who in government should be contacted about a problem. It can be just as difficult for many people to know how to define their problem. Believing that a problem can be solved on a fair and impartial basis is equally important. Those and other barriers mean that many people feel weak and powerless in the face of government.

A key reason for the success of Ombudsman offices around the globe is that they have made themselves accessible to members of the community. The offices have been innovative and flexible in developing procedures that are helpful and not obstructive. My own office, for example, receives and deals by telephone with the great bulk of complaints it receives. By doing that we can resolve over 85% of complaints within 1 month of receipt. We are also adjusting to other changes in society, by increasingly using the internet for online complaint handling.

Nor does the Ombudsman's office impose barriers that are a feature of some other methods for challenging government decision-making. There is, for example, no financial charge or filing fee for making a complaint to the Ombudsman. Nor is it necessary to use a lawyer to frame a complaint. And, within the one office, complaints are received about the full range of government decision-making – on matters as diverse as taxation, immigration, land planning, and traffic offences.

Even when a decision by government was correctly made, the reasons in support of that decision may be inadequate or not well understood by others. In the worst case, a person may have lost trust in the objectivity and fairness of a government agency and disbelieve whatever explanation is given.

An Ombudsman's office that is accessible to members of the community can address that problem by giving either a better or an independent explanation of why the decision was made. Frequently, this is enough to resolve a grievance.

6. A model that is universal and adaptable

Ombudsman offices are now established in over 130 countries. They deal with complaints across the full range of government services, and operate as successfully in the private sector as well.

The foundation principles are the same in each system – independence, impartiality, fairness, rationality, and integrity. But the way that disputes are resolved can vary markedly, not only between offices but within offices as well. Within my own office, for example, which receives up to 20,000 complaints each year, we use a full range of different powers and procedures to deal with complaints. Most complaints are handled informally over the telephone. In other instances we undertake a formal investigation, taking evidence on oath and inspecting documents and premises. Many disputes are resolved by mediation, negotiation or discussion.

There is an equal mixture in the skills of the staff. Some, like myself, have a background in law. Others have a background in police, community service, defence, trade unions, public service and teaching. This mix of skills is an important asset, which is not found as strongly in most other review bodies such as courts and tribunals. This enables the Ombudsman's office to

understand more easily the complexity and subtlety of the issues we have to deal with.

Closing thoughts

The steps now being taken in Indonesia to establish an Ombudsman presence, nationally and in regional government, are impressive. May you gain from the experience of other countries, which is that government and society benefit when there are procedures in place to ensure that disputes are resolved professionally and efficiently.

You will doubtless encounter many questions and even doubts about whether an Ombudsman office can be truly effective. How can an agency that is funded by government be fearless and independent in investigating complaints against government? Will a complaint mechanism operate as an early detection system of the dissidents in society? Will the police and the armed forces take notice of recommendations made by an Ombudsman's office? Will an Ombudsman's office ever have enough staff with sufficient training to deal with all the problems that are thrown up by government?

Those questions cannot be ignored, but they can be addressed. The very same questions were raised in Australia when the Ombudsman's office was first established, and they have been raised in other countries as well. Our experience suggests that satisfactory answers can be given and that over time an Ombudsman's office can be an effective institution in dealing with the grievances of members of the public and promoting the concept of government accountability to the public.

APPENDIX: OVERVIEW OF THE COMMONWEALTH OMBUDSMAN IN AUSTRALIA

1. Establishment and growth of Ombudsman offices in Australia

- The first Australian Ombudsman office was established in 1971 in the State of Western Australia; in 1977 the Commonwealth Ombudsman (or national ombudsman was established); and there is now an Ombudsman in every State and Territory in Australia (in all, 9 public sector Ombudsmen).
- There are many industry ombudsman offices in the private sector – eg, Banking and Financial Services Ombudsman, Telecommunications Ombudsman, Energy and Water Ombudsman, Private Health Insurance Ombudsman; Transport Industry Ombudsman.
- The Commonwealth Ombudsman receives nearly 20,000 complaints per year, and a further 10,000 inquiries. The largest areas of complaint are pensions and social welfare benefits; child support payments; taxation; and immigration.
- The Commonwealth Ombudsman has a staff of 105, spread across 8 offices – one in the capital city of each State in Australia. The central office is in Canberra, the national capital.

2. Major features

- The office of Ombudsman is established by an Act of the Parliament (*Ombudsman Act 1976*).
- The Ombudsman is independent – the Ombudsman is appointed by the Governor-General on the nomination of the Prime Minister, and can only be removed by both houses of the Parliament. The usual term of appointment is 5 years. Most (but not all) Ombudsmen have been lawyers.
- The Ombudsman has three main roles – to investigate complaints from members of the public; to conduct own motion investigations (ie, investigations undertaken at the initiative of the Ombudsman); and to conduct periodic inspections of law enforcement records relating to telephone interception, surveillance and controlled operations.
- The Ombudsman can only make recommendations to government. If a recommendation is not accepted, the Ombudsman can report to the Prime Minister and the Parliament. This is rarely necessary.
- The Ombudsman has the powers and immunities needed to compel government agencies to comply with an investigation – eg, the Ombudsman has an enforceable power to inspect government documents and premises, and to require that evidence be given under oath; and both the Ombudsman and complainants are protected against civil proceedings. These powers are rarely used – most investigations are conducted informally and cooperatively.
- Two important restrictions on the Ombudsman's jurisdiction are that the Ombudsman cannot investigate complaints against government ministers, or concerning employment in the public service.

3. Important achievements

- The Ombudsman's office efficiently and economically handles a large number of complaints each year. Over 70% of complaints are received and dealt with by telephone; 85% of complaints are resolved within one month; it is rare for a

government agency to reject a recommendation by the Ombudsman; and the Ombudsman's budget is far less than that of most courts and tribunals.

- The Ombudsman has encouraged and assisted government agencies to establish their own procedures for internal complaint handling – eg, through the publication, *A Good Practice Guide for Effective Complaint Handling*. In about 70% of complaints to the Ombudsman, the complainant is advised to use the agency complaint handling system before the Ombudsman will investigate. This is a more efficient and effective way of resolving complaints. The Ombudsman regularly monitors agency complaint systems to ensure that they are operating in a professional manner.
- The Ombudsman has encouraged agencies to publish a service charter defining the service standards the agency will observe in its dealings with the public.
- The Ombudsman has prompted government to reform the administrative system for paying compensation for defective administration. Far more people now receive compensation, often for small amounts, without having to initiate legal proceedings. A common example is compensation for the loss of a few hundred dollars suffered by a person who was incorrectly advised about their entitlement to a government pension or benefit.
- The Ombudsman's office pays close attention to government record keeping. For example, the Ombudsman has persuaded agencies to keep a brief written record of all advice given orally to members of the public, eg, at government counters and over the telephone.
- The Ombudsman has a keen interest in ensuring that freedom of information legislation works effectively. My office conducted a government wide study in 1999 which showed that freedom of information laws were not being administered properly. We are currently repeating that study.
- The office is committed to ensuring that administrative law values are respected, both in government, and in the way that the office itself conducts investigations. For example, we ensure that decisions are based on relevant considerations; that decisions are explained and justified; that there is evidence to support each critical finding in a decision; and that natural justice is observed (ie, each side to a dispute is given a proper opportunity to express a view before a decision is made).

4. Key factors in the Ombudsman's success

- The Ombudsman has worked hard to protect its independence. Where necessary, it has been publicly critical of government in letters and reports. The office frequently takes steps to reassure members of the public that it is independent and impartial.
- The office has avoided being an advocate for the public. It sees its role as an impartial office, which listens to both sides of a dispute before forming an opinion.
- Although the Ombudsman is at arms length from government, the office has nevertheless established an excellent working relationship with government agencies. For example, most government agencies have one or more Ombudsman contact officers with whom my office can deal quickly and informally. As Ombudsman, I meet regularly with the heads of government agencies.
- I give equal importance to working with and through Parliament. For example, I have made submissions to and appeared before parliamentary committees on

about 8 occasions in the last year, on matters such as military justice, health support payments, immigration processing, good governance, law enforcement and human rights education. As Ombudsman I personally sign all correspondence with members of parliament.

- In handling individual complaints, we try to stand back and see if there is a broader problem that is likely to affect many people. We call these the systemic issues – the problems that affect the whole system of government. As a result, we frequently make proposals for reforming law and policy. Some recent examples are reports on grievance resolution in the defence force, payment of family assistance, assessment of child support liability, and resolving disputes about traffic infringement notices. These reports all grew out of the individual complaints we had received on those topics.
- My office has an active staff training program: we have an induction program for all staff, two investigation courses are conducted each year, and there are regular staff meetings and bulletins. I encourage and give office support to staff to attend administrative law conferences around Australia.
- We maintain eight offices around Australia. This keeps the office in touch with government around the country, and ensures that it does not become isolated and narrow in its focus. We are about to embark on a large program (called an outreach program) of visiting regional areas in Australia.
- The office relies heavily on information technology in all aspects of its work – to allow people to complain, to record each investigation, to track the movement of files in the office, to monitor the length of time taken in investigating each complaint, and to provide a picture of the types of complaints received by the office.
- The Commonwealth Ombudsman works closely with other Ombudsman offices, in Australia and in the Asia-Pacific region. Our belief is that we grow stronger by working together.