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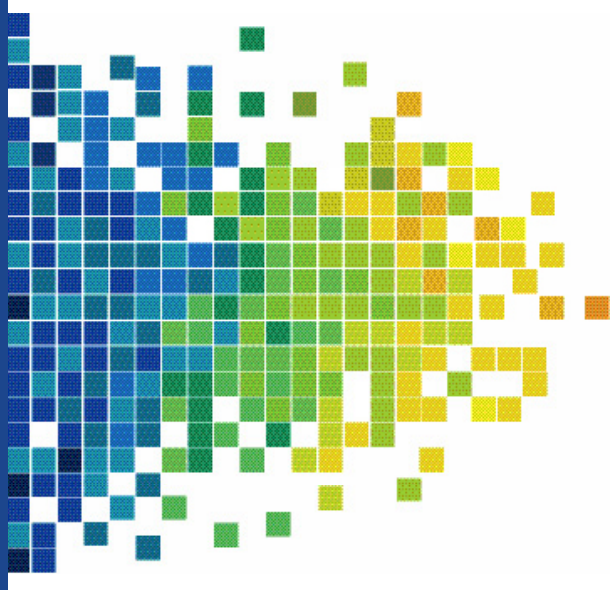

Commonwealth OMBUDSMAN

Promises, prospects and performance in public administration

A speech by Commonwealth Ombudsman Allan Asher to the 2011 National Administrative Law Forum: Democracy, participation and administrative law
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ABSTRACT

It is vital that government agencies place a greater emphasis on social inclusion when approaching policy and service delivery. Central to this is improving the way government agencies communicate with people. At the moment, a good deal of government communication lacks clarity and is not accessible to those in the community who need it most.

The speech looks at what can be done by government agencies to remedy this, and what role the Commonwealth Ombudsman's office and the integrity agency sector as a whole can play. It emphasises the importance of taking happiness and wellbeing as a starting point when developing and implementing policy and service delivery, and the value of proper complaints handling in ensuring community feedback leads to improvement in the provision of services.

INTRODUCTION

I'd like to begin by acknowledging the Ngunnawal people, who are the traditional owners of the land on which we are gathered this afternoon.

Recognising the local Indigenous community is a very good place to start because addressing the needs of marginalised people is at the heart of what I'd like to talk about today.

In particular, I'll be looking at:

- the necessity of focusing on vastly improving social inclusion when approaching policy and service delivery
- that central to this is improving the way government agencies communicate with people
- what can be done by government agencies to achieve this
- what role my office, and integrity agencies as a whole, can contribute to the process.

Let us start by considering first principles.

HAPPINESS AND WELLBEING

The idea that it is the fundamental role of government to enhance the wellbeing and happiness of its people is gaining currency around the world. Economic indices based on wellbeing were announced by the French and the British governments in 2009 and 2010 respectively, and are seen by economists such as Nobel laureate Professor Joseph Stiglitz as better measures of economic progress than gross domestic product.

It is articulated too in US President Barack Obama's Executive Order for improving the US Government, which was issued in April. Titled *Streamlining Service Delivery and Improving Customer Service*, it pushes for better customer service activities as well as finding ways to use innovative technologies to deliver them.

In Australia, the Treasury Department has enshrined a Wellbeing Framework[1] in its strategic objectives[2], which outline the department's values, role and key policy responsibilities. Foremost among the five elements of this is, and I'm quoting:

> The opportunity and freedom that allows individuals to lead lives of real value to them … that human development is measured by the extent to which individuals have the capabilities necessary to choose to lead a life they have reason to value.

Treasury staff are encouraged to assess new and existing public policy against the wellbeing framework, which requires a qualitative, long-term approach to measuring the health of the economy. One way the department does this is by routinely issuing its Intergenerational Report, which focuses on such things as environmental challenges, social sustainability and the fiscal and economic challenges of an ageing population.

Of particular importance to any agency aiming to focus better on the needs of people is *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*[3], 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.

Wellbeing is an issue I've raised before[4], and the reason it's close to my heart is because during the 40 years I've spent advocating for consumers, I have seen time and again the sometimes dire consequences of an organisational culture that puts the wellbeing of clients pretty much last. For instance, the habit British energy companies had a few years ago of using thugs to push into people's homes and bully them into signing unconscionable contracts, or cutting off customers' power during that country's freezing winters.

SOCIAL INCLUSION: THE CHALLENGE FOR GOVERNMENT

I'd like to talk a little about social inclusion because I believe it should be the issue for anyone involved or professionally interested in public administration.

I say this because of the obvious challenges agencies face in not losing touch with those who are, often, most in need of adequate government services. Or not being in touch in the first place.

To illustrate I will use my own office as something of a bellwether.

The Australian Government has defined a socially inclusive society as one in which all Australians feel valued and have the opportunity to participate fully[5]. This means ensuring that people who are currently marginalised become fully engaged – people such as newly arrived immigrants, the elderly, people with disabilities, mental illness or problems with addiction, many Indigenous people as well as whistle-blowers,

1 June 2009, http://www.treasury.gov.au/documents/876/PDF/Policy_advice_Treasury_wellbeing_framework.pdf
2 http://www.treasury.gov.au/documents/1874/PDF/Treasury%20Strategic%20Framework_w.pdf
3 Advisory Group on Reform of Australian Government Administration, March 2010, http://www.dpmc.gov.au/publications/aga_reform/aga_reform_blueprint/index.cfm
4 Speech to L21 – Public Sector Leadership 2011 conference: Rethinking and improving service delivery, 12 May 2011
5 A Stronger, Fairer Australia, summary brochure published by the Social Inclusion Unit, Department of the Prime Minister and Cabinet, 2009

children, the illiterate, those who are impoverished, particularly the homeless, and many others.

Of particular concern are those who are newly socially excluded – for instance, the recently unemployed or homeless, immigration detention centre detainees or newly arrived and vulnerable immigrants – who are less likely to be aware of their opportunities to have a voice.

It is heartening that the phrase 'social inclusion' is cropping up more often in government and public sector discussion, and in initiatives such as the National Compact[6], which seeks to strengthen relations between Government and the not-for-profit sector. My office is in the process of signing up to the Compact and I very much look forward to us taking part.

Social inclusion, or the lack of it, is a huge issue for my office. Last financial year, we received around 39,000 approaches, of which we chose to investigate more than 4000. However, I suspect that for every complaint we get, there are maybe 10 we don't. In general terms, I believe that the people we don't hear from are the people we should be hearing from most, because they are likely to be those members of our community who are the most marginalised and disadvantaged.

If only 10 per cent of people who should be complaining are complaining, the remaining 90 per cent cannot be said to be fully enfranchised in any meaningful sense. How can we provide accurate feedback and recommendations to agencies, how can the agencies themselves get direct feedback, if we're not hearing from most of the people with real problems?

I suspect there are a range of reasons why these complaints aren't made. A person could be unaware of our existence, or has heard of our office but doesn't realise we take complaints from the public, or knows all this but doesn't think we can do anything. Or perhaps they have cultural or language issues, or concerns about the implications of making a complaint, or certain disabilities such as cognitive impairment.

A recent public awareness survey we conducted showed that less than one third of people under 35, and a similar number of people who speak a language other than English, have heard of my office. More surprisingly, only 60 per cent of women are aware we exist versus 72 per cent of men.

While my office addresses some of these issues through its outreach and education programs, as well as our broader publicity work, it is clearly our responsibility to find innovative ways to tackle this better. With that in mind, I am keen to raise the profile of my office wherever appropriate, including in social media forums. We are currently using Twitter and very soon we will establish Facebook sites – initially for the Commonwealth and ACT Ombudsman roles – and down the track for the Overseas Students Ombudsman. We will also soon start posting material on YouTube.

That such a large proportion of the community is unaware of us, or precisely what we do, points not just to the communication imperatives of my office but highlights a degree of ignorance of the complaint-handling process in general, and indeed the need for it. After all, our survey also found that a substantial number of people under 35 (around 14 per cent) weren't even sure whether they had ever been treated unfairly by a government agency.

Connecting with the Indigenous community poses a unique set of challenges. Prior to the introduction of my office's Indigenous outreach programs, virtually no Indigenous people complained to us – as far as we are aware – and it hardly needs saying that this is not because they had little about which to complain.

A report[7] based on research my office commissioned late last year revealed that Indigenous people are unlikely to complain because:

- they do not know it is possible or acceptable to complain, or who to complain to
- they believe they must accept their lot in life
- they fear reprisals
- they dislike confrontation
- there are language issues

6 www.nationalcompact.gov.au

7 *Improving the services of the Commonwealth Ombudsman to Australia's Indigenous peoples*, prepared by Winangali Indigenous Communications and Research, November 2010

- complaining brings with it a sense of shame
- have poor self-esteem
- they believe that complaining in itself won't change anything.

The research also found that many Indigenous people prefer to use an intermediary whom they know to discuss problems or issues, preferably face-to-face in a familiar location, and only after they have come to trust the impartiality and effectiveness of the complaint-handling process.

That is presumably why our outreach teams are effective in gathering complaints from Indigenous people. And it is perhaps telling that we have occasionally drawn criticism from some within the Public Service for using such methods to supposedly 'drum up' business.

It is worth highlighting that some government departments, such as Centrelink, are also taking active steps to engage with Indigenous communities in this way by sending remote access teams into Indigenous communities, and I couldn't endorse this approach more strongly.

The research agency we used also recommended the use of printed materials with simple messages and illustrations that tell a story, as well as community forums and Indigenous radio and TV to get messages across.

One of the reasons some people don't make contact with us, or fully engage with other government agencies, is lack of access. This is particularly true of socially marginalised people in remote areas. How do you contact an agency, including my office, if you don't have a landline, or if the local payphone doesn't work? Perhaps you have a mobile phone, but not enough credit to make calls to 1800 and 1300 numbers, which are only free or at a local rate if you're using a landline. That is the irony – it is often the most disadvantaged who do not have landlines but are most in need of freephone services.

I highlighted my concerns about this issue in a letter to Chris Chapman, Chairman of the Australian Communications and Media Authority, in April this year. The Authority's own research has found that the number of people without a landline is increasing; indeed, 14 per cent of the population are mobile-only users[8]. There has also been a decrease in the number of payphones available to the public[9].

One complainant to our office found himself in the somewhat absurd position of calling Centrelink to advise them of his income so that he would receive his fortnightly payment. His pre-paid credit ran out before he had completed the call and he did not have enough money to top it up. This required him to miss a day of classes to visit the Centrelink office in person.

Now, there's online of course, but only around half the population have functional access to the Internet. This digital divide must always be borne in mind when an agency seeks to engage meaningfully with its more marginalised clients. And of course not all agency websites are equally accessible.

It should also be remembered that a website, even an accessible one, is no panacea in itself. Online should complement, not displace, other communication channels.

So at the heart of any attempt to improve social inclusion is effective, two-way communication between agencies and all members of the community. In other words, enabling the voiceless to find their voice, and listening to what people say when they do speak up. It's crucial that government departments and oversight agencies take this approach because it is fundamental to any claim a government can make about its level of accountability.

I'll be returning to the specific role of the Ombudsman later, but I will say now that helping government to improve services to constituents through socially inclusive activities, not simply finding fault, is a key feature of the work my office does and will continue to do.

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8 ACMA, *2009-2010 Communications Report 2 – Take-up and use of voice services by Australian Consumers*, pp 4, 14, 22

9 Ibid, p77

HOW GOVERNMENT COMMUNICATES WITH PEOPLE

Many of the complaints we receive about government agencies arise from poor communication. Partly I suspect because many agencies see the way they communicate as a side issue to the services they provide, whereas the two are inextricably linked or indeed the same thing.

Some common examples of poor, or even lazy, communication include:

- computer-generated form letters, or letters that cut and paste great tracts of impenetrable legislation, or refer to websites to which their clients may not have access
- sending people too much correspondence, or too little, or none at all
- call centre staff who don't have enough information themselves, or don't have the authority to make proper decisions
- failing to provide key information, such as the right to review, and how to complain
- writing in bureaucratese rather than plain language using jargon, acronyms and abbreviations
- failing to provide simple explanations for people with cognitive impairment
- taking an officious tone
- not providing translations or interpreters
- having no single point of contact, so that people have to repeat their concerns over and over again

Let's look at Indigenous people again. Poor communication is overwhelmingly the main source of complaints to my office from Indigenous people in the Northern Territory, where our outreach programs currently operate. For instance, there is often confusion about how people are affected by government programs, due to insufficient communication, or communication that is too high level, or has been over-simplified to the point of excluding important information, or doesn't explain how government initiatives will affect lives.

A report[10] my office published in April this year followed a series of complaints about interpreters not being used when they should have been, either because they were not available, or because they were not deemed necessary.

One case study used in the report relates to the Strategic Indigenous Housing and Infrastructure Program, which is jointly run by the Northern Territory Government and the Department of Families, Housing, Community Services and Indigenous Affairs.

A resident of a remote Indigenous community complained to my office that Northern Territory Government staff and building contractors had not used interpreters when they met with residents to discuss housing plans in that community.

As a result, some residents did not understand the nature of the work that was planned, where they would live while work was being done, and whether they would be re-allocated the same house when the work had been completed.

We raised this with the Department and I'm pleased to say that in response they organised two meetings attended by an Indigenous language interpreter at which the housing program and other housing-related matters were properly explained. The complainant later told us that the community felt this addressed the issue.

Communicating with people who are socially excluded is obviously a particular issue for frontline agencies such as Centrelink. It should be said that those of my staff who deal with Centrelink are of the view that it has a culture geared towards improving service delivery to the disadvantaged, and it's encouraging to see that its 10-year service delivery reform plan places a strong emphasis on this. In March this year we accepted an

10 Talking in Language: Indigenous language interpreters and government communication, April 2011 http://www.ombudsman.gov.au/files/Talking_in_Language-Indigenous_Interpreters_REPORT-05-2011.pdf

invitation from Centrelink to work with them on the design and review of their new internal review process, and I look forward to this[11].

However, by virtue of the size of the agency and the sheer number of its customers, problems do arise. Among these are:

- a failure to provide reasons for decisions
- a flurry of letters sometimes sent to customers that contain conflicting information
- not tailoring communication to individual circumstances, such as hearing, vision or cognitive impairment.

In September last year, my office published a report[12] looking at how three agencies involved in social security deal with clients with mental illnesses.

In one case study, a Mr E complained to my office that despite first contacting Centrelink to enquire about claiming a Disability Support Pension in 2006, he was not granted payment until 2008. Mr E had lodged a claim for compensation from Centrelink for this loss of entitlement, but his claim was refused. Following an investigation we asked Centrelink to reconsider Mr E's claim on the basis that, despite being told Mr E had a mental illness and was clearly having difficulty with the claim process, Centrelink staff did not try to help him complete his claim. Centrelink accepted our view, and agreed to pay Mr E compensation equivalent to his lost entitlement.

Our investigation showed that it is clear the agencies involved do focus, wherever possible, on providing discretion for staff to adjust to the requirements of customers who require flexibility as a result of a mental illness. However, the report made the following recommendations:

- greater consideration of a customer's barriers to communication
- more training for staff to identify customers with a mental illness
- encouraging customers to disclose a mental illness
- better recording of information about a customer's illness or barriers to engagement.

The problem that these examples illustrate is that poor communication creates a wall between agencies and the people they serve. So we must sweep away this obfuscation. Helping government do this by seeking to change the culture of poor communication is one of the things my office will be looking at over the next three to five years.

I am in discussion with the Plain English Foundation on what measures are required to make this happen, and last month I wrote to the Prime Minister suggesting we meet to discuss such a long-term, service-wide plan.

It is important to emphasise that while these communication problems are widespread through the public sector, many agencies are very responsive to our recommendations.

IMPROVING PERFORMANCE

In fact, some individual agencies are doing well. But it is vital that there is a unified, consistent approach across government. This is of particular importance when someone must deal with more than one agency in relation to a particular issue. It is in these instances that people fall through the gaps.

All three tiers of government must work cooperatively, including in partnership with the business and community sectors, to achieve improved outcomes for vulnerable and disadvantaged Australians. Just as agencies within each tier must work seamlessly.

Ahead of the Game reinforces the need for greater flexibility, collaboration and innovation by governments

11 *Centrelink: Right to Review – having choices, making choices*, March 2011 – http://www.ombudsman.gov.au/files/centrelink_the_right_of_review_having_choices_making_choices.pdf

12 *Falling through the cracks – Centrelink, DEEWR and FAHCSIA: Engaging with customers with a mental illness in the social security system*, September 2010 – http://www.ombudsman.gov.au/files/Falling-through-cracks_customers-with-mental-illness.pdf

if the challenges they face in delivering more citizen-centric outcomes for the Australian community are to be met. In my view, this especially applies to National Funding Agreements and National Partnership Agreements that come under the Council of Australian Government's reforms.

Among the recommendations of Ahead of the Game are that service delivery be simplified to make access to government services more convenient through automation, integration and better information sharing. Over time this would lead to:

- a 'tell us once' approach
- a service delivery portal that guides citizens through interaction with government and
- physical locations where citizens can access multiple services.

This would be grounded in a view of policy and service delivery that places the interests of citizens first.

One way in which agencies can make this happen is to shift their attitude towards complaints themselves. Many within the private sector still view their complaints areas as punishment details for errant executives rather than a strategic resource. Increasingly, the result of this approach is that these businesses are the first to go out of business. There's no such inducement for senior officers in the public sector, but perhaps there ought to be.

The reality is that, apart from being a way of measuring how socially inclusive an agency is being, complaints are rivers of gold: an almost limitless source of free advice.

Approaching complaints in this way was something I drew to the attention of the ACT Government last month, when I suggested they draw on this resource rather than invest significant sums of money contracting consultants to review their business performance.

This means making it easy for people to make complaints and ensuring that complaint-handling processes are not only set up to effectively resolve issues for individuals but to help identify systemic administrative problems as, or ideally before, they arise. More prevention, less cure.

Helping agencies improve their complaint-handling systems and make the most of complaints as a strategic resource is an area I would like to see my office develop. Along with helping bring about a seamless, whole-of-government approach to the matter.

A key issue I would also like to highlight is the importance of providing reasons for administrative decision making. This formed part of a submission my office recently made in response to the Administrative Review Council's consultation paper on Judicial Review in Australia.

A common cause of complaints made to my office is the adequacy of reasons provided by agencies.

Often an agency may make a decision that is perfectly appropriate, just badly explained. Even when the agency does not alter its decision, a proper explanation can reduce a person's concerns and reassure them that the correct process was followed and their views were taken into consideration. Sometimes a lengthy complaint process can be remedied with a simple apology.

It's my view that statements of reasons should always be in writing, set out in plain language, and include the relevant facts and material considerations that the decision-maker relied upon in making the final decision. Statements of reasons should also provide relevant information about rights of review, including internal review and statutory review mechanisms, where applicable.

EXPANDING THE SCOPE OF THE COMMONWEALTH OMBUDSMAN

The responsibilities of my office are continuing to expand. They now include the recently launched Overseas Students Ombudsman, and we are soon to become the Norfolk Island Ombudsman. Another role in the pipeline is responsibility for the Government's Public Interest Disclosure scheme, which we anticipate will be in place by the end of the year.

To fulfil these individual responsibilities, and better perform our bread-and-butter work of investigating and

remedying complaints, my office will be seeking to forge stronger, long-term partnerships with other integrity agencies to help better define our combined role as the fourth branch of government and give us more bite.

This approach will be particularly important in helping to tackle government corruption, which, given the somewhat disjointed arrangements Australia currently has in place, still tends to find its way through the cracks.

We will be examining these, and similar issues, at the Commonwealth Ombudsman National Conference in November. The conference will look at the role of integrity agencies in helping government and government agencies achieve better inclusion, community-focused service delivery and integrity of government.

Let me conclude by saying that improving social inclusion and service delivery as a whole are colossal tasks. Effecting the cultural change within single agencies is hard enough, but doing so across government can seem daunting. Harder, certainly, than talking about it here this afternoon.

But in a country facing significant social, economic and environmental issues over coming decades the consequences of not doing so are dire. For any and all agencies, it means going back to first principles and asking:

- are we placing the needs and wellbeing of the Australian community first, and does our service delivery reflect this in terms of improving social inclusion?
- are we communicating with people in a clear, accessible manner?
- do we have effective complaint-handling processes that enable us to learn from our mistakes and improve service outcomes?

Thank you.