

ANZOA Conference 2010

Improving operational efficiency and effectiveness

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Introduction

I must say at the outset that this is not intended to be a lecture on ways to improve the operational efficiency and effectiveness of Ombudsman organisations. I would not presume to give such a lecture in this company; to tell you what you already know, to teach you to ‘suck eggs’ so to speak. As members of ANZOA, we all observe the Benchmarks for Industry-Based Customer Dispute Resolution Schemes, Benchmark 5 being “Efficiency” and Benchmark 6 being “Effectiveness”. What I want to do is talk from the perspective of *my* experience, as Chief Ombudsman and head of the New Zealand Office of the Ombudsman, in trying to achieve improvements in the efficiency and effectiveness of that office. Hopefully some of what I say will nevertheless have resonance for you all.

I would also note that I am not an “efficiency” or “effectiveness” expert: I do not claim to head a totally efficient and effective Ombudsman organisation. In fact, I don’t know that this is within the realms of possibility for even the most high-performing Ombudsman organisation. The fact is that we do not work in a static environment; extracting efficiency and effectiveness gains is of necessity an ongoing and iterative process. There must be, as other speakers have noted already at this Conference, a constant process of renewal in order for us to remain relevant and responsive.

I would also note what we have done (and are doing) in the Office of the Ombudsmen in New Zealand will not be news to any of you. In many ways we are ‘behind the game’, and I cheerfully admit to borrowing heavily from the good work

that has been done in other Ombudsman organisations in other jurisdictions. To their credit, my colleagues in both industry and Parliamentary offices on both sides of the Tasman have been more than willing to share their experience and expertise, which goes to show the benefit of maintaining and supporting Ombudsman networks like ANZOA.

So why should we care about efficiency and effectiveness?

First of all, we should care because we are accountable to our stakeholders. As a Parliamentary Ombudsman I am accountable to Parliament for the performance of the office. While our accountability requirements may differ between country and state, we all have them. Among other things, I am required by the New Zealand Public Finance Act to provide information on our future operating intentions, including:

- the specific impacts, outcomes and objectives we seek to achieve or contribute to;
- how we intend to perform our functions and conduct our operations to achieve those impacts, outcomes and objectives effectively and within a changeable operating environment; and
- the main measures and standards we'll use to assess our performance and the cost-effectiveness of our interventions.

Secondly, we are responsible for ensuring proper administration in the agencies we oversight, and we therefore have a responsibility to model good administrative behaviour – including standards of efficiency and effectiveness. We would not be credible otherwise.

Finally, we are spending taxpayers' – or stakeholders' – money – and we are obliged to them to perform the best that we can and to keep them informed of our

performance. As Ombudsmen, we simply won't last long if we are not demonstrating an ongoing commitment to doing things better.

Drivers of efficiency and effectiveness

There are also internal and external drivers requiring increased efficiency and effectiveness, some of which we will all be facing, and some of which are particular to my office.

First, is the **increasing demand for services**. I know the New Zealand Office of the Ombudsmen is not alone in experiencing a significant increase in work over the last few years. Our current forecast is an approximate 22 per cent increase in complaints and requests for assistance received in the current financial year as compared with the previous one. We are not expecting that trend to reverse any time soon.

We've also talked before about the possibly unscientific but very real feeling that the matters we're being asked to adjudicate on are becoming increasingly complex. The only way we can manage this situation without a significant fiscal injection (which realistically we are unlikely to receive) is to try and extract more and better efficiencies.

Second, there is the **current economic environment**. Things are tight, and will remain so for the foreseeable future. The agencies we oversight will be required to do more with the same or fewer resources; to improve efficiency and redirect resources to the frontline. At the same time, members of the public who are struggling to cope in straightened financial circumstances will become increasingly reliant on government services and support. They have high expectations about the level of service they're entitled to receive, and if those expectations are not met they are likely to complain. This is probably a factor in the increased demand for Ombudsmen services, and can be expected to elevate complaint levels in the short to medium term.

Dame Sian Elias' comments yesterday about paying attentive care to the small matters and the ordinary punters and doing that effectively will provide social "glue" in times of stress really resonated with me as I'm sure it did with you.

Effective and efficient Ombudsmen oversight in these circumstances becomes critical, yet at the same time our interventions must be practical, relevant and proportionate.

Third – and this is specific to my office – we have been and are facing a "free and frank" appraisal of our operations in the **freedom of information jurisdiction**. This began with a paper by law lecturer and media commentator, Stephen Price and a research project and book published by Nicola White (appropriately called "Free and Frank"), and continues concurrently with a review of New Zealand's official information legislation by the Law Commission.

The Commission has just completed an initial consultation and published a summary of submissions received. In the first half of 2010 they will publish an issues paper identifying problems and proposed options for solutions. The issues raised in the public submissions were no surprise to us really:

- Submitters expressed frustration with the *"case by case"* approach (whereby each case is considered on its own merits, and one case will not necessarily set a precedent as it might in a court of law), saying it is time-consuming, resource intensive and can lead to inconsistency. They wanted clearer guidelines or examples about recurring requests, relying more on precedent or explicit presumptions as to release and withholding.
- A number commented that our investigation processes take too long, with one media agency saying *"the level of delay undermines the use of complaints as a useful sanction"*. One agency described *"a tiresome exchange of letters over a period of time"*. We cannot but accept that such perceptions undermine faith in our office and the system generally.

- There was agreement that more guidance and training needed to be available. Some were not aware of the guidance and training provided by our office already, or were not happy with it. One, somewhat acerbic submitter, in particular noted that our guidance *“adds complexity without clarity”*. Another requester said there was a *“lack of championing of the OIA since the decommissioning of the Information Authority”* and described the Ombudsmen as *“ambulance men”*.

Being aware of these sentiments – and understanding them to a degree – there was (and is) no option but for us to get on the front foot. We are of the view that the official information legislation is generally sound, and the case-by-case approach is one of its strengths. We do not want the legislation ‘watered down’ in that respect.

Fourth, (and I almost blush to admit it as someone who, in a previous incarnation, lived and died by audience surveys) we had the results of our first **survey of complainants and agencies** (I quoted one of the complainants at the beginning of my address). They said some very nice things about our professionalism, competence and independence. However, the survey also revealed some uncomfortable truths. Complainants and agencies were concerned about the length of time investigations took. They felt our communications with them could be clearer and easier to understand. It was also apparent that we weren’t reaching all segments of the population – the majority of complainants surveyed being male, European, and over 40 years of age.

We were also receiving **feedback from our auditors** that our performance information focused too much on our *“activities”*, without identifying why we were doing those activities – our outcomes – and demonstrating how those activities contributed to the achievement of our outcomes. This is basic stuff in a *“managing for outcomes”* world, but we needed to start from scratch.

Fifthly, we are promoting a review of the Ombudsman Act and, not too coincidentally, some of the suggestions made yesterday by Mai Chen are reflected in our initial thinking.

Finally, I believed that we needed to “shake the tree” a bit and reposition the Office to better match the needs of complainants, reflect the reality of modern agency structure and practice within a greatly altered State Sector, and bring modern management practice, quality assurance and consistency of decision making into the office. The latter has involved establishing clearer lines of devolved decision making and accountability, and developing a much needed research and professional development capability to future proof the office and better support the Ombudsmen in their work and decision making. Following from this is a strengthened capacity and capability to actively assist the agencies we oversight to “put it right” in the first place, more effectively.

Measuring efficiency and effectiveness

At this point, I must mention – but thankfully sidestep – the thorny issue of how we measure our efficiency and effectiveness. I must admit to relief in noting that the topic of my address was *improving* efficiency and effectiveness, rather than *measuring* it.

We know, in theory, why Ombudsman interventions are effective. The second Chief Ombudsman, Sir George Laking, summed up the principles rather nicely:

There is ... a psychological value in the existence of the Ombudsman’s office. Official decisions are likely to be the better if the decision-making official is alert to the fact that his judgment is subject to scrutiny. Local authorities also tend to develop improved systems for the handling of grievances within their own organisations and where this is being done, complainants may be expected to receive fairer

treatment in the first instance. At the same time, aggrieved members of the public may gather confidence to challenge decisions in the knowledge that the service of an independent, impartial arbiter is available to them.

But did anyone turn around to Sir George and say “well prove it”?

We have all developed various measures to differing degrees of effect, such as cases closed; time taken to close cases; and number of recommendations made and actioned. We report against these measures. We benchmark our performance against ourselves and sometimes with other agencies; and undertake internal reviews, or complainant and agency surveys.

However, there are some inherent difficulties in measuring Ombudsman effectiveness. The latest issue of the Journal of the International Ombudsman Association is devoted to these. Mary Rowe, Ombudsperson and Adjunct Professor of Negotiation and Conflict Management at the MIT Sloan School of Management, notes in that journal, that one of the tricky issues is figuring out “*who should get the credit*” in a particular case. Many of an Ombudsman’s achievements come through the action of others, and not always at an Ombudsman’s explicit direction. As a result of an Ombudsman’s intervention an agency and complainant may settle a concern directly. One Ombudsman investigation may lead to a process improvement that affects numerous individuals who may otherwise have had a legitimate complaint. The ‘effects’ of an Ombudsman may be diffuse and intangible, and therefore difficult to measure. The fact that individuals can access free and independent complaint resolution mechanisms may also help avoid the escalation of costs associated with protracted disputes. But how do we measure those savings?

Mary Rowe has some ideas for communicating Ombudsman effectiveness that may be helpful, for instance:

- Effective tracking of complaints to identify emerging problems and potential solutions so the office becomes known for providing helpful “heads up” and support (and that was mentioned yesterday in the discussion of the Ombudsmen’s toolbox)
- Inclusion in general climate surveys to test knowledge, use and value of Ombudsman organisations; and
- Publically reporting the five or six most serious problems and issues in the past year: cases that resulted in significant outcomes or achievement of efficiencies can go some way to demonstrating the cost-effectiveness of Ombudsman interventions.

Professor Linda Reif of the Law Faculty of the University of Alberta in her book on *The Ombudsman, Good Governance and the International Human Rights System* focussed in her final chapter specifically on evaluating the effectiveness of a classical or hybrid Ombudsman by discussing some important indicators. They were:

- Democratic governance in the State
- The independence of the institution from government (or industry)
- The extent and adequacy of the powers given to the institution
- The accessibility of the office to members of the public
- The level of co-operation of the institution with other bodies
- Operational efficiency (level of financial and human resources)
- The accountability and transparency of the institution,
- The personal character and expertise of the persons appointed to head the institution
- The behaviour of government in not politicizing the institution and having a receptive attitude toward its activities
- (or, in terms of ANZOA’s membership – the provision of a governing board or other mechanism representative of industry and consumers to maintain independence from direct influence of the particular sector) and
- The credibility of the office in the eyes of the populace.

Frank Fowlie provides another approach in his work *A practitioner's Guide to Evaluating Ombudsman Offices*.

John Wood, who is attending this Conference, is vastly more familiar than I am with the range of evaluative techniques for discerning and measuring the efficiency and effectiveness of Ombudsman's offices and I hope he'll contribute to the discussion following this presentation.

Many schemes also subject themselves to periodic evaluations by an independent reviewer. The New Zealand Office of the Ombudsman has not yet done that, but I live in hope that when we have settled into our new structure and way of working that we will have the fortitude to do this on a regular basis.

Improving efficiency and effectiveness

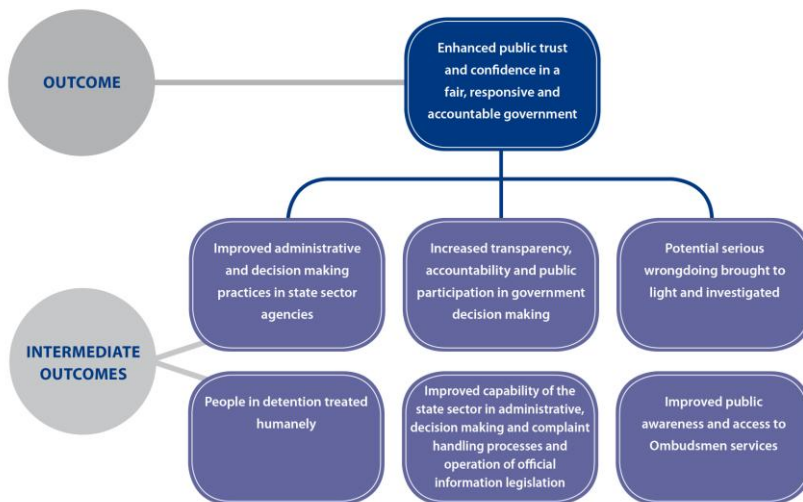
Back to basics

Returning to the more comfortable topic of my experience in improving the efficiency and effectiveness of the New Zealand Office of the Ombudsmen, you heard me say earlier that we'd received some criticism regarding our performance framework. Without a cohesive performance framework it was difficult to demonstrate to everyone's satisfaction that we were operating efficiently and effectively.

So we got back to basics and thought about:

- what we have to do;
- what we want to do; and
- why we have or want to do it. And importantly
- was our structure and management relationships appropriate for an enhanced future

The result was this:



an overall outcome sought of enhanced public trust and confidence in a fair, responsive and accountable government, and six intermediate outcomes.

Four of these intermediate outcomes reflect what we *have* to do under our statutory jurisdictions – the Ombudsmen Act, the official information legislation, the Protected

Disclosures Act, and the Crimes of Torture Act. Two of them reflect what we *want* to do, in terms of freeing up capacity to make some proactive, systemic improvements to state sector capability in administrative, decision-making and complaints-handling processes, and improving public awareness of and access to Ombudsmen services. We also identified some strategic priorities for the short-medium term, including:

- improving work practices to deliver faster, better and more consistent responses to complaints, and identifying measures to streamline complaints handling and investigation processes;
- developing ways of better communicating key Ombudsmen decisions and settled principles so that agencies and requesters know the “rules” and can predict how they might apply in particular circumstances; and
- promoting greater openness and proactive disclosure of official information where appropriate to reduce the administrative burden and transaction costs of reacting to individual requests for similar information.

Like I said, this is not rocket science, but it is a significant shift in mind-set for this office. Historically, we were reluctant to do anything other than what we were specifically charged to do by Parliament – that meant waiting for something to go wrong before doing anything about it (the ‘ambulance men’ as we were referred to earlier). We were reluctant to undertake public awareness-related activities because we did not want to be seen as ‘touting for business’, yet we cannot hope to be effective if we are not reaching the diversity of communities that make up New Zealand society. We were also reluctant to give people the ‘answers’, even in a general sense, in case we were conflicted if the matter ultimately came to us for determination. But what we have realised is that if we don’t fill the gap, someone else will, and we are not sure that we would like what they might fill it with. We have therefore implemented organisational change – the way we are structured to deliver on our mission; operational changes to our overall methodology and extending our range of interventions to match what most of the rest of you are

already doing in terms of education and outreach. In relation to my topic and more specifically, we have made changes in our approach to:

- speed up the complaints process and make it less resource intensive for us and for agencies; and
- provide better guidance to agencies and not leave them guessing the right answers.

Speeding up the complaints process and making it less resource intensive for us and for agencies

Under the first heading, we have established an early assistance and rapid response group, which handles the large number of straightforward matters that are capable of informal resolution, and operates efficient 'gateway' or referral mechanisms when complainants raise matters that are outside our jurisdiction, or capable of resolution in a more appropriate way. It also gives us the capacity to formally investigate complaints urgently when matters of public or private interest require it.

We are trialling a streamlined investigation process for this purpose also. At the moment, this is operating in the parliamentary sector, in respect of official information complaints against Ministers or by Members of Parliament. This is in recognition of the significant public interest in appropriate and timely access to information about the workings of executive government by elected representatives, the media and others.

There are statutory reasons why official information investigations can take time. The legislation provides that an Ombudsman's requirement must be met as soon as reasonably practicable and within 20 working days of receipt. When we seek the information at issue and a report on the agency's decision, it very often takes the maximum time to respond, and in some cases longer. It can take longer still if we decide there is insufficient information on which to form a view. Agencies then have a further 20 working days to respond to any provisional view formed.

To streamline our investigation process, we now seek only the information at issue, within 5 or 10 working days. Any issues are worked out face-to-face in an early meeting between investigators and officials, enabling us to move quickly to form a provisional view on the merits of the decision. There were some initial reservations about the process among some of the central agencies. However, they were reassured by the operation of the process in practice, when the matter was resolved without *“a tiresome exchange of letters”* (as one submitter to the Law Commission described it). This creates efficiencies internally, and it has also reduced the time and effort that ministerial offices and supporting agencies are required to devote to Ombudsmen investigations. It is of course reliant on investigators with significant experience and excellent and intelligent judgment.

We are beginning to trial a more streamlined process in Ombudsmen Act investigations also, where in appropriate cases we call for the relevant papers first before deciding whether it is necessary to seek a full report from the agency.

As Mai Chen implied yesterday, in the Ombudsmen Act context, we are without the statutory timeframes for responses to Ombudsman requirements. Unlike the official information legislation, the Ombudsmen Act specifies no particular time period within which an agency must comply with an Ombudsman’s requirements. So whether Ombudsmen’s requirements should be time-bound is one issue we would propose to consider in any review of the legislation. In any event, we must get better at identifying when delays are due to agency inaction and consider publicly reporting that information as an incentive for timely compliance. Our enhanced Case Management System will now allow our newly re-established Team Leaders to track and review the aging of cases, and more consistent file management with investigators should help obviate the delays complained of.

Providing better guidance to agencies and not leaving them guessing

In the past we have used case notes to disseminate information about our decisions. However, the criteria for their selection were not always clear. The cases were always interesting, but often they turned on their particular facts, and may not have demonstrated as well as they may, the Ombudsmen's general approach to particular issues or types of information. A number of principles of general application have developed over the years. We want to get better at disseminating these principles to assist both agencies and requesters.

For instance, the Ombudsmen have received a number of requests to review decisions by local authorities to withhold information about contracts entered into to secure large commercial events in their areas (for instance, the Ellerslie Flower Show in Christchurch, and the LA Phoenix game in Auckland). So last year we published our general approach to requests for information about local authority events funding. We are aware of a number of other general areas where subject-specific guidance could usefully be provided in the future.

We have also developed and are delivering on request, and free of charge, training programmes to agencies on their obligations under the official information legislation. Our assistance in this regard is increasingly sought, and gratefully received. Our training experience has confirmed what we've known anecdotally for a long time – that many people required to work with the legislation have a less than adequate knowledge of its proper operation. In future we want to ramp up training on good decision-making and assist in the development of robust complaints-handling processes within agencies. We have already worked with 3 major agencies in doing this with good results. The next step in that process is a follow up audit to see how the systems are working and, where we have made suggestions for improvement both to the system and in respect of individual complaints, that action has in fact been taken.

We are also using our established relationships with state sector Chief Executives to exhort greater openness and proactive disclosure of official information in order to reduce the administrative burden of responding to requests. By 'proactive

disclosure' we mean something more than releasing information once they have received a large number of requests. We are encouraging agencies *before* they embark on significant policy or legislative projects to think about the kind of information they will generate, and how and when that information will be disclosed to address the public interest in transparency, accountability and participation. On three occasions in just the past couple of months Chief Executives have approached my office for advice on major policy projects and how to manage the release (or withholding, as appropriate) of information in connection with those projects well in advance of having received requests. We encourage this kind of forward-thinking because ultimately it should mean agencies can respond more efficiently and effectively to requests for official information – they can make decisions promptly, and with appropriate regard for competing public interest considerations favouring withholding and disclosure. This should have flow-on effects for us in terms of reduced complaint numbers.

Finally, we are looking at greater use of our Ombudsman Act powers to investigate matters of our 'own motion' – that is, without necessarily waiting for a complaint. In a sense this is exhibiting the kind of proactive approach we're encouraging agencies to take in the freedom of information area. At the moment, our resources are concentrated on the corrections sector, with own motion investigations into:

- the efficiency and effectiveness of procedures for prisoners to complain to the Department about Corrections Inmate Employment and its staff;
- the treatment and conditions of segregated prisoners; and
- the provision, access and availability of health services to prisoners.

This 'proactive' or preventive approach is also reflected in our recently-added functions under the Crimes of Torture Act, as a National **Preventive** Mechanism, providing ongoing monitoring and inspection of facilities where people have been detained against their will under various enactments.

Closing remarks

In the end, continued confidence in the Ombudsman's office rests on having clearly articulated outcomes, supported by a "fit for purpose" structure; a demonstrably high level of trust and integrity between the office and those it deals with; capable and competent staff, transparent and robust processes; impartiality and fairness; confidentiality; and a credible review process.

As other speakers have noted, the role of the Ombudsman in both the private and public sector is vital to a well functioning democracy, and to the maintenance of high standards of conduct in government and business. The economic and social health of our countries depend on all our institutions functioning as well as they can and dealing in a principled way with their consumers. Our role is to ensure that they do.

To end on a lighter note – Professor Geoffrey Sawyer then at the Australian National University once said that: "For modern states, an Ombudsman resembles a spouse – there is no absolute guarantee of permanent happiness but life will be quite incomplete without one".