

10th World Conference of the International Ombudsman Institute

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Session I: Innovative practices in upskilling agencies and improving administrative practices

The Western Australian Integrity Coordinating

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Introduction

It is a great pleasure to participate in this session as part of the 10th World Conference of the International Ombudsman Institute. I take this opportunity to express my sincere thanks to Dame Beverly Wakem, President of the IOI, Amy Abel, Conference Manager, the Conference Organising Committee and everyone involved in organising this conference for the work that they have undertaken.

Developing and executing a major international conference, alongside of our other important IOI and regional meetings, is a very significant accomplishment, particularly given the fact that the program has such a breadth and depth of relevant, interesting and thoughtful sessions that we have been enjoying over the last few days.

In this session we are discussing innovative practices in upskilling agencies and improving administrative practices and, in particular, Bev asked me to speak to you about the role of the Western Australian Integrity Coordinating Group.

To do so, I will set the scene for discussing the Integrity Coordinating Group by beginning with a brief exploration of what we mean by the word integrity, before turning to consider why integrity matters. I will then discuss the role of the Group, before making my concluding remarks.

What do we mean by integrity?

I want to start with a brief exploration of what we mean by the word integrity. An initial question that obviously arises is whether we are referring to personal integrity or institutional integrity (or, perhaps, both). It seems clear enough that when we are considering government, our focus is on institutional integrity rather than personal integrity. There is, however, a very strong interplay between institutional integrity and personal integrity. The former can be established in principle, legislative remit, structure and practice, but not able to be realised successfully if it lacks occupants without the latter.

But what do we mean by the word integrity? There is reasonably clear agreement that if public officials act in a way that is corrupt, for example, planning officials accepting bribes or other favours, to give planning permission inappropriately, we can say that they have acted without integrity. Indeed, the institutionalising of tackling corruption has been the most

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visible, and sometimes controversial, aspect of the move by the state to fortifying integrity in government.

What though of other conduct that can be seen as less than outright corruption? What of conflicts of interest, pecuniary or other benefits that do not appear on their face to be outright corruption or simply a broad category of public administration sins that can be considered improper conduct?

If the conceptualisation of integrity as meaning the absence of corruption is axiomatic, it seems to me that the call to a wider concept of integrity, one that includes pathologies not just of corruption but other forms of misconduct and improper action, seems similarly to be entirely unremarkable – to act with either or both improper motive or conduct is surely to act without integrity. Integrity recognises a band of behaviour, and within that band, a range of acts might properly be characterised as actions lacking in integrity.

I favour a wide definition of the word integrity – one that incorporates outright corruption, misconduct and a range of improper practices. I do so particularly when considering that the assessment we are making is of public officers acting in a public domain, not private citizens acting in a private domain. Public officials are entrusted by the public to act solely in their interest, to be seen to be, and actually be, proper, honest and transparent in their dealings and, importantly, are paid by those members of the public, through taxation, to so do.

Why integrity matters

Before discussing the role of the Western Australian Integrity Coordinating Group and how it promotes integrity in government, particular through its *Integrity in Decision Making* framework, I propose to pause briefly to consider why we place an emphasis, indeed a significantly increasing emphasis over the last few decades, on the importance of integrity, including its recognition in our system of government and its importance to the proper administration of the laws of Parliament.

One explanation for the focus on the importance of integrity in government must lie with the expanding functions of government, including functions that involve covert or coercive powers or the deprivation of liberty. These sorts of powers will necessarily (and, I think, properly) attract interest in the assurance of integrity in the exercise of these powers.

Another explanation, is the appeal of the new domain of accountability agencies - acting to ensure integrity, as opposed to the old domain - acting to ensure procedural compliance. As Professor AJ Brown has noted “public accountability is all about compliance ... the concept of integrity is all about substance, inextricably linked with ideas of truth, honesty and trustworthiness, whether applied to individuals or institutions”.

Linked to this explanation, and one as familiar to Aristotle as it would be to modern day writers, integrity has clear intrinsic value – it is inseparable from the idea that it is better in any walk of life, including life serving others, to act reliably and with virtue, with fidelity and honesty, responsibly and appropriately, with a clear sense of proper, legitimate purpose and unaffected by the corruptive and perverse.

Integrity in government also matters for its instrumental value – the practical consequences that can be observed from its protection and promotion in civil society. In its most recent

2011 Prosperity Index, the Legatum Institute assessed 110 countries, representing approximately 90% of the world's population, in terms of a series of measures, such as whether a country possesses "an honest and effective government that preserves order and encourages productive citizenship" or whether it features "transparent and accountable governing institutions". What becomes quickly apparent about those countries at the top of the Prosperity Index is that they are countries that have fundamental adherence to the rule of law, a significant absence of institutionalised corruption and high levels of integrity in governance. The exact opposite correlation is observed at the bottom of the Prosperity Index.

I do not wish to be overly triumphalist about the success of modern democratic government characterised by a separation of powers, respect for the rule of law, hallmarked by integrity and with well established, sophisticated accountability frameworks. This form of government has faults. Furthermore, even a passing acquaintance with comparative constitutionalism suggests that there are variations on how to constitute the accretion and exercise of state powers in a way that is characterised as being done with integrity. Suffice to say, however, and to paraphrase Winston Churchill, that government systems that enshrine integrity within its framework are the worst form of government, apart from every other form of government that have ever been tried.

The Integrity Coordinating Group

Having considered the importance of integrity, I now want to turn to the idea of the role of the Ombudsman and fellow integrity agencies. The Ombudsman is a core institution of modern government with a role to promote and protect human rights, contribute to the maintenance of the rule of law and as a pathway to accessible, timely and effective administrative justice. The Ombudsman does so a variety of ways, including by investigating complaints from citizens, through investigations of its own motion, through regular or special audit and, increasingly, through a range of monitoring, inspectorate and supervisory roles, often related to the exercise of coercive or covert powers or the deprivation of liberty.

A further key role for the Ombudsman is to collaborate with fellow integrity agencies, with one such example being the Western Australian Integrity Coordinating Group, or ICG. The ICG was established in January 2005 to promote and strengthen integrity in Western Australian public bodies and this remains its primary purpose. The ICG is not a separate integrity agency with its own statutory remit, rather it is an informal collaboration of the Corruption and Crime Commission, Public Sector Commissioner, Auditor General, Ombudsman and Information Commissioner. While the work of each ICG member agency is different, and each office has specific and distinct jurisdictions, at the heart of each office is the concept of integrity in government. The heads of each ICG member agency meets four times a year, with chairing responsibility rotating annually and the group is supported by regular meetings of senior officers of each of the agencies.

The ICG defines integrity as earning and sustaining public trust by:

- Serving the public interest;
- Using powers responsibly;
- Acting with honesty and transparency; and
- Preventing and addressing improper conduct.

Putting the concept of integrity into the day to day practice of public administrators, the Western Australian Integrity Coordinating Group suggests that integrity is demonstrated by:

public sector employees who serve the public interest with integrity by avoiding actual or perceived conflicts of interest and not allowing decisions or actions to be influenced by personal or private interests; use their powers for the purpose, and in the manner, for which they were intended; act without bias, make decisions by following fair and objective decision-making processes and give reasons for decisions where required; and behave honestly and transparently, disclosing facts, and not hiding or distorting them. This includes preventing, addressing and reporting corruption, fraud and other forms of misconduct.

The ICG promotes and strengthens integrity in Western Australian public bodies in three principal ways:

- First, by encouraging and supporting research, evaluation and policy discussion to monitor the implementation of integrity and accountability mechanisms in Western Australia, and other jurisdictions, nationally and internationally;

This first function reflects the desire of ICG members to be self-reflective in terms of the theory, aims and outcomes of integrity in governance. It also gives ICG members the capacity to work with universities, ensuring the scholarly thinking and practice can meet for mutual benefit. It has also led to further ideas, such as an ICG intern – a university student employed by one of the ICG members who undertakes a rotation in each of the ICG agencies over a period of two years. My agency hosted the first of these students in what has become, in a very short period of time, a very popular program.

- Second, by ensuring that there is operational cooperation and consistency in communication between the ICG members; and

In relation to this second function, it will be evident to most conference delegates that there can be an overlap between the functions of integrity agencies (as indeed there can be overlap between the integrity functions among the existing branches of government). For example, in Western Australia, my office, like most Ombudsman, can undertake own motion investigations, however these investigations could potentially, from time to time, explore similar issues to those being quite properly pursued in a performance audit undertaken by the Auditor General or an inquiry of the Public Sector Commissioner. It is for these reasons, among others, that a regular forum for discussion of work being undertaken can ensure efficiency and effectiveness in operations – avoiding duplication, but also enhancing work through collaboration.

- Third, by undertaking education activities on integrity issues within the public sector.

The demands of modern government present a complex and crowded space of stakeholders, functions, accountabilities, ideas and priorities competing for the attention of the heads and staff of government agencies. In this context it is critical that integrity institutions are able to gain the interest of agencies. To do so, it is vital that education products are adapted and suitable for modern government and are innovative.

As part of this third function, the ICG maintains a website, undertakes an annual forum attended by the CEOs and senior staff of much of the public sector and produces information and products to develop the skills base of public sector agencies. These products include information on conflicts of interest and the *Integrity in Decision-Making* framework.

Launched in June 2011, the *Integrity in Decision-Making* framework seeks to promote the importance of, and provide knowledge and skills to agencies about, integrity in decision making. The *Integrity in Decision Making* framework is designed to be a comprehensive set of information sheets and easy to use practical tools in the form of checklists that is sufficiently detailed and robust that it will effectively increase the skills, knowledge and rigour of integrity protection at an agency level, yet not be so detailed or complex that it is burdensome or cumbersome to adopt and use. More specifically, the framework consists of a Checklist for Decision Makers, a Checklist for Public Authorities, an overarching information sheet titled *Integrity in Decision Making* and four information sheets addressing the key elements of Power, Principles, Proper Process and Proportionate Outcomes.

Conclusion

In conclusion, the conference theme asks us to focus on Ombudsman in the 21st century. In doing so, we can draw upon the development of the Ombudsman institution – an institution half a century old in this country, 40 years of age in Australia and over 200 years old in Europe. Indeed, the idea of institutional integrity oversight has an older tradition again, if we consider the control branch within the Chinese system of government, a modern example of which is readily on display in the Control Yuan of Taiwan.

Building on this rich history of the institution of the Ombudsman, as we look to the Ombudsman institution of today, and the future, we find that we have become very familiar with the idea of integrity oversight. But, as former Australian Commonwealth Ombudsman Professor John McMillan and his co-author Ian Carnell have observed, “the familiarity of this model of independent review should not detract from the profound nature of this change in government”. This profound change sees the role of the Ombudsman cast widely - as a promoter and protector of human rights, a contributor to the maintenance of the rule of law and as a pathway to accessible, timely and effective administrative justice. Through the performance of its functions, the Ombudsman has become an important procedural safeguard against the abuse of integrity in the modern State.

A further key role for the Ombudsman is to collaborate with fellow integrity agencies, with one such example being the ICG.

Both separately and collaboratively, the Ombudsman has a role to encourage, educate and equip government agencies to ensure that they have the skills to respond appropriately to complaints and allegations of misconduct, to improve over time, their administrative practices, and to ensure that they promote integrity in the administration of the laws of parliament.

The ICG and similar mechanisms in other jurisdictions, represent innovative ways for this integrity promotion work to be undertaken collaboratively.

Ultimately, this is a most vital of endeavours as history has, in my view, decisively demonstrated that societies that enshrine integrity in their public institutions are the ones that

are the most stable and successful. They are the societies where, among other things, prosperity is the greatest, opportunities for advancement are their strongest, health, education and environmental outcomes are the strongest and safety-nets for vulnerable or low-income citizens, the most generous and sustainable.