THE FUTURE OF THE RELATIONSHIP BETWEEN PARLIAMENTARY OMBUDSMEN AND INDUSTRY OMBUDSMEN

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I have been asked to talk about the future of the relationship between Parliamentary Ombudsmen and Industry Ombudsmen. The topic suggests, I think quite accurately, that the relationship is at a crossroads. Cold war, an uneasy truce, or very positive relationship. Where do we go from here?

I am pleased to say in New South Wales, the relationship between Parliamentary and Industry Ombudsmen falls into the very positive relationship category. I am a member of the NSW Ombudsman network, an informal group which meets periodically, and consists of the heads of complaints bodies, including the NSW Ombudsman, Health Care Complaints Commissioner, Legal Services Commissioner, the Heads of the Anti-Discrimination Board and the ICAC. Statutory officer or Industry Ombudsman – we have a great deal in common, and find these high level meetings very useful for discussing common operational and policy issues.

This Ombudsman network led to the establishment of the Joint Initiatives Group (JIG). This group is made up of senior staff of all our organizations, who meet periodically on specific projects and issues, particularly training, professional development, public information and outreach activities. Through JIG, our staff have shared training courses, and information stalls at community events.

The issue of statutory or industry status has been of less relevance than the similarities. In practice, industry ombudsman schemes have added another dimension to the spectrum where statutory offices already demonstrate differences from each other.

At one end of the spectrum are **statutory** offices with jurisdiction over **government** authorities, eg the Commonwealth Ombudsman At the other end are **private** ombudsman schemes with jurisdiction over **private** companies, eg Banking Industry Ombudsman. You could see these as the most pure examples of statutory and industry schemes.

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However, the real picture is more complicated. In between these extremes we have:

- **A statutory** office with jurisdiction over **private** companies, the Private Health Insurance Ombudsman

- **A statutory** office with jurisdiction over **government and private** bodies, the NSW Health Care Complaints Commission.

- **A private** industry ombudsman scheme with jurisdiction over both **government** authorities and **private** bodies, the Energy & Water Ombudsman, NSW.

I note that the NSW Ombudsman used to be at the same end of the spectrum as the Commonwealth Ombudsman. But it has moved away from the pure model, since in its child protection and disability responsibilities, the Ombudsman now has jurisdiction in relation to non government child and disability services, in addition to its traditional jurisdiction over NSW government authorities.

The Parliamentary Ombudsman for Tasmania is also the Electricity Ombudsman and the Health Care Complaints Commissioner for the state, so Jan O'Grady covers pretty much everything that moves, public or private.

The NSW Ombudsman had jurisdiction over the public sector electricity and water utilities, and under a Memorandum of Understanding between us, retains the right to intervene in a matter if necessary. In practice this does not happen, and utility complaints are regularly, and I suspect happily, referred to the Electricity and Water Ombudsman by the NSW Ombudsman's office.

So what is the point of all this? I am suggesting that the division between parliamentary and industry ombudsmen has become fairly blurry in places, and that a discussion about the future of our relationship is very timely.

I suggest that if a parliamentary ombudsman walked into the office of the Energy & Water Ombudsman, NSW or the other energy ombudsman schemes, they would feel pretty much at home. Industry Ombudsman schemes subscribe to the *Benchmarks for Industry Based Customer Dispute Resolution Schemes* released in 1997 by the Federal Minister for Customs and Consumer Affairs. In his foreword, the Minister, Chris Ellison, said that Australia was fortunate that many industries have taken the initiative to develop dispute schemes. It is not surprising that schemes have developed in significant consumer areas like banking, telecommunications, utilities, insurance and financial services.

There are six benchmarks:

- **accessibility:** the scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use, and having no cost barriers;

- **independence**: the decision making process and administration of the scheme are independent from scheme members;

- **fairness**: the scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it, and by having specific criteria upon which its decisions are based;

- **accountability**: the scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems;

- **efficiency**: the scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance;

- **effectiveness**: the scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

I believe these benchmarks apply pretty much across the board to both parliamentary and industry ombudsmen.

So where do we go from here? Parliamentary Ombudsmen have long acknowledged the importance of meeting with each other to discuss issues in common, to provide mutual support, and to encourage the exchange and development of ideas.

The utility Ombudsmen from Australia and New Zealand meet quarterly as ANZEWON, the Australia and New Zealand Energy & Water Ombudsman Network, and we have recently completed a comprehensive and extremely valuable benchmarking exercise between our organisations.

Do we have things to learn from each other? We are all very small organisations compared to the organisations within our jurisdiction. We also stand apart from those organisations, raising the question about where we obtain support if it is not from each other.

Some possible scenarios:

- parliamentary ombudsmen expand their association to include non statutory ombudsmen;

- industry ombudsmen set up their own association, and there is contact between the two associations;

- there is little or no contact between parliamentary and industry ombudsmen and they go off on quite separate paths.

I would like to pre-empt discussion by suggesting that the last scenario should be eliminated immediately, as I think this would be a huge loss to both groups. I am also not a great fan of re-inventing the wheel, and the idea of one association has a lot of merit. However, the idea of a partnership has not achieved much momentum, with

the result that industry ombudsmen have recently commenced discussion about the formation of a separate association.

Any partnership must be a real one. Industry ombudsmen are not interested in being poor relations in any combined association. Industry ombudsmen have established their schemes as significant ADR bodies which strongly uphold the principles of administrative law, fairness, and good decision making.

Unlike parliamentary ombudsman who are clearly defined in law, I acknowledge that there is an issue about definition for industry ombudsmen. For example, a local Council in Sydney has established an "internal Ombudsman" for ratepayer complaints. This one is easy – as an internal complaints mechanism within the Council administration, this mechanism lacks the fundamental principle of an ombudsman's office – independence, and is therefore not only a significant oxymoron, but a very misleading representation of ombudsman schemes.

But Australia does not have to design the template. There are existing models which have already tackled these kinds of issues with apparent success.

For example, in 1991 a conference of United Kingdom ombudsmen from both the public and private sectors was held, at which it was agreed to set up an association for ombudsmen, their staff, and other organisations and individuals, such as voluntary bodies and academics interested in the work of ombudsmen. The Association came into being in 1993 as the United Kingdom Ombudsman Association and became the British and Irish Ombudsman Association when membership was extended to include ombudsmen from the Republic of Ireland in 1994.

So I will leave you with a very respectable model to assist in our discussions.

As Ombudsmen, we are all involved in highly sensitive negotiation and dispute resolution – it is our core business. It cannot be beyond us to sort out the future relationship between parliamentary and industry ombudsmen.