



# Social Development Committee

## Social Development Committee

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Hon Judy Spence MP  
Chair  
Committee System Review Committee  
Parliament House  
George Street  
Brisbane Q 4000

Dear Ms Spence

### **Review of the Committee System of the Queensland Parliament – call for submissions**

Thank you for your letter of 8 April 2010 inviting the Social Development Committee (the committee) to make a submission to the review of the committee system of the Queensland Parliament. The committee's submission is attached.

If you require any further information please do not hesitate to contact the committee's Acting Research Director, Ms Joanna Fear on 3406 7689.

Yours sincerely

Lindy Nelson-Carr MP  
Chair

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# Social Development Committee Submission to the Review of the Committee System of the Queensland Parliament

## Introduction

This submission relates to the Committee System Review Committee's consideration of 'the effectiveness of the operation of the committee structure of the 53<sup>rd</sup> Parliament following the restructure of the committee system on 23 April 2009.'

The Social Development Committee (the committee) is one of the parliamentary committees established by resolution of the Legislative Assembly on 23 April 2009.

The committee has responsibility for monitoring and reporting on issues in the policy areas of health, education and training, social welfare services, community development, housing, child safety and Aboriginal and Torres Strait Islander policy.

The committee is also responsible for monitoring and reporting on three independent statutory bodies, namely the Family Responsibilities Commission, the Commission for Children and Young People and Child Guardian and the Health Quality and Complaints Commission.

Since its establishment, the committee has received two referrals from the House<sup>1</sup> and has held formal meetings with each of the commissions and reported on those meetings.<sup>2</sup>

In this submission, the committee highlights two issues that have arisen in relation to its role in monitoring and reporting on the three commissions, namely:

- the ability of the relationship between an independent statutory body and a parliamentary committee to enhance the independence of the statutory body; and
- the ability of a parliamentary committee to consider complaints about an independent statutory body's handling of individual cases.

Additional comments relating to the opportunity to debate committee reports and the resourcing of committees are also included.

## The committee's oversight role generally

The resolution establishing the committee provides that, with respect to each commission, the committee has the following functions:

- to monitor and review the performance by the commissioner of the commissioner's functions;

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<sup>1</sup> See: Queensland Legislative Assembly. Social Development Committee, *Chronic Diseases in Queensland*, Report 2, January 2010; Queensland Legislative Assembly. Social Development Committee. *Inquiry into Addressing Cannabis-Related Harm in Queensland : Issues Paper*, March 2010

<sup>2</sup> Queensland Legislative Assembly. Social Development Committee. *Meeting with the Commissioner for Children and Young People and Child Guardian held on 13 November 2009*, Report 3, April 2010; Queensland Legislative Assembly. Social Development Committee. *Meeting with the Health Quality and Complaints Commission held on 13 November 2009*, Report 4, April 2010; Queensland Legislative Assembly. Social Development Committee. *Meeting with Family Responsibilities Commission held on 26 March 2010*, Report 5, May 2010

- to report to the Legislative Assembly on any matter concerning the commissioner, the commissioner's functions or the performance of the commissioner's functions that the committee considers should be drawn to the Legislative Assembly's attention;
- to examine the annual report tabled in the Legislative Assembly and, if appropriate, to comment on any aspect of the report; and
- to report to the Legislative Assembly any changes to the functions, structures and procedures of the commission that the committee considers desirable for the more effective operation of the commission or the Act which establishes it.

The committee has adopted the following processes to fulfil its obligations to monitor, review and report on the commissions:

- hold two general meetings with the commissions each year;
- time the meetings so that one follows the tabling of the annual reports and the other precedes the estimates process;
- ask written questions on notice and require written answers to those questions before the meetings;
- meet with the commissions and ask follow up questions without notice; and
- report to Parliament on the proceedings and include in the report the written questions on notice, answers to those questions and a transcript of the meetings.

These processes are based on those adopted by the Legal, Constitutional and Administrative Review Committee (now the Law, Justice and Safety Committee) in relation to the Ombudsman and the Information Commissioner.

### **Enhanced independence**

Although a number of Queensland parliamentary committees<sup>3</sup> have oversight roles, the nature and extent of these roles varies depending on the legislation or resolution under which they are established.

The roles of committees may include for example: consultation about the process of selection and appointment of statutory office holders;<sup>4</sup> involvement in the suspension<sup>5</sup> or removal of statutory office holders from office;<sup>6</sup> involvement in strategic reviews of the offices;<sup>7</sup> receipt of

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<sup>3</sup> For example: the Parliamentary Crime and Misconduct Committee in relation to the Crime and Misconduct Commission; the Public Accounts and Public Works Committee in relation to the Auditor-General; the Law, Justice and Safety Committee in relation to the Ombudsman, Information Commissioner and Electoral Commissioner; the Integrity, Ethics and Parliamentary Privileges Committee in relation to the Integrity Commissioner; the Social Development Committee in relation to the Commission for Children and Young People and Child Guardian, the Health Quality and Complaints Commission and the Family Responsibilities Commission.

<sup>4</sup> *Integrity Act 2009* (Qld) s 74; *Electoral Act 1992* (Qld) s 23; *Ombudsman Act 2001* (Qld) s 59; *Right to Information Act 2009* (Qld) s 135; *Auditor-General Act 2009* (Qld) s 9; *Information Privacy Act 2009* (Qld) s 145; *Electoral Act 1992* (Qld) ss 7 and 23; *Crime and Misconduct Act 2001* (Qld) s 228

<sup>5</sup> *Ombudsman Act 2001* (Qld) s 68; *Right to Information Act 2009* (Qld) s 162; *Auditor-General Act 2009* (Qld) s 18

<sup>6</sup> *Integrity Act 2009* (Qld) s 82; *Ombudsman Act 2001* (Qld) s 67; *Right to Information Act 2009* (Qld) s 161; *Auditor-General Act 2009* (Qld) s 18; *Crime and Misconduct Act 2001* (Qld) s 236

<sup>7</sup> *Integrity Act 2009* (Qld) ss 86, 88, 89(d); *Ombudsman Act 2001* (Qld) ss 83 and 85; *Right to Information Act 2009* (Qld) ss 186, 188 189(e); *Auditor-General Act 2009* (Qld) ss 68 and 70

annual reports and other reports;<sup>8</sup> consultation in developing the proposed budget;<sup>9</sup> and consultation about the salary, allowances and terms of appointment of the statutory office holder.<sup>10</sup>

The Social Development Committee's oversight role is established by resolution of the Legislative Assembly rather than legislation and although in relatively broad terms, it does not involve the committee in matters such as the appointment or removal of commissioners, budget approval or involvement in strategic reviews.

The Health Quality and Complaints Commission (HQCC) recently raised a matter with the committee which suggests the different relationships may be perceived to enhance the independence of the various statutory bodies or statutory office holders in different ways. Prior to meeting with the committee in November 2009 the HQCC suggested that the commission's independence 'could potentially be, or be perceived to be, undermined because [it is] required to report to, and through, the Minister for Health.'<sup>11</sup> The HQCC proposed that 'instead of, or in addition (as per the Crime and Misconduct Commission), the HQCC report directly to the Queensland Parliament or through a Parliamentary Committee.'<sup>12</sup> It appears that the HQCC does not consider the committee's role in monitoring and reviewing the commission has enhanced perceptions of its independence in the way it had hoped.<sup>13</sup>

This raises the following question: if one of the rationales for a parliamentary committee overseeing an independent statutory body or statutory office holder is to enhance the independence of that body or office, what are the essential elements of that relationship?

### **Complaint handling**

Parliamentary committees that oversee independent statutory bodies, particularly investigatory agencies, may from time to time receive complaints about the way a statutory body handled an individual case.

The ability of Queensland parliamentary committees to deal with such complaints varies. For example, in relation to administrative review reform, the Law, Justice and Safety Committee is specifically prevented by legislation from reconsidering or reviewing reports, findings, recommendations or decisions in relation to a particular investigation, complaint or decision.<sup>14</sup> The rationale for this is that it ensures 'that officers such as the Ombudsman, the Information Commissioner and the Anti-Discrimination Commissioner can operate independently in carrying out their statutory duties to investigate particular cases, while enabling the committee to examine the overall effectiveness of the legislation under which they operate.'<sup>15</sup>

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<sup>8</sup> *Integrity Act 2009* (Qld) s 85; *Ombudsman Act 2001* (Qld) s 87; *Right to Information Act 2009* (Qld) s 184; *Information Privacy Act 2009* (Qld) s 193; *Crime and Misconduct Act 2001* (Qld) s 138

<sup>9</sup> *Ombudsman Act 2001* (Qld) s 88; *Auditor-General Act 2009* (Qld) s 21

<sup>10</sup> *Auditor-General Act 2009* (Qld) s 11(4)

<sup>11</sup> Social Development Committee. *Meeting with the Health Quality and Complaints Commissioner held on 13 November 2009*, Report 4, April 2010, Written response to question on notice 9

<sup>12</sup> Social Development Committee. *Meeting with the Health Quality and Complaints Commissioner held on 13 November 2009*, Report 4, April 2010, Written response to question on notice 9

<sup>13</sup> Social Development Committee. *Meeting with the Health Quality and Complaints Commissioner held on 13 November 2009*, Report 4, April 2010, Appendix B (Transcript of Meeting with the Health Quality and Complaints Commissioner) p 5

<sup>14</sup> *Parliament of Queensland Act 2001* (Qld) s 86(2)

<sup>15</sup> Explanatory Notes issued with the Parliament of Queensland Bill 2001 (Qld) clause 86

By contrast the Parliamentary Crime and Misconduct Committee does consider complaints from individuals about their dealings with the Crime and Misconduct Commission. This has, however, resulted in a substantial workload and the establishment of a Parliamentary Commissioner to assist with the work.

Although the resolution establishing the Social Development Committee states that the committee does not 'have the power to investigate and report on events, incidents or operational matters within the policy areas ...' this may be interpreted to refer to the policy areas of 'health, education and training, social welfare services, community development, housing, child safety, Aboriginal and Torres Strait Islander policy' rather than the committee's oversight responsibilities. It may therefore be within the committee's power to consider complaints it receives about the operations of the Commission for Children and Young People and Child Guardian, the Health Quality and Complaints Commission and the Family Responsibilities Commission.

Although complaints may inform a committee of systemic problems within a commission which may not otherwise become apparent, there are a number of factors that make such activities difficult, in particular:

- The resolution of complaints about complaints may require judgments about issues outside the committee's area of expertise. For example, in the case of a complaint against the Health Quality and Complaints Commission the committee may need to consider whether the matter had been dealt with in a reasonable timeframe, whether the expert that was used in the investigation was appropriately qualified, and whether the decision about the standard of care was reasonable in the circumstances.
- The committee has no power to overturn decisions. At best it can make comments about issues such as timeliness or the way the commission communicated with the complainant.
- Complainants may develop unrealistic expectations about what can be achieved by complaining to the committee.
- There may be other, more appropriate avenues of review including internal review and complaining to the Ombudsman.
- Taking on complaints can have significant resource implications for both the committee and the commissions which would have to prepare detailed responses to the committee's requests for information about each complaint.

## **Other comments**

### **Debating committee reports**

The committee notes that the sessional orders allow for committee reports to be debated following a notice of motion by the member tabling the report.<sup>16</sup> The committee also notes that this process is rarely used and calls on the review committee to consider ways to enhance debate on committee reports.

### **Committee resourcing**

The committee also stresses the need to resource committees appropriately. It is vital that committees have access to expert opinion and advice as required. Similarly, it is important that committees are able to travel to fulfil their roles. Consideration could be given to allowing members to use frequent flyer points to overcome any budgetary constraints.

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<sup>16</sup> Legislative Assembly of Queensland. *Sessional Orders of the Legislative Assembly 53<sup>d</sup> Parliament (First Session)*, SO 2