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The Honourable Judy Spence MP
Chair
Committee System Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Spence

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

Thank you for inviting me to provide a submission to the Committee's review of the Parliamentary Committee System Select Committee. Thank you also for granting me a week's extension within which to lodge my submission.

I support the Committee's review of the committee system and its examination of the effectiveness and value of the system. It is important for these periodic reviews to occur so that Parliament can assess whether the mechanisms it establishes to enhance its ability to monitor the effectiveness of government are operating efficiently and effectively.

As the New South Wales Ombudsman, Bruce Barbour, noted in a 2006 article titled "Parliamentary Oversight from the Perspective of the New South Wales Ombudsman"¹, the success of a Parliamentary Committee, the degree of oversight and the effect that it has, can vary. Mr Barbour said:

There are not only significant differences in the agencies that Parliament and Parliamentary Committees oversight both in jurisdiction and size, but also the particular traits of individual members of committees and how they see their role will affect their approach.

My direct involvement with the Committee system occurs through the Law, Justice and Safety Committee (to which I report) as well as through the Estimates Committee process. As such, I will confine my comments to those two Committees.

Background

The Ombudsman is an officer of Parliament, appointed by the Governor in Council.² The Ombudsman is independent of the executive government, and is not subject to direction by any person about the way he or she performs the functions of ombudsman.³ The *Ombudsman Act 2001* establishes the Office of the Ombudsman and the Ombudsman controls the Office.⁴ An officer of the Ombudsman is not subject to direction by any person,

¹ Barbour, Bruce: "Parliamentary Oversight from the Perspective of the New South Wales Ombudsman", *Australian Parliamentary Review*, Autumn 2006, Vol.21(1), 81-7.

² See s.11(2) and s.58 of the Ombudsman Act.

³ See s.13 of the Ombudsman Act.

⁴ See s.73 and s.74 of the Ombudsman Act.

other than from within the Office, about the way the Ombudsman's investigative powers are to be exercised, or the priority given to investigations.⁵

The other officer of Parliament who reports to the Law, Justice and Safety Committee is the Information Commissioner. As officers of Parliament, the focus of our accountability commitments is different from that of other independent statutory bodies, and from that of a department within the Queensland public sector. Nevertheless, my Office and I are subject to many of the same accountability mechanisms as those entities. For example, my Office is deemed to be a department for the purposes of the *Financial Accountability Act 2009* and is subject to financial scrutiny by a Parliamentary Estimates Committee (as part of the Attorney-General and Minister for Industrial Relations' estimates portfolio). I must also prepare an annual report for tabling in Parliament each year.

The Law, Justice and Safety Committee's current arrangements are that I meet with it once a year (following the tabling of my annual report). The Committee has a broad range of law reform responsibilities. In addition to the jurisdiction conferred upon it by the *Parliament of Queensland Act 2001*, the Ombudsman Act provides that the Committee is required to:⁶

- monitor and review the Ombudsman's performance of the functions conferred by the Ombudsman Act;
- report to the Legislative Assembly on any matter concerning the Ombudsman, the Ombudsman's functions or the performance of the Ombudsman's functions that the Committee considers should be drawn to the Assembly's attention;
- examine each annual report tabled in the Legislative Assembly under the Ombudsman Act and, if appropriate, comment on any aspect of the report; and
- report to the Legislative Assembly any changes to the functions, structures and procedures of the Office of the Ombudsman the Committee considers desirable for the more effective operation of the Ombudsman Act.

The usual procedure followed by the Committee in discharging these functions is:

- to provide questions on notice to the Ombudsman with a request for responses to be provided prior to a meeting;
- to hold an *in camera* meeting with the Ombudsman to discuss his responses to the questions on notice and to ask questions without notice; and
- to furnish a report to Parliament on the Committee's findings which includes a transcript of the meeting.

The Ombudsman Act also requires the Treasurer to consult with the Committee in developing the proposed budget of the Ombudsman for each financial year.⁷

In addition to the responsibilities outlined above, the Committee has a role in the strategic reviews of the Office of the Ombudsman. The Ombudsman Act requires a review to be conducted at least every five years of:⁸

- the Ombudsman's functions;
- the Ombudsman's performance of those functions, to assess whether they are being performed economically, effectively and efficiently.

Before a reviewer is appointed by the Governor in Council, the Minister must consult with the Committee and the Ombudsman about the appointment and about the terms of reference for the review. Each review must be undertaken by an appropriately qualified person, who is to provide a report on the review.

⁵ See s.75 of the Ombudsman Act.

⁶ See s.89 of the Ombudsman Act.

⁷ See s.88(3) of the Ombudsman Act.

⁸ See s.83 of the Ombudsman Act.

The responsible Minister must table the strategic review report in the Legislative Assembly and it is then referred to the Committee,⁹ which may provide a report on it to Parliament.¹⁰

Discussion

Having regard to the Ombudsman's role as a government watchdog and to the Ombudsman's powers and extensive jurisdiction, both the public and the public interest require that the Ombudsman's processes be as accountable as possible. The often quoted phrase is "Who watches the watchdog?". As the Ombudsman is an officer of the Parliament, I consider that a committee of Parliament is the most appropriate mechanism for ensuring both accountability and independence. Importantly, it ensures the Ombudsman is accountable to the Parliament and not to the government of the day.

Somewhat surprisingly, the NSW Ombudsman is the only other Ombudsman in Australia who has this type of accountability mechanism in place. However, it is also the model followed in New Zealand, which was the first Ombudsman's office to be established in the Australasian region and is regarded as having been established in accordance with the traditional Scandinavian Ombudsman model.

In essence, the Law, Justice and Safety Committee acts as a type of conduit between my Office and Parliament. My experience of the meetings with the Committee is that, on the whole, this direct interaction is both effective and of mutual benefit. On the one hand, the Committee is able to discharge its monitoring role by identifying issues it wants information on or to discuss. On the other hand, I am able to draw to the Committee's attention any significant matters, such as budgetary issues or other issues affecting our performance, or changes or trends in the complaints we receive.

The time taken by my staff and I to gather statistics and other relevant information in order to prepare detailed answers to the Committee's questions on notice is often significant, but I accept that the meetings are an important accountability mechanism, and an effective way for the Committee to scrutinise the operations of my Office. At these meetings, evidence is given on oath, and a transcript of proceedings is prepared, which is then attached to the Committee's report. In that way, members of the public have access to the matters discussed at the meeting. This is an important accountability aspect of the Committee's meetings.

(a) *Legislative review*

As the main conduit between my Office and the Parliament to whom I am accountable, I consider the Committee could play an increased role in respect of the review of legislation relevant to my Office. The administration of the Ombudsman Act is the responsibility of the Attorney-General and Minister for Industrial Relations. In practice, this means that it is the Minister to whom I make any submission regarding amendments to the Ombudsman Act, and it is the Minister who then decides whether such amendments should be introduced into Parliament.

However, as noted above, the Committee's terms of reference include examination of the Ombudsman's functions, structures and procedures, and to report to the Legislative Assembly any changes the Committee considers desirable for the more effective operation of the Ombudsman Act. At present, there is no formal requirement for the Committee to be consulted on any proposed amendment to the Ombudsman Act. Consistent with the Ombudsman's independence from executive government, it would be appropriate to require that the Committee be consulted on any proposal to amend the Ombudsman Act.

⁹ See s.85 of the Ombudsman Act.

¹⁰ See s.84(3) of the Parliament of Queensland Act.

In this regard, I am advised that in New Zealand, if the government of the day wants the Ombudsman to take up a new role, the Minister responsible will write to the Officers of Parliament Committee (an all-party select committee of the Legislative Assembly that determines the budget requests of the Ombudsman) requesting that it consider the government's request and provide the Ombudsman with the required funding.

Recommendation 1

The Ombudsman Act be amended to require that the Committee be consulted on any proposal to amend the Ombudsman Act or any other Act relevant to the Ombudsman's jurisdiction, functions or performance of functions.

(b) Appointment of Ombudsman

Another area where it would be appropriate to extend the Committee's role is in the process for appointment of an Ombudsman. Given the Ombudsman's independence from government and the Committee's role in overseeing the Ombudsman's performance of functions, it is important that the Committee has unqualified support for, and confidence in, the appointee. When I was appointed Ombudsman, both the Chair and the Deputy Chair of the Committee were members of the selection panel, which signalled that my appointment was apolitical and that I had the Committee's support.

The following models could be considered:

- The *Right to Information Act 2009* requires the Minister to consult with the Committee about the process of selection for appointment of the Information Commissioner, as well as the appointment of a person as Information Commissioner.¹¹
- The *Crime and Misconduct Act 2001* requires the Minister to consult with the Parliamentary Crime and Misconduct Committee before nominating a person for appointment by the Governor in Council as a commissioner.¹²
- In New South Wales, the Parliamentary Committee with oversight of the NSW Ombudsman has the power to veto a proposal to appoint a new Ombudsman.

I consider that the Law, Justice and Safety Committee should be consulted on the process of selection for appointment of a new Ombudsman, as well as the appointment of a person as Ombudsman and have the power to veto a proposal.

However, in order to be effective, a truly bipartisan approach to the exercise of the power is needed. Therefore, the fact that the Chair of the Committee is a government member who has a casting vote needs to be addressed. This could be done by requiring that the appointment of a person as Ombudsman be approved either unanimously or by a majority of members not comprised solely of government members.

¹¹ See s.135 of the Right to Information Act.

¹² See s.228 of the Crime and Misconduct Act.

Recommendation 2

The Ombudsman Act be amended to require that the Minister cannot nominate a person for appointment as a new Ombudsman unless the Law, Justice and Safety Committee:

- (a) has been consulted on the process of selection for appointment, as well as the appointment of the person, and
- (b) agrees with the appointment unanimously or by a majority of members not comprised solely of government members.

(c) *Financial and budgetary considerations*

As regards the financial position and budgetary requirements of my Office, at present my Office's financial and non-financial performance and outlook are scrutinised by a Parliamentary Estimates Committee (under the Attorney-General's portfolio), using my Office's Service Delivery Statement as the basis. I am required to prepare, for each financial year, estimates of proposed receipts and expenditure, and provide them to the Treasurer. As noted above, the Treasurer must consult with the Law, Justice and Safety Committee in developing my Office's proposed budget.¹³

Given the limited time available for the Attorney-General's estimates portfolio hearing, the role that the Law, Justice and Safety Committee already plays in overseeing my Office's budget, and my Office's independence from ministerial control, I have doubts about the value, purpose and efficiency of the Estimates Committee process in examining the performance of my Office from an accountability perspective.

I consider that a more efficient process regarding oversight of this area could be implemented by removing my Office from the Estimates Committee process and extending the role of the Law, Justice and Safety Committee in this area.

A precedent for this proposal is provided by the New Zealand model. Under s.31 of the *Ombudsmen Act 1975* (NZ), except as otherwise provided for in that Act, all salaries and allowances and other expenditure payable or incurred under or in the administration of the Act are payable out of money to be appropriated by Parliament for the purpose.

As in Queensland, the New Zealand Ombudsman is an Officer of Parliament. I have been informed that the political parties in the New Zealand House of Representatives, in recognition of the benefits in having an Ombudsman's Office that independently and impartially reviews the administrative acts of government, took steps to ensure that the Office's activities could not be indirectly controlled by budgetary processes.

This was achieved by Parliament establishing the *Officers of Parliament Select Committee* to provide for a politically neutral consideration of the budget requests of officers of Parliament.¹⁴ Under the *Public Finance Act 1989* (NZ), the Ombudsman's budget must be determined by the Committee. This arrangement means that the Ombudsman's budget bids are not considered by the government controlled Finance and Expenditure Committee, as is the case with government agencies, and also avoids the need for the Ombudsman's budget to be considered in detail by the House as a whole.

Membership of the Committee comprises representatives of each political party in the House of Representatives. The Speaker of the House is the Chair of the Committee and also acts

¹³ See s.88 of the Ombudsman Act.

¹⁴ The Controller and Auditor-General, and the Parliamentary Commissioner for the Environment are also Officers of Parliament

as the notional Minister for the Ombudsman's Office in budget documentation. Significantly, the Committee considers the budget requests on their merits rather than from the viewpoint of whether the bids fit with the policy plan of the current government.

The Chief Ombudsman meets with the Committee to answer questions about budget requests. The Committee may also seek the advice of Treasury but any advice it gives must relate to the merit of the proposal and not be constrained by the policies of the current government.

The Committee then reports to the House of Representatives and the budget numbers it recommends for the Ombudsman are included in an Appropriations Bill. I am advised that the appropriations included for *Vote Ombudsmen* have generally been passed without comment or with favourable comment.

A direct appropriation in accordance with the New Zealand model seems to me to be a far more appropriate, accountable and effective approach for determining funding for the Ombudsman as an officer of Parliament.

Recommendation 3

A scheme similar to that operating in New Zealand for examining and determining the funding for the New Zealand Ombudsman be established in respect of the funding for the Queensland Ombudsman.

If the Ombudsman's budget is to continue to be examined as part of the Estimates Committee process, it be examined as part of the Speaker's portfolio, consistent with the Ombudsman's status as an officer of Parliament.

Summary

I am satisfied that the Parliamentary Committee model of scrutiny and oversight, at least as regards my Office, is an appropriate model and generally works well. For the reasons explained, I am less convinced that the Estimates Committee model is the most appropriate or effective means for scrutinising my Office's financial and non-financial performance and outlook.

I consider that the Parliamentary Committee System, as far as its interaction with my Office is concerned, could be strengthened by:

- mandating a role for the Law, Justice and Safety Committee in legislative review;
- requiring that the Minister cannot nominate a person for appointment as a new Ombudsman unless the Law, Justice and Safety Committee has been consulted and agrees with the appointment unanimously or by a majority of members not comprised solely of government members;
- removing my Office from the Parliamentary Estimates Committee process and strengthening the role of the Law, Justice and Safety Committee in examining, developing and recommending to Parliament the proposed budget of the Ombudsman for each financial year;
- if the Ombudsman's budget is to continue to be examined as part of the Estimates Committee process, including such expenditure within the examination of the Speaker's expenditure, consistent with the Ombudsman's status as an officer of Parliament.

Thank you again for providing me with an opportunity to comment on the Committee System Review Committee's inquiry. I trust that the Committee will find my comments useful in informing its deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Bevan', with a long horizontal flourish extending to the right.

David Bevan
Queensland Ombudsman