



Queensland Ombudsman

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12 April 2017

Mr Duncan Pegg MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Mr Pegg:

I refer to the Legal Affairs and Community Safety Committee's (LACSC) recent call for submissions on the Court and Civil Legislation Amendment Bill 2017 (the Bill). The Bill amends the *Ombudsman Act 2001* (Ombudsman Act) in certain ways, including to:

- improve the Ombudsman's ability to protect complainants and witnesses and obtain and control the release of sensitive information;
- include, as a function of the Ombudsman, the provision of advice or training to agencies to improve the quality of their decision-making and administrative practices and procedures;
- provide the Ombudsman with a power to direct the principal officer of a local government to table a report by the Ombudsman about the local government at a local government meeting;
- provide that a person may not be employed as an officer of the Ombudsman if the person does not consent to a criminal history check; and
- clarify that a corporation may be appointed to undertake strategic reviews (under the Ombudsman Act) of the Ombudsman Office and increase the interval between strategic reviews under the Ombudsman Act from five to seven years.

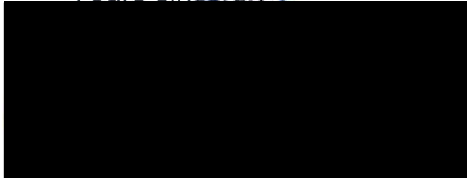
The Ombudsman has considered the Bill and is supportive of the proposed amendments to the Ombudsman Act. The explanatory notes to the Bill provide a summary of the rationale for the proposed amendments, which I will not set out here again in any detail. The Ombudsman has been consulted on relevant aspects of the Bill.

As outlined in the explanatory notes, the amendments largely arise from proposed legislative changes recommended in the last strategic review of the Office of the Queensland Ombudsman (Office) completed in 2012. These were published in the report from that review. The proposed amendment in regard to the timing and undertaking of strategic reviews of the Office is a recent development, about which the Ombudsman was not consulted, but he has no objection to it.

At the time, the then LACSC set out its support for the majority of proposed legislative changes in its report on the strategic review to the Parliament (**see attached summary**).

The proposed amendments in the Bill are necessary and desirable to support the better operations of the Office, particularly the management of complaints and investigations. They also formalise the administrative improvement role for the Office which has been an important aspect of its work for some time. Collectively, the amendments to the Ombudsman Act contained in the Bill will also provide a valuable improvement to the protections for officers, complainants and witnesses and enhanced powers for the Ombudsman in the release of reports to local councils.

Yours sincerely,



Andrew Brown
Acting Queensland Ombudsman

Encl. 18 page table

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
<p>Amend s.5, s.6 and s.12 Objects and functions</p>	<p>Amend s.5(b) to provide:</p> <p>The objects of this Act are –</p> <p>...</p> <p>(b) to improve the quality and <i>effectiveness</i> of decision making and administrative practice in agencies.</p> <p>Amend s.6(b)(ii) to provide:</p> <p>The objects of this Act are to be achieved by –</p> <p>...</p> <p>(b) authorising the ombudsman -</p> <p>...</p> <p>(ii) to make recommendations and provide advice, training or other help to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices.</p> <p>Insert a new s.12(ca) to recognise the training function:</p> <p>The functions of the ombudsman are –</p> <p>...</p> <p>(ca) to provide advice, training or other help to agencies to improve the quality of decision-making and administrative</p>	<p>Section 5(a) uses the word “effective” in terms of describing the investigative function of the Ombudsman. It is recommended that section 5(b) be amended to also incorporate the concept of “effectiveness” and to make clear that an object of the Act is to improve not only the quality of decision-making and administrative practice in agencies, but also the effectiveness of these actions.</p> <p>The Office is committed to providing training to agencies in making good administrative decisions. It also provides training and advice to agencies in establishing and maintaining internal complaints management systems. However, there is no clear authority under the Act to provide such advice other than as the result of an investigation or in making recommendations generally.</p> <p>For example, under s.12(c), the Ombudsman must first consider the practices and procedures of agencies, before making recommendations or providing information etc. It is recommended that clear authority be inserted in the Act to authorise the Office’s good decisions and complaint management training and any similar activities in the future which are designed to further the object of the Act as set out in s.5(b) “to improve the quality of decision-making and administrative practice in agencies”.</p>	<p>The Committee considers that when having regard to the <i>quality</i> of decision-making processes, it could reasonably be considered that the “effectiveness” of the process could be considered as part of assessing the quality.</p> <p>The Committee does not support the amendment.</p> <p>The Committee considers training to be an important part of the Ombudsman’s operations and supports the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
	practices; ...		
Amend s.16(2)(b) What ombudsman may not investigate Jurisdiction over legal advisers	Make necessary amendments to clarify that the Ombudsman has jurisdiction to investigate administrative actions of a legal adviser to the State, except where the legal adviser is acting for the State in a legal proceeding.	<p>The Ombudsman cannot investigate administrative action taken by a person acting as legal adviser to the State or as counsel for the State in any legal proceedings. Query whether the words “in any legal proceedings” apply to legal advisers or only Counsel?</p> <p>If the words do not apply to legal advisers, the Ombudsman would be prevented from investigating administrative actions taken by the many in-house lawyers employed in the public sector. This appears to be inconsistent with the fact that the State or an agency required to provide information for an Ombudsman investigation is not entitled to claim any privilege it could claim in a legal proceeding (see s.45).</p>	<p>The Committee agrees with the submissions of the Coordinator General and the HQCC – in that it does not see the need for the proposed amendment.</p> <p>The Committee does not support the amendment.</p>
Amend s.20 Complaints	<p>Amend s.20(3)(b) to read as follows:</p> <p>(3) Despite subsection (1), the ombudsman may –</p> <p>(c) if the person who could have made a complaint under this Act has died or the ombudsman considers the person cannot, for any reason, act for himself or herself, accept a complaint from an individual who is, in the ombudsman’s opinion, suitable to represent the person (also a complainant).</p> <p>Omit s.20(5)</p>	<p>There is currently inconsistency between s.20(3)(b) and s.20(5) regarding when a complainant can be represented by another person.</p> <p>The Ombudsman’s view is that a complainant should represent him or herself in making a complaint unless the Ombudsman is satisfied that it is not reasonable for them to do so.</p>	<p>The Committee sees merit in clarifying the section and therefore supports the amendments.</p>

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Amend s.24 Investigations generally	<p>Re-number existing section as s.24(1) and insert new s.24(2) as follows:</p> <p>(2) The principal officer of the agency must give the ombudsman reasonable help in the conduct of an investigation conducted informally under s.24(1)(a).</p>	<p>Section 22(2) provides that the principal officer of the agency must give the Ombudsman reasonable help in the conduct of a preliminary inquiry. This needs to be extended to include the conduct of informal investigations.</p> <p>While part 4 powers are available for investigations, it is quicker and less resource intensive for both the Ombudsman and the agency being investigated if the Ombudsman conducts investigations informally (as permitted under s.24(a)).</p>	<p>The Committee agrees with the reason set out by the Reviewer and supports the amendments.</p>
Amend s.38 Contempt of ombudsman	<p>Amend s.38(g) to provide that a person is in contempt if the person, in contravention of an order of the Ombudsman (see suggested amendment to s.91 below), publishes or permits or allows to be published, information / reports provided by the Ombudsman.</p>	<p>At present, s.38(g) provides that a person is in contempt if he or she publishes, or permits or allows to be published, information given to the Ombudsman, in contravention of an order by the Ombudsman.</p> <p>The contempt needs to be expanded to cover the publication of a report or information provided by the Ombudsman where the Ombudsman has made an order prohibiting such publication.</p> <p>See the suggested amendment to s.91 below.</p>	<p>The Committee agrees with the reason set out by the Reviewer and supports the amendments.</p>
Amend s.45 Information disclosure and privilege	<p>Amend/clarify s.45(1) and/or (2) to provide that, if the Ombudsman considers that there are compelling public interest reasons favouring disclosure, the Ombudsman may disclose privileged material when reporting on the results of an investigation.</p>	<p>Sections 45(1) and (2) provide, inter alia, that agencies cannot rely on legal professional privilege to refuse to give to the Ombudsman privileged documents where such documents are relevant to a preliminary inquiry or an investigation by the Ombudsman.</p>	<p>The Committee shares the views of the Coordinator General, HQCC and QUT. While the Committee considers there is a need for the Ombudsman to be able to access legal advice during the course of an investigation, the Committee is</p>

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		<p>This is to ensure that, in conducting the inquiry or investigation, the Ombudsman has access to all information, including legal advice, that an agency may have obtained and taken account of in handling a matter. In significant investigations, there may have been a substantial amount of legal advice sought and obtained by an agency, and it may have played a central role in influencing an agency's actions. It is important that the Ombudsman have access to this advice so as to be able to make an informed assessment of the reasonableness or lawfulness of an agency's actions.</p> <p>An issue has arisen regarding whether s.45 gives the Ombudsman authority then to disclose and discuss such legal advice in a report prepared at the conclusion of an investigation and that is to be made publicly available. That is, while an agency is compelled to give legal advice to the Ombudsman for the purposes of an investigation, it is arguable that the advice is provided only for that specific and limited purpose, and does not amount to a waiver of the privilege that exists in the advice vis-à-vis the world at large. As the privilege in the advice has not been waived, the Ombudsman is prevented from publicly disclosing it in a report.</p> <p>Agencies often maintain their claim to privilege in respect of legal advice that they have provided during an investigation. That is, while they accept that s.45 requires them to give the advice to the Ombudsman for the purposes of an investigation, they argue that this does not amount to a general</p>	<p>not convinced that there is a need for the Ombudsman to be able to disclose privileged material when reporting on results of an investigation.</p> <p>The Committee does not support the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>waiver of privilege, such that they do not consent to the public disclosure of the advice in an Ombudsman report.</p> <p>It is often difficult for the Ombudsman to meaningfully the actions taken by an agency in reliance on legal advice when the advice itself cannot be disclosed. The alternative argument is that s.45 operates to remove any right that an agency has to make a claim for privilege over legal advice, either for the purposes of an investigation, or in respect of any report that is prepared at the conclusion of an investigation.</p> <p>It is recognised that legal professional privilege is a substantive common law right that cannot be abolished by statutory provisions except by express language or clear and unmistakable implication. However, it is also recognised that the Ombudsman performs an important function in investigating complaints against government agencies and reporting on the results, and that this reporting function may be hampered in some instances if he is unable to discuss the legal advice relied upon by an agency. It is recommended that clear authority be inserted into the Act to authorise the Ombudsman, where he is satisfied that there are compelling reasons for doing so, to disclose the contents of legal advice in a public report.</p>	
	<p>Amend s.45 to override privileges and to include appropriate protection for individuals where they provide information</p>	<p>The operation of the current s.45(4) is unclear. On its face, it seems that s.45(4) operates to prevent persons to whom investigation requirements are issued under division 4, from refusing to provide the</p>	<p>The Committee considers that any uncertainty in the provisions must be cleared up to ensure the section operates</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
	<p>in response to an investigation requirement.</p> <p>See, for example, ss.192-197 of the Crime and Misconduct Act 2001 or ss.94-96 of the Criminal Justice Act 1989 (repealed).</p>	<p>information on the grounds of self-incrimination. However, advice received from Senior Counsel about the operation of s.45 is that the better view is that a person can refuse to comply with an investigation requirement if to do so would tend to incriminate them.</p> <p>In other words, although the Act appears to say that a person does not have court equivalent privileges in responding to an investigation requirement under part 4, Counsel's view is that, for these protections to be overridden, clearer wording is required.</p> <p>This has the potential to limit the effectiveness of the Ombudsman's powers to obtain information, especially from public servants, as they could object to answering simply on the basis that to do so may incriminate them in a disciplinary breach.</p>	<p>as intended.</p> <p>The Committee supports the amendment .</p>
<p>Amend s.47 Protection of person helping ombudsman</p>	<p>Amend s.47 to provide protection for persons who:</p> <p>(a) may help the Ombudsman; or (b) are the subject of a reprisal because another person has helped or may help the Ombudsman</p>	<p>Section 47 makes it an offence for a person to cause or threaten to cause detriment to someone who gives the Ombudsman information or a document for the purposes of a preliminary inquiry or an investigation.</p> <p>However, it isn't an offence if a person causes or threatens detriment to someone:</p> <ul style="list-style-type: none"> • in the belief that that the person may assist the Ombudsman; or • in the mistaken belief that the other person has assisted the Ombudsman. <p>Nor does it create an offence where a person is the subject of a detriment or threat of detriment because another person (e.g., a relative) has helped</p>	<p>The Committee considers the additional categories of persons to whom section 47 applies, are warranted.</p> <p>The Committee supports the amendments.</p>

03

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>the Ombudsman.</p> <p>It is recommended that the section be amended to provide protection in these circumstances. It is also recommended that the section be amended to clarify that it protects complainants.</p>	
<p>Amend s.50(4) Report and Recommendation</p>	<p>Amend s.50(4) to require council mayors to table the report at a Council meeting.</p>	<p>Where the Ombudsman sends a report about a local council to the CEO of the council, the CEO is required by s.50(4) to provide a copy to each councillor. However, there is no requirement for the Mayor to table the report at a council meeting to ensure that it is debated.</p>	<p>The Committee supports this amendment.</p>
<p>s.54 Other reports on authority of speaker</p>	<p>Amend s.54 to provide: 54 Publication of other reports</p> <p>The ombudsman may, in the public interest or in the interests of any agency, organisation or person, publish, in a form the ombudsman considers appropriate, any report on a matter arising out of the performance of the ombudsman's functions whether or not the matters to be dealt with in the report have been the subject of a report tabled in the Assembly under this Act.</p> <p>As a corollary to giving the Ombudsman power to publish his reports administratively when he considers it appropriate, amend the <i>Right to Information Act 2009</i> to exempt Ombudsman reports from the ambit of the RTI Act.</p>	<p>At present, the Ombudsman is able to publish reports only through the Speaker (see ss.51, 52, 53 and 54). Because of the complicated process that is involved in tabling a report, only significant reports on major investigations are tabled for publication. Other reports of a more routine nature are summarised (in an anonymised form) in brief case reports contained in the Ombudsman's Annual Report.</p> <p>The Ombudsman is of the view that, in line with the government's policy of ensuring greater transparency and making as much information available to the public as possible on a routine, administrative basis, it is appropriate that the Ombudsman be given the discretion to publish routine investigative reports whenever appropriate, and in an appropriate form.</p> <p>Publication of these reports would enhance the transparency and accountability of the Office as well</p>	<p>The Committee does not consider that the process of tabling reports through the Speaker is complicated as suggested by the Reviewer.</p> <p>As a Parliamentary Officer, the Committee considers it appropriate that the Ombudsman tables reports (through the Speaker) in the Legislative Assembly.</p> <p>Similar to the provisions relating to the tabling of reports by the Information Commissioner, an alternate mechanism may be for the Ombudsman to provide less significant reports to the Chairperson of the</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>as the agencies whose administrative actions are being investigated, and would assist the public to better understand the functions of the Ombudsman and the work that the Office performs on a daily basis. The Annual Report summaries that are currently prepared often are insufficient to discuss in a meaningful way the issues that the investigation dealt with.</p> <p>In addition, investigative reports are currently subject to the RTI Act. It has been the case where the Ombudsman has determined that it was not appropriate to seek publication of a report through the Speaker for a particular reason.</p> <p>However, the report is then released by a decision-maker under the RTI Act. By removing finalized investigative reports from the ambit of the RTI Act, and giving the Ombudsman a discretionary power to publish them administratively (in an appropriate form), control over the publication of the reports rests solely with the Ombudsman.</p> <p>While the Ombudsman considers it is appropriate that major reports on significant investigations that have wider implications for the public service should continue to be published formally through the Speaker under s.52, he considers that s.54 should be amended to give him the discretion to publish any other report on the Office’s website.</p>	<p>Parliamentary Committee who must then cause the report to be tabled on the next Sitting Day.</p>
<p>Amend s.65 Acting ombudsman</p>	<p>Amend s.65(1)(b) to remove the words “...or from the State..”.</p>	<p>Section 65(1)(b) currently provides that the Governor in Council may appoint an Acting Ombudsman when the Ombudsman is absent from</p>	<p>The provision is clearly discretionary in that the Governor in Council <i>may</i></p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>Queensland. This has the potential effect of requiring acting arrangements to be put in place if, for example, the Ombudsman is in Sydney for the day on business. It is submitted that, if the ombudsman is interstate for a short period of time on business, he is still able to communicate with the Office and to perform his duties, and that acting arrangements are therefore unnecessary. It is recommended that s.65(1)(b) be amended to remove the reference to the Ombudsman being absent from the State.</p> <p>The provision would still operate to give the Ombudsman the discretion to put acting arrangements in place if he is absent from the State and he is satisfied that he is unable to perform the duties of his Office.</p>	<p>appoint a person to act as the Ombudsman during a vacancy...etc</p> <p>The provision does not use <i>must</i> and it is therefore not mandatory that the Governor in Council appoint an Acting Ombudsman. The Committee considers that the example provided where the Ombudsman may be out of the State for one day on business is a good example of where the discretion not to appoint an Acting Ombudsman would be exercised.</p> <p>The reference in the provision of being absent from the State is consistent with similar provisions applying to the Information Commissioner and the Parliamentary Crime and Misconduct Commissioner, both of which are also Officers of the Parliament.</p> <p>The Committee does not support the amendment.</p>
Amend s.86 Delegation	Amend s.86 to provide that: the Ombudsman can delegate functions as well as powers the Ombudsman can delegate, to	Section 86 of the Act provides: The ombudsman may delegate the ombudsman's powers under this Act, other than the power to	The suggested amendments are sensible and will improve the operations of the office.

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
	<p>the Deputy Ombudsman and Assistant Ombudsmen, his powers under s.50(1), and s.51(1) and (2)</p>	<p>make a report or recommendation, to an officer of the ombudsman.</p> <p>Firstly, it is recommended that the provision be amended to include the delegation of functions, as well as powers (as is provided for chief executives under s.103 of the Public Service Act 2008). Secondly, in practice, the latter part of s.86 is problematic as it means that all reports containing an opinion that there has been maladministration, with or without recommendations, must go to the Ombudsman, even in straightforward cases. This creates a significant workload for the Ombudsman, and leads to delays in finalising matters.</p> <p>It is considered appropriate that the Ombudsman's powers under s.50(1) (giving a report and recommendations to the principal officer of an agency); and s.51(1) and (2) (requesting that the principal officer advise of the steps taken to give effect of the recommendations) be delegable to the Deputy Ombudsman and Assistant Ombudsmen.</p> <p>It is noted that, under the NSW Ombudsman Act, the Deputy and Assistant Ombudsmen have wide powers to make reports and recommendations (see s.8Aff).</p>	<p>The Committee supports the amendments.</p>
<p>Amend s.91 Prohibiting publication of information</p>	<p>Amend s.91 to make clear that the Ombudsman can prohibit the publication of information/reports provided to an agency or person by the Ombudsman.</p>	<p>At present, s.91 only authorises the Ombudsman to prohibit the publication of information given to the Ombudsman or the contents of a document produced to the Ombudsman. The Ombudsman cannot prohibit an agency or person from publishing</p>	<p>The Committee agrees with the reason set out by the Reviewer and supports the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>information the Ombudsman provides to the agency or person for the purposes of an investigation or in a report of the Ombudsman. The problems that can arise from this limitation are illustrated by a case in which the Ombudsman gave a report on an investigation of a complaint about a local council to the council, which then disclosed the complainant's name while discussing the report in public session.</p> <p>Amend s.93(1) Protection from Liability Amend s.93(1) to provide protection from civil liability for Ombudsman officers in respect of acts done negligently but honestly. Suggested amendment:</p> <p>93(1) An officer of the Ombudsman does not incur criminal or civil liability for any act, matter or thing done or omitted to be done under this Act or any other Act unless the act, matter or thing was done, or omitted to be done, in bad faith.</p>	
<p>Amend s.93(1) Protection from liability</p>	<p>Amend s.93(1) to provide protection from civil liability for Ombudsman officers in respect of acts done negligently but honestly.</p> <p>Suggested amendment:</p> <p>s.93(1) An officer of the Ombudsman does not incur criminal or civil liability for any act, matter or thing done or omitted to be done under this Act or any other Act unless the act, matter or thing was done, or omitted to be done, in bad faith.</p>	<p>The protection given in the current s.93(1) does not extend to acts done negligently but honestly. This protection existed in the repealed Parliamentary Commissioner Act 1974 (see s.29(1) and (2)).</p> <p>The justification for the change at the time was that Ombudsman officers would be protected in the same way as public servants are protected – that is, by a specific indemnity given by the Minister for Justice & Attorney-General.</p> <p>However, the existing indemnity does not apply to officers of the Ombudsman and it is understood that the government does not intend to provide such an indemnity as the Ombudsman is an officer of the</p>	<p>The Committee considers that the protections provided to officers in other agencies should apply equally to officers of the Ombudsman.</p> <p>The Committee supports the amendments.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>Parliament and is not part of the Executive.</p> <p>Other agencies have the requested protection. See for example, s.265 of the <i>Anti-Discrimination Act 1991</i>.</p>	
<p>Divisions 2 and 3 of Part 8 Staff of the Office</p> <p>Amend s.76(3) Officers</p>	<p>Whether or not staff of the Office should become public servants</p> <p>Amend s.76(3) to give a clear head of power for conditions of service for officers of the Ombudsman to be decided by order of the Governor in Council (see for example, s.504(1) of the Land Act 1994; s.5A(2) of the Local Government (Queen Street Mall) Act 1981; s.3(2) of the Newstead House Trust Act 1939 and s.44 of the Constitution of Queensland Act 2001).</p>	<p>Recommendation 70 of the Smerdon Strategic Review report provided as follows:</p> <p>A review of the Ombudsman Act should be undertaken and progressed through normal channels.</p> <p>The review also should incorporate appropriate changes to the legislation to facilitate Ombudsman staff becoming public servants, with an appropriate recognition of operational independence.</p> <p>The Ombudsman has given careful consideration to this proposal and does not support it. In his view the proposal does not have appropriate regard to the fact that the Ombudsman is not part of Executive government but is an officer of the Parliament.</p> <p>Making the Ombudsman’s officers part of the public service would mean they would be bound by directives of the Public Service Commission, which creates at least the perception of a conflict in that the Ombudsman has jurisdiction over the administrative actions of the Commission (not including the decisions of its tribunals).</p> <p>The Ombudsman’s reputation for independence with the community relies substantially on the ability of his officers to be able to say to complainants that neither the Office nor they are part of the public service.</p>	<p>The Committee does not consider that this amendment is warranted.</p> <p>The Committee considers that the independence of the Office of the Ombudsman is paramount and does not see the requirement for its staff to become public servants as suggested.</p> <p>The Committee does not support the amendments.</p>

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		<p>Advice received from the Executive Council Secretariat is to the effect that s.76(3), in its current form, does not contain a sufficient head of power to authorise the making of an order of council (which is a statutory instrument under the Statutory Instruments Act 1992) setting out terms and conditions of service.</p> <p>Rather, it is only sufficient to authorise the making of an Executive Council Minute, which is not a statutory instrument. A Minute does not gain the benefit of s.23(1) of the Statutory Instruments Act and therefore cannot automatically apply, adopt or incorporate any Act, statutory instrument, other law or document as in force at a particular time, or from time to time.</p> <p>This means that each time a relevant change to the Public Service Act and Regulation, the Public Service Award or any applicable Directives occurs, a new Minute must be prepared.</p> <p>By amending s.76(3) to permit conditions of service to take the form of an order in council, the resultant application of s.23(1) of the Statutory Instruments Act would avoid the Ombudsman having to prepare updated conditions of service each time an applicable section of the Public Service Act is amended, or a new Directive issued.</p>	
<p>Insert new s.14A Administrative Audits</p>	<p>Insert a new provision, similar to s.14A of the South Australian Ombudsman Act 1972, that gives the Ombudsman jurisdiction to conduct a review of the administrative</p>	<p>Consistent with the Ombudsman’s role of improving the quality of administrative practice in agencies, it would be of benefit to include a provision giving the Ombudsman power to conduct audits of agencies so</p>	<p>The Committee sees merit in inserting the new section and supports the amendment.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
	practices and procedures of an agency, if the Ombudsman considers it in the public interest to do so.	as to identify any administrative practices and procedures in need of improvement.	
Insert new s.23A Ombudsman may issue direction in relation to an administrative act	Insert a new provision, similar to s.19A of the South Australian Ombudsman Act, that gives the Ombudsman authority to direct an agency to refrain from performing an administrative act for a specified period.	Such a power is needed to prevent an agency from performing an administrative act where the Ombudsman is satisfied that the act is likely to prejudice an investigation or proposed investigation, or the effect or implementation of a recommendation that the Ombudsman might make as the result of an investigation or proposed investigation.	The Committee sees merit in inserting the new section and supports the amendment.
Insert new s.64A Appointment	Insert a new section requiring the Ombudsman to make a declaration of interests in terms similar to s.12 of the Auditor-General Act 2009	<p>The Ombudsman Act currently contains no requirement for the Ombudsman to make a declaration of interests. Section 12 of the Auditor-General Act requires the Auditor-General to make a declaration of interests under a scheme that has appropriate regard to the independence of that office.</p> <p>An amendment in similar terms should be inserted in the Ombudsman Act to require the Ombudsman to make a declaration of interests to the Speaker, consistent with the Ombudsman's status as an officer of the Parliament.</p>	<p>The Committee agrees that as the Ombudsman is an officer of the Parliament, it would be appropriate for the Ombudsman to make the declaration of interests.</p> <p>The Committee supports the amendments.</p>
Insert new s.78A Staff of the Office	Insert a provision to give the Ombudsman's staff similar industrial appeal rights to officers of the Public Service Commission:	<p>While the Ombudsman does not agree with the recommendation of the Smerdon report that officers should become public servants, it is important to clarify the appeal rights of officers who are aggrieved by certain decisions made by the Ombudsman concerning their employment.</p> <p>As it is not appropriate for officers of the</p>	The Committee considers that the staff of the Ombudsman should have equivalent industrial appeal rights as appropriate for their employment status.

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>Ombudsman to have appeal rights to the Public Service Commission, it is suggested that they be given appeal rights to the Industrial Relations Commission in line with those appeal rights enjoyed by officers of the Public Service Commission.</p> <p>See s.215 of the <i>Public Service Act 2008</i>.</p>	<p>The Committee supports the amendment.</p>
<p>Insert new s.76(4) Criminal History Check</p>	<p>Insert a provision similar to s.160 of the <i>Public Service Act</i> and s.330 of the <i>Crime and Misconduct Act</i> to provide that a person may not be employed as an officer of the ombudsman if the person does not consent to a criminal history check.</p>		<p>The Committee supports the amendment.</p>
<p>Legal proceedings</p>	<p>Insert a provision similar to s.29(4) of the repealed Parliamentary Commissioner Act.</p>	<p>Under s.29(4) of the repealed Parliamentary Commissioner Act, the Ombudsman could not be called to give evidence or produce any document in court, or in any judicial proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under that Act.</p> <p>However, that protection was omitted from the Ombudsman Act, for reasons which are unclear. Most other Ombudsman legislation in Australia contains such a protection – see s.35 of the NSW legislation; s.29(4) of the Victorian legislation; s.30 of the South Australian legislation; s.31(4) of the Northern Territory legislation; and also s.26(1)(b) of the New Zealand legislation. It is submitted that such a protection is appropriate for the Ombudsman, given the role he discharges and the fact that he is an officer of Parliament.</p> <p>In 2007, the Ombudsman was served with a Notice</p>	<p>The Committee considers the suggested provision should be inserted to ensure the Ombudsman cannot not be called to give evidence or produce any document in court, or in any judicial proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under that Act.</p> <p>The Committee supports the amendment.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>of Non-Party Disclosure in connection with legal proceedings commenced against a government department by a former complainant to this office.</p> <p>The complainant was seeking to use, in his legal proceedings against the government department, investigative documents prepared or received by the Ombudsman. The Ombudsman relied on a number of grounds of objection in response to the Notice of Non-Party disclosure, including that s.92 prohibited disclosure of the requested documents.</p> <p>The complainant ultimately chose not to pursue the Notice. However, it is submitted that a specific provision, such as the repealed s.29(4), should be inserted into the Act to make the position clear.</p>	
<p>Government-Owned Corporations (GOCs)</p>	<p>Widen the jurisdiction of the Ombudsman to include GOCs.</p>	<p>At present, the Ombudsman Act has no application to GOCs. The Office frequently receives calls from persons inquiring whether we have jurisdiction to investigate a complaint against a GOC. Over the past 12 months, the Ombudsman has made several submissions (including submissions to the government’s Integrity and Accountability Green Paper, and the Public Service Commission’s review of the Whistleblowers Protection Act) calling for the government to give this Office jurisdiction to investigate the administrative actions of GOCs.</p> <p>The Ombudsman is firmly of the view that entities that carry out public functions using public funds and public infrastructure are accountable to the public for the way in which they perform those services and spend those funds, and should be</p>	<p>The Committee supports appropriate amendments be made to widen the application of the Ombudsman Act to GOCs.</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>subject to all the usual accountability measures. The Ombudsman therefore recommended in his submission in response to the Green Paper that he be given jurisdiction to investigate the administrative actions of GOCs.</p> <p>In its response to the green paper, the government observed: GOCs are responsible for significant amounts of public money and should be subject to the highest levels of scrutiny and ethical standards In recognition of the need for high levels of scrutiny of GOCs, the government has committed to amending the <i>Government Owned Corporations Act 1993</i> to ensure that GOCs can be investigated by the CMC on misconduct matters.</p> <p>As matters stand, GOCs are audited by the Auditor-General and will soon be within the jurisdiction of the CMC. It is illogical that they are not also subject to the Ombudsman’s jurisdiction (as is the case with the corresponding bodies in NSW).</p> <p>The Ombudsman remains of the view that all GOCs (whether or not they operate in a competitive environment) should be subject to his jurisdiction, and that he should have the ability to investigate maladministration, on complaint or on his own initiative.</p>	
<p>Making and publishing standards</p>	<p>Insert a provision giving the Ombudsman power to make and publish complaint-handling standards for the public sector.</p>	<p>As a logical corollary to the complaint handling training and best-practice educative functions that the Ombudsman conducts across the public sector, it is recommended that consideration be given to giving the Ombudsman the power to make and</p>	<p>While the Committee agrees that such a provision could be beneficial, the Committee is cognisant of not increasing the regulatory burden for agencies that already have appropriate</p>

SECTION	SUGGESTED AMENDMENT	REASON	COMMITTEE COMMENT
		<p>publish complaint-handling standards (similar to the power given to the Public Service Commission under the <i>Public Interest Disclosure Act 2010</i> to publish a Public Interest Disclosure Standard), binding on all public sector agencies that fall within the jurisdiction of the Ombudsman.</p> <p>The Ombudsman would have an oversight/audit role in ensuring that agencies implement, and adhere to, complaint-handling policies and procedures that comply with the Standard.</p>	<p>standards in place, that may not comply with other approved standards. Any such provision will need careful consideration to ensure that it does not create additional levels of compliance for agencies.</p>