



LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair) (via teleconference)
Mr JP Lister MP (via teleconference)
Mr SSJ Andrew MP (via teleconference)
Mr JJ McDonald MP (via teleconference)
Mrs MF McMahon MP
Ms CP McMillan MP (via teleconference)

Staff present:

Ms R Easten (Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC HEARING—OVERSIGHT OF THE QUEENSLAND OMBUDSMAN TRANSCRIPT OF PROCEEDINGS

MONDAY, 30 MARCH 2020

Brisbane

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The committee met at 9.03 am.

CHAIR: Good morning. I declare open the public hearing. I am Peter Russo, the member for Toohey and chair of the committee. With me via teleconference is James Lister, the member for Southern Downs and deputy chair; Stephen Andrew, the member for Mirani; Jim McDonald, the member for Lockyer; Melissa McMahon, the member for Macalister, who is present; and Corrine McMillan, the member for Mansfield.

The purpose of today's hearing is to hear evidence from the representatives of the office of the Ombudsman as part of the committee's oversight of the Ombudsman. Under the Parliament of Queensland Act 2001 and the standing rules and orders of the Legislative Assembly of Queensland, the committee has oversight responsibility for entities including the Ombudsman. The Ombudsman Act 2001 sets out the committee's functions with respect to the Ombudsman. These include monitoring and reviewing the performance of the Ombudsman's functions, reporting to the assembly on any matter concerning the Ombudsman's functions and examining the Ombudsman's annual report.

As parliamentary proceedings, persons may be excluded from participating in the hearing at my discretion. I remind witnesses that intentionally misleading the committee is a serious offence. The proceedings are being recorded by Hansard and broadcast, with a live audio feed on the parliament's website. I remind everyone to turn mobile phones off or to silent mode, so as to avoid disrupting the hearing.

CLARKE, Mr Phil, Ombudsman, Office of the Queensland Ombudsman (via teleconference)

PYKE, Mrs Angela, Deputy Ombudsman, Office of the Queensland Ombudsman (via teleconference)

ROBERTSON, Mrs Leanne, Director, Corporate Services Unit, Office of the Queensland Ombudsman (via teleconference)

ROSEMANN, Ms Louise, Principal Adviser, Public Interest Disclosures, Office of the Queensland Ombudsman (via teleconference)

CHAIR: Good morning, everyone. I invite you to make a short opening statement, after which committee members will have some questions for you. Before we go any further—I know this may get a bit monotonous—can you please say who you are, even though it may require you saying it more than once? That includes committee members. Before you ask a question, please say who you are. Mr Clarke, would you like to start by making an opening statement?

Mr Clarke: Mr Chair, I will make an opening comment and thank you for the opportunity. As members would be aware, this is my last opportunity to appear before the committee, I believe, subject to the outcome of the state budget estimates process. I may have an opportunity to speak there or be questioned by the committee. My term finishes on 9 July, which I think the committee would be aware of.

The last six months of 2019 was a continuation of the office's good performance over several years. I think the committee has previously made comment about the office's performance, and that has continued in the second half of 2019. Very briefly, the total number of contacts received during that six-month period was down about 0.9 per cent on the previous year. That was made up of a reasonably significant reduction in the number of complaints received. They were down about eight per cent. Out-of-jurisdiction matters, inquiries and review requests from complainants were all up. That is matters received.

In terms of matters completed by the office, it was up about 0.1 per cent, which was a very small increase on the same period last year, with complaints completed down about eight per cent and all other categories, out-of-jurisdiction matters, inquiries and review requests being up on the previous period. I will not say a great deal more about the performance of the office, other than that it was still continuing, up until Christmas last year, in the same vein as it had in previous years.

Just like everybody else in the community at the moment, the office is currently being severely impacted by COVID-19 decisions of government. At the moment we anticipate that, like many other public sector agencies that do not have a response requirement in terms of COVID-19—in other words, not an emergency response group—we have taken steps to have as many staff as possible work from home. As of this week I anticipate that out of a total staff of approximately 70 people the majority of those staff will work from home. Ultimately, we will likely reach a level of about 75 per cent or 80 per cent of staff working from home at any given period. That has only been possible by taking some steps in terms of limiting access to the office for the purpose of making complaints. At the moment we are in a position where we have limited access to the office. The floor has been locked down. There is no public access to this floor in the building, so there is no walk-in complaint capacity with the office.

As of Friday last week, I also took steps to limit public access via telephone. That is because we currently do not have the capacity to work from home through the telephone system. We are working on that. I am hopeful that we will be able to reinstate telephone system access for the public in April, subject to being able to get the technology in place. The public can still make complaints to the office via the website and via email if they know the office's email address, and they can still send their complaints in writing. We will also keep open the prisoner phone link service so that prisoners, who have been able to avail themselves of that for many years, will continue to have the capacity to ring the office to make a complaint.

The impact of COVID-19 on the office's operations is as yet untested. It is unknown. We appear to be getting roughly the same number of contacts on a weekly basis. We anticipate that there will still be a significant demand for the office's services, although it may be negatively impacted by the closure of the phone system in the short term.

I will refer very quickly to some more strategic issues. The strategic review of the office and the progress on implementation is now at the stage where I can report that, of the recommendations made, 75 per cent are now either complete or ongoing, about six per cent are on hold and 19 per cent are progressing. Those that are progressing are largely dependent upon legislative review. The major proportion of them is dependent upon strategic legislative review.

In regard to the implementation of the Human Rights Act, which has had a substantial impact upon this office from 1 January, the arrangements are in place for this office. We have referral arrangements between the office and the Human Rights Commission. All staff in this office have been trained in human rights complaints handling. We have made changes to our complaints management system, the case management system, so that we can record all human rights issues that arise in Ombudsman complaints. We have made changes to our online complaint form to support the human rights implementation. We have made changes to the decision-making protocols in the office. We have revised training materials that we use in our training services to public sector agencies and we are well placed to be able to report on the impact of the Human Rights Act on this office. As it currently sits, within the office it looks like—and these are very preliminary figures—between 25 per cent and 30 per cent of complaints received in this office had some sort of human rights issue attached to them.

This year the office has again participated in the public sector staff survey. Very briefly for the committee's information, I am able to report that on the areas of the survey that relate to engagement of staff, organisational leadership and innovation, the Ombudsman's office is above the public sector average and is also above the results received by the office in the 2017 survey. They are quite pleasing. The staff are currently involved in an implementation discussion about some changes that we will make in regard to the outcome of the staff survey.

I will very quickly refer to some criticism of the office in recent months about the relevance of the office's work and, in particular, the production of public reports. For the committee's information, I have looked at the number of public reports that have been produced since January 2011, which is the period in which I have been in office. During that time there have been 23 reports released publicly, and released publicly is either through tabling them in the House or receiving the Speaker's permission to release them via the Ombudsman office website. Those 23 reports have ranged across very significant areas of government service and include health, infrastructure, environment, local government, health again, environment again, local government again, consumer affairs, local government again, natural resources, corrections, local government again, workplace safety, child safety, corrections, local government again, local government again, health again, local government again, justice, youth justice and local government again and then, finally, disability. Those 23 reports I think demonstrate the breadth of the jurisdiction of this office. The capacity of the office to range across that whole jurisdiction remains an ongoing and significant challenge for the office. As I have said in the past, our challenge is to decide what not to investigate rather than what to investigate.

I would like to thank my staff. As I said, this is potentially the last opportunity I will get to appear in public before the committee. I acknowledge the professionalism and work of the staff of this office, whether they are investigators, trainers, our corporate staff, PIDs oversight staff or others involved in delivering the services. We are a small office—some 70 people—but we have what I regard as a very significant role within the public sector. As an office of the parliament, the work that we do builds confidence in the democracy within which we live. If people have confidence that they can bring a complaint about their government or a government agency to this office as part of the oversight framework then I believe it strengthens the democracy and makes sure that people have confidence and trust in the public sector. From that point of view, I believe the office's work remains relevant and, indeed, very important.

It has been a privilege for me to be in the office for the period of time that I have. I think there are a couple of challenges for the future. One is the independence of the office. It is absolutely vital that the independence of the office is maintained. Any changes that undermine that independence will undermine the confidence that the public has in the democracy. The complexity of public administration, in particular contracting out of services, is adding to the complexity of our work. At the moment there are very limited provisions in the Ombudsman Act which allow me and officers delegated within this office to undertake investigations of contracted agencies. That relates to section 10(c) of the Ombudsman Act. As different service delivery models evolve, I believe that those challenges will become more difficult.

Finally, I mention the complexity of oversight arrangements. There has been a significant impetus in recent years to use the term 'ombudsman' for public sector oversight bodies that do not have all of the independence and other indicia of a truly independent oversight body. Unfortunately, that has the effect of diluting the significance of the independence of this office because the general public do not differentiate between an officer of the parliament and other bodies using the term 'ombudsman'. It is my recommendation to the committee over the future to, wherever possible, ensure that the term 'ombudsman' is only used for those bodies, at the discretion of the parliament, that meet the definitions developed by the International Ombudsman Institute or the Australian and New Zealand Ombudsman Association. With that position, I believe this office will be well placed, with the support of the committee, to go forward and continue to do its job in the future for the benefit of the general public. Thank you, Mr Chair. I am happy to take the committee's questions.

Mr LISTER: Mr Clarke, I thank you for your care of the public good and wish you well in your post-Ombudsman work. I am sure that you will find something to do, as most people do in retirement. Regarding the Public Trustee, can you tell me if there has been any formal or informal work between your office and the Public Trustee over the resolution of more systemic problems that have been identified through the complaints process to your office?

Mr Clarke: This office has a significant and ongoing relationship with the Public Trustee. We handle not a large number but a significant number of complaints from the Public Trustee on an ongoing basis. We also, I believe, completed a complaints management system review of the Public Trustee some time ago and made recommendations about the handling of complaints. While we have not, it is true, conducted a system-level investigation into issues identified at the Public Trustee, the numbers of resolutions that we get and the range of issues that we get from the Public Trustee indicate that the Public Trustee's complaints management system itself is robust and does a sound job in managing complaints.

That does not mean that there are not systemic issues there to look at, but it means that, within the scheme of prioritising the resources of this office and the areas in which we might undertake investigations, that level of confidence in the Public Trustee and the systems and processes that the Public Trustee uses means that the prioritisation exercise to date has not resulted in a systemic investigation being undertaken. There have been discussions in the office about such systemic investigations, but other issues have been a higher priority up to this point in time.

That said, the work that we do with the Public Trustee on an ongoing basis in regard to complaints is still a significant feature of the work that we do. We will continue to do that, and if people bring complaints to the office they will be dealt with from both the point of view of making individual outcome investigations or, if there is any systemic issues identified as part of a complaint investigation, those systemic issues may well attract recommendations to the Public Trustee as part of a complaints management exercise rather than a systemic investigation.

Mrs McMAHON: Thank you, Mr Clarke, for your appearance on the phone this morning. I also thank your staff. My question is in relation to the public interest disclosures. I specifically refer to your annual report, where you refer to new standards being made in the PID Act. Could you talk us through the reasoning behind the new standards and, specifically, how they will impact on assessments that come through your office?

Mr Clarke: I will make a very quick comment and then ask Ms Rosemann to add some detail. The new standards were introduced in March 2019. They were there to support the enhanced capacity of the public sector in dealing with PIDs and provide more detailed guidance for public sector agencies. They came out of a broader discussion around the capacity of the public sector in dealing with public interest disclosures, in particular the support of disclosers, risk assessment in the PIDs process and the management of public interest disclosures by agencies. Since the standards were released there has been a very significant upturn in the engagement between this office and agencies generally, and that engagement has been, I believe, very positive. Agencies have been very appreciative of the work that we have done. You may recall that the strategic review and the strategic reviewer, Ms Simone Webbe, made quite positive comments about the work of the PIDs unit at that point in time. I believe the work of the PIDs unit in this office has significantly increased over the last 12 months and, while there will always be ongoing work within agencies, I think we are at a stage where we could confidently say that the agencies are better prepared now than they were 12 months ago for dealing with PIDs. I just ask Ms Rosemann to add her comments.

Ms Rosemann: I would like to point out that the Office of the Queensland Ombudsman inherited a previous standard issued by the Public Service Commission when the Ombudsman became the oversight agency under the Public Interest Disclosure Act on 1 January 2013. When we embarked on a project of reviewing the standard in 2018 that standard had in fact been in place for about eight or nine years, so it was well overdue for review and revision. The initiative to develop new standards was born out of a number of concerns: firstly, that the standards were out of date; secondly, that they were not best practice; and, thirdly, that there had been a number of developments in other jurisdictions and also new evidence from the *Whistling while they work 2* research project, which this office has been a founding research partner of. That project, led by Professor AJ Brown from Griffith University, has produced a wealth of knowledge about best practice in whistleblower management which we wanted to incorporate. Fourthly, feedback we were getting from agencies was that the existing standard was not as helpful as it might be in guiding them in terms of operational practice.

The development of draft standards took on board all of that feedback and was discussed with public interest disclosure coordinators in agencies. It was then circulated to the CEOs of all public sector entities in Queensland for their comment. The response was incredibly supportive, and that led to Mr Clarke gazetting the standard on 1 March last year. At this stage, the standard applies to all public sector entities except government owned corporations. There is a process being facilitated through Treasury to progress the application of those standards to government owned corporations, but over the last 12 months we have focused heavily on capacity building, providing training and guidance to agencies, and a range of new tools and resources which are available on our website to assist them to effectively provide support to disclosers, to ensure there is effective risk assessment and risk detection for disclosers and to more adequately comply with their obligations under the act. Hopefully we will see the benefit of that not just in the last 12 months but in the longer term.

CHAIR: In relation to public interest disclosure, your report on page 50 noted that there had been an increase of 42 per cent compared with the previous year. Does anyone have any views on the reasons for the significant increase?

Mr Clarke: I will ask Ms Rosemann to answer that detail.

Ms Rosemann: I draw your attention to the data that is published on page 54 of the annual report. You will notice that by far the largest proportion of that is increases in the area of corrupt conduct reports. I think that, as much as anything, there are two influences on the number of public interest disclosures being reported. There is no doubt that the level of engagement that we have had with public sector agencies over the last 12 to 18 months has increased the awareness amongst agencies, both at the CEO level and through management and supervisor ranks, of their obligations under the act. That has been achieved not only through, for example, the engagement around the development of new standards but also through the significant increase in training that we have done and through a variety of other engagement strategies we have implemented. There is a much broader and more complete knowledge amongst public sector agencies of their obligations under the Public Interest Disclosure Act which has led to greater identification of public interest disclosures that were always there but perhaps not identified and managed appropriately.

I think the second influence has been—and my comment about the data on corrupt conduct public interest disclosures is that the other significant influence has been the work of the Crime and Corruption Commission and the increased awareness that has been generated through a number of significant investigations and inquiries they have undertaken, which has also generated increased awareness of the need to report and the obligation where a public servant or a public officer has reported corrupt conduct but there is an associated obligation to afford the protections under the public interest disclosure to that person.

CHAIR: Does the member for Mirani have a question?

Mr ANDREW: No, not at this time. I would like to say thank you to Mr Clarke for his service to Queensland.

Ms McMILLAN: Thanks again to you, Mr Clarke. I share a similar message of thanks for your service. I have a question in relation to the nature of the human rights queries or complaints. Are there any particular issues or flavours of those complaints that have come through?

Mr Clarke: As I outlined earlier, it looks like about 25 per cent to 30 per cent of complaints received in the office would have some sort of human rights element in them. We have started to monitor that information, but at this stage it is very early in the monitoring process. The types of matters that we are identifying as human rights complaints will be in areas like the right to access for education, less so in the right to access for health care, although I would imagine the Office of the Health Ombudsman would have substantial numbers of complaints in regard to access to health care. We also have complaints received in regard to the right to protection of family and children in regard to particularly Child Safety complaints. In terms of the general trend, I guess the best way I could describe it would be that the big social service agencies are expected to generate the greatest number of human rights complaints, and our initial data would support that.

Mr McDONALD: Mr Clarke, I thank you on behalf of my community for your services to Queensland. I have always found you to be very professional and I am sure you will be sorely missed. My question is about Child Safety complaints. I note there has been an increase from 421 to 513 complaints from 2017-18 to 2018-19, with 135 being assessed as involving harm or risk of harm to a child or young person. Could you express to us any concerns you might have with regard to Child Safety complaints and how these could be improved?

Mr Clarke: The office's role in oversighting Child Safety complaints has two aspects to it. One is the general complaints work that we do for people contacting the office. We then work with the complainant and the agency to progress those areas of concern. The other is the general oversight role that we have of the handling of complaints in Child Safety.

The committee will be aware that in 2016 we put out a report in regard to the handling of Child Safety complaints and prior to that, in 2014, we had undertaken a complaints management system review in the then department responsible for child safety. Those two elements in particular identified that the challenges faced by the department of child safety in regard to handling complaints are significant. The particular challenges relate to the interface between what is a complaint and what is case work, whereas this might be more easily determined in other areas of public sector administration.

In regard to Child Safety, there is a very strong propensity in the department to continue to have dissatisfaction by complainants dealt with in the case work area rather than having it defined as a complaint. Therefore, as I said in my 2016 report—and it remains my view—the complaints management system in Child Safety still has a way to go before it is able to say that it captures all of the complaints made to the agency and deals with all those complaints consistent with its complaints management systems and processes.

The then director-general of the department advised me some time ago that the recommendations from the 2016 report had been fully implemented. Those recommendations were largely about trying to get a functioning complaints management system after the recommendations in the 2016 report found that the department did not at the time have a particularly sophisticated complaints management system. The complaints management system now in the department I believe is improved on where it was at in 2016, but there is still quite a way to go for the department to be able to demonstrate that its complaints management system is on the same level of sophistication as its case management system for dealing with child safety issues.

Mr LISTER: You mentioned that there has been a fairly significant workload associated with the Human Rights Act. Has there been a particular sector where you see that being more the case, for instance dealing with prisoners?

Mr Clarke: Firstly, I will make a comment. The introduction of the Human Rights Act in regard to the management of complaints from 1 January was about—the requirement for us was to identify and categorise and be able to report on human rights issues in Ombudsman complaints. The truth of the matter is that most of the issues that we are identifying as human rights issues were always issues in those complaints. It is not the case—and I do not wish to mislead the committee with regard to the idea that these human rights issues are additional work. Some of it—a small proportion, I believe—is new work where complainants have taken human rights issues and have been able to articulate them more fully in their complaints. However, the majority of issues that we are currently categorising as human rights issues within complaints have always been there.

Prisoners have always been high on the number of matters that we deal with in this office compared to most agencies. Where prisoners identify issues, there is a strong probability that those issues will associate with human rights, in particular where the area of complaint is about the use of segregation, access to health care, sometimes religious freedoms and the like. There is a significant proportion of human rights matters identified in the corrections area.

The comment I made earlier I think remains the best guide I can give to the committee; that is, areas which are large human services areas of delivery—like education, health, housing, corrections and child safety—would be those that would generate the greatest number of human rights issues in the complaints we receive.

Mrs McMAHON: I refer to the annual report in relation to the feedback survey, which currently lists 64 per cent of clients satisfied with the service provided. I note that your office target is 80 per cent. Notwithstanding current issues with public interface and the difficulties in that so far, what ordinarily would be the processes that you would put in place to help increase client satisfaction levels?

Mr Clarke: When I established it in its current form, the survey of clients had two purposes to it. One was to establish an index of the grade of service for the office—that is, the professionalism of this office, the helpfulness of officers to complainants and like factors. It was not an index to measure whether or not the complainant was happy with the outcome. There are, I think the committee would appreciate, substantial difficulties in working in an environment where typically about 12, 13, 14 or 15 per cent of investigations actually result in a rectification or a change to a government agency decision. Therefore, 85 per cent of the decisions in regard to investigations do not result in a change that the complainant was seeking in the first place. From that point of view, there is a significant challenge in measuring client satisfaction when the client may well disagree ‘wholeheartedly’ with the outcome of the investigation. We are asking them whether their experience of the office and the professionalism was positive. Having something in the range of 65 per cent to 67 per cent is typically what we have had and we have had that for a very long time.

The current process remains similar to historic processes; that is, we measure the outcome for our intake process on a biannual basis and we measure the outcome for the investigations process on a biannual basis. The processes are then averaged over a two-year period and that moving average is what we report. There has not been a particular change in process in recent times. What we seek to do, though, is take the detailed feedback that comes from client satisfaction surveys and look to improve our processes in the office. An example of the sorts of things that we have done over time is change the nature of our correspondence so it is less bureaucratic and legalistic and is more in plain English; increased contact with complainants via the telephone so that we are able to explain decisions that we take, particularly when those decisions are adverse to the complainant; and looking to streamline our processes. The improvements in timeliness have, in part, been informed by the outcomes of the client satisfaction survey. They are the types of things that we work on improving: where we can give better information to complainants, better communication to complainants and try to give them a more timely service so that if they have any other avenue of review, for example commencing a legal action, we do not negatively impact upon their capacity to do that.

CHAIR: There being no further questions, I thank you for your time this morning, Mr Clarke and the other representatives from your office. I would also like to extend my thanks to you for the service you have provided to the people of Queensland. This concludes our hearing with the Ombudsman. Thank you to the secretariat and Hansard reporters. A transcript of the proceedings will be available on the committee’s parliamentary webpage in due course. I declare this public hearing for the Ombudsman closed.

The committee adjourned at 9.47 am.