



Your ref:  
Our ref: 11795  
K Cossart, [REDACTED]

## IN-CONFIDENCE

18 April 2018

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

Dear Mr Russo

### **Inquiry submission — Strategic Review of the Office of the Queensland Ombudsman**

Thank you for the opportunity to make a submission on the strategic review of the office of the Queensland Ombudsman.

My comments are limited to where the recommendations impact on or refer to QAO and are attached.

If you have any questions, please contact me or have your Committee Secretary contact Kaylene Cossart [REDACTED]

Yours sincerely

[REDACTED]  
Brendan Worrall  
Auditor-General

# STRATEGIC REVIEW OF THE OFFICE OF THE QUEENSLAND OMBUDSMAN

## Submission by the Auditor-General, April 2018

### Introduction

As a fellow integrity officer, I welcome the opportunity to support the independence and role of the Queensland Ombudsman. The Queensland Ombudsman is important to ensuring a fair and accountable public administration.

Many of the recommendations made in this strategic review either impact or reference my office and as such I provide the following comments.

### Summary of recommendations impacting on QAO

The recommendations that impact or refer to the Queensland Audit Office (QAO) are listed below.

Number	Recommendation
4	Active engagement with agencies as early as practicable for own initiative investigations and other complex or systemic investigations, is supported.
20	Legislative amendment to enable the Office of the Queensland Ombudsman and the Queensland Audit Office to share complaints and investigation data and other systemic information in confidence is recommended and should be supported by a formal Memorandum of Understanding including detail of the permissions, access protocols and confidentiality arrangements.
36	Amendment of schedule 3, s.12 of the <i>Right to Information Act 2009</i> to include s.92 of the <i>Ombudsman Act 2001</i> is recommended.
64	<p>To achieve significant efficiency, effectiveness and economies in human resource management of the staff of the Office, the Ombudsman should consider seeking legislative amendments for appointment of the staff of the Office of the Ombudsman under the <i>Public Service Act 2008</i>, and then employed by the Ombudsman, in a similar manner and with similar readily available protections as the staff of other Ombudsmen in Australia.</p> <p>Pending the relevant amendments to the <i>Ombudsman Act 2001</i> and the <i>Public Service Act 2008</i> to facilitate this new employment framework, the Ombudsman is encouraged to:</p> <ul style="list-style-type: none"> <li>▪ Liaise with the Public Service Commission to arrange for notices and other information flow to go to the Office directly notwithstanding its unique status outside the public service legislation</li> <li>▪ Liaise with the Department of Justice and Attorney-General and other relevant agencies to include the Office in networks for notices about temporary and shorter-term employment opportunities.</li> </ul>

**QAO response to recommendations**

4. Active engagement with agencies as early as practicable for own initiative investigations and other complex or systemic investigations, is supported.

The agency feedback suggested that the Ombudsman adopt a similarly consultative approach that QAO does in actively engaging with departments to design and plan performance audits.

My staff and I are available to discuss our strategic audit planning process with the Ombudsman.

Transparency of our proposed program of performance audits have provided our clients and stakeholders with forward visibility to help with their own planning and review. It allows us to engage in early conversations with our stakeholders so we can refine and direct our efforts to the areas where we can have the greatest impact within these topics.

20. Legislative amendment to enable the Office of the Queensland Ombudsman and the Queensland Audit Office to share complaints and investigation data and other systemic information in confidence is recommended and should be supported by a formal Memorandum of Understanding including detail of the permissions, access protocols and confidentiality arrangements.

I agree with oversight agencies such as ourselves, the Queensland Ombudsman and the Crime and Corruption Commission sharing information to minimise duplication of investigation activity.

General information is currently shared with the Queensland Ombudsman in a limited capacity, but this is not as valuable as the relationship QAO has with the Crime and Corruption Commission where we can share information openly.

This recommendation would require an amendment to s.53 of the *Auditor-General Act 2009* along the lines of the reference to the CCC under s.53(3)(b).

36. Amendment of schedule 3, s.12 of the *Right to Information Act 2009* to include s.92 of the Ombudsman Act 2001 is recommended.

The recommended amendment is consistent with exemptions provided to QAO. Protected information under s.53 of the Auditor-General Act is exempt from disclosure under schedule 3 section 12 of the Right to Information Act. This ensures consistency with the Auditor-General Act and protects the confidentiality of audit information.

Including protected information under s.53 as exempt information under the Right to Information Act, provides our clients with comfort that any sensitive information provided or audit product created as part of an audit is protected and confidential.

This only relates to information obtained or documented during an audit, that is not publicly available, to ensure the integrity of our audit investigations. Any right to information requests in these instances are determined at the source agency.

64. To achieve significant efficiency, effectiveness and economies in human resource management of the staff of the Office, the Ombudsman should consider seeking legislative amendments for appointment of the staff of the Office of the Ombudsman under the *Public Service Act 2008*, and then employed by the Ombudsman, in a similar manner and with similar readily available protections as the staff of other Ombudsmen in Australia.

Pending the relevant amendments to the *Ombudsman Act 2001* and the *Public Service Act 2008* to facilitate this new employment framework, the Ombudsman is encouraged to:

- Liaise with the Public Service Commission to arrange for notices and other information flow to go to the Office directly notwithstanding its unique status outside the public service legislation
- Liaise with the Department of Justice and Attorney-General and other relevant agencies to include the Office in networks for notices about temporary and shorter-term employment opportunities.

In the Strategic Review of the Queensland Audit Office tabled in Parliament in March 2017, the reviewers made the following strategic recommendation under s.3.1.

6.3 (ii) *We recommend that the Auditor-General Act 2009 be amended:*

- *To provide for the Auditor-General's employment of QAO staff under that Act rather than under the public Service Act;*
- *To give the auditor-General the authority to employ the staff necessary to carry out the Auditor-General's functions; and*
- *To enable the Auditor-General to determine the remuneration and other terms and conditions of employment of QAO staff.*

This recommendation was based on recruitment and retention difficulties experienced by QAO.

The strategic reviewers' terms of reference also included the independence of the Auditor-General noting the *Finance and Administration Committee Report no. 23 Inquiry into the legislative arrangements assuring the Auditor-General's independence*. The reviewers stated that they interpreted the provision as an invitation to comment on the matters that were the subject of the inquiry. They made the following strategic recommendation.

8.6 (i) *We recommend that:*

- *The Auditor-General become an independent Officer of Parliament;*
- *The Auditor-General's independence be strengthened inline with the suggestions made by the QAO in its submission to the Finance and Administration Committee's inquiry into "the legislative arrangements assuring the Auditor-General's independence; and*
- *Subsections 26(3) and 56(4) of the Auditor-General Act be repealed.*

The reviewers made reference to the lack of independence in relation to the resourcing QAO.

*We consider that the area of most immediate concern, one we have referred to in various parts of this report, is the auditor-General's lack of independence in relation to the resourcing of his office.*

In our submission in October 2013 to the former Finance and Administration Committee inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence, we addressed our independence concerns based on International Organisation of Supreme Audit Institutions (INTOSAI) principles.

We raised opportunities to further strengthen independence by establishing the Auditor-General as the employer and employing QAO staff under the Auditor-General Act and not the Public Service Act under the INTOSAI principle 8 which deals with financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources.