



18 April 2018

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

lacsc@parliament.qld.gov.au

Dear Sir/Madam

The Local Government Association of Queensland (LGAQ) is grateful for the opportunity to provide a submission into the Committee's inquiry into the Strategic Review of the Office of the Queensland Ombudsman.

For the LGAQ, the peak body for the 77 local governments in Queensland, transparency and accountability is paramount. The LGAQ recognises the important role the Office of the Ombudsman plays in promoting transparency and accountability as one of the integrity agencies in the State.

The LGAQ would like to limit its comments to two areas, namely the scope of the Ombudsman's role and the sharing of information between agencies.

To remain effective and a trusted element of Queensland's accountability and integrity system, it is essential that the Office of the Ombudsman focuses its activities squarely on its legislated role, i.e. on investigating administrative actions of agencies and in assisting agencies to improve the quality of administrative practices and procedures.

For the benefit of the Committee's inquiry, I would like to take this opportunity to recall one example where the Office of the Ombudsman's actions created significant tension in the local government sector because they appeared to be outside the Office's remit.

In 2016, the Ombudsman investigated concerns raised by a member of the public about the inclusion of a landowner's name in the auction notice issued by the Toowoomba Regional Council for the sale of land for unpaid rates under section 142 of the Local Government Regulation 2012. In a report published on 21 December 2016, the Ombudsman found there was no express legislative requirement to include the homeowner's name on the action notice and that the Council's decision to include the name of the homeowner on the auction notice was unreasonable.

It was the LGAQ's strong view at the time, expressed in a letter to the Ombudsman dated 23 December 2016, that it was a matter for the legislature, and not the Ombudsman, to determine, once and for all, whether the names of the individuals concerned should be included in the public advertising required by the relevant statutory process.

In response to the Ombudsman's report and recommendations, the (then) Department of Infrastructure, Local Government and Planning issued advice in Bulletin 01/17 that, whilst councils are encouraged to consider their sale of land procedures in light of the Ombudsman's



report, in the absence of any statutory requirement, any decision regarding the inclusion of an owner's name in an auction notice remains a matter for the council's discretion.

To our knowledge, there has been no further clarification of the Ombudsman's findings and therefore the advice provided by the Department still does not align.

Regarding the specific recommendations contained in the Review Report, the LGAQ would like to make some comments about Recommendations 20 and 22 dealing with information sharing between agencies. While the LGAQ has been supportive of greater information sharing between integrity agencies, for example to prevent jurisdiction shopping by serial complainants making unsubstantiated claims, it is important that care is taken when sharing information and a certain level of rigour is adhered to.

Recommendation 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.

Current legislation already provides mechanisms for sharing of information between the Queensland Audit Office (QAO) and the Ombudsman. The issue here is to determine the purpose of amending the current provisions, the nature of the amendments and the impact of proposed amendments on the entities whose information is being shared.

Care needs to be exercised in proceeding with any amendments which would facilitate the sharing of information with the QAO to ensure that the Ombudsman remains responsible and accountable for the information shared.

If the proposed amendments enable more wide-spread sharing of information (and by extension of complaints against councils), this could also extend to matters which are not substantiated by the Ombudsman at the end of their investigative process. Information sharing should be done in such a way that the integrity of investigations conducted by the Ombudsman is maintained.

Recommendation 22: Reintroduction of the proposed legislative amendments in relation to the Ombudsman that were contained in Part 6 of the Crime and Corruption and Other Legislation Amendment Bill 2017.

These proposed legislative amendments would have the effect of allowing the Ombudsman to share information with agencies even when those agencies do not have an interest in protecting the health, safety or security of a person or property. In short, it allows for greater sharing of information without the current thresholds.

The concern would be that information about an investigation is shared with an organisation that does not necessarily "need to know" but has an "interest" in the information for the performance of their functions.

It is important to note that, even though the proposed amendments in Recommendation 22 respond to a request from the Ombudsman to be able to share information with Commonwealth agencies, the Commonwealth Ombudsman and other state Ombudsmen, the proposed amendments extend the existing definition of agency to include these entities. In other words, the proposed amendments would not only apply to Commonwealth agencies, the Commonwealth Ombudsman and other state Ombudsmen but also agencies captured by the existing definition.

If these two recommendations are adopted, therefore, it is likely that the Ombudsman will have the ability to share local government information with the QAO and other government



organisations without the local government's consent or knowledge. Once information is shared without the owner's consent or knowledge, the accuracy and timeliness of that information is placed at risk without any possibility of mitigation by the owner of that information.

In conclusion, local governments are not opposed to the sharing of information with external agencies. However, the LGAQ believes that the explicit controls which currently exist in legislation must be maintained and applied to the proposed amendments to ensure that information sharing remains purposeful, appropriate and transparent.

Should you have any questions about the content of this submission, please do not hesitate to contact Stephan Bohnen, Principal Advisor – Intergovernmental Relations, 

Yours sincerely



Greg Hallam AM
CHIEF EXECUTIVE OFFICER