LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

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

Staff present:

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

PUBLIC HEARING—INQUIRY INTO THE STRATEGIC REVIEW OF THE OFFICE OF THE QUEENSLAND OMBUDSMAN (OMBUDSMAN)

TRANSCRIPT OF PROCEEDINGS

MONDAY, 11 JUNE 2018

Brisbane

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The committee met at 9.37 am.

CHAIR: Good morning. I declare open this public meeting. I am Peter Russo, the member for Toohey and chair of the committee. With me here today are James Lister, the member for Southern Downs and deputy chair; Stephen Andrew, the member for Mirani, who will be joining us by teleconference sometime during this session; Jim McDonald, the member for Lockyer; Melissa McMahon, the member for Macalister; and Corrine McMillan, the member for Mansfield.

The Ombudsman Act 2001 requires a strategic review of the office of the Queensland Ombudsman to be conducted at specific intervals, with review reports to be referred to this committee. Under the Parliament of Queensland Act 2001, the committee may consider a review report and report on it to the Legislative Assembly. The public meeting today is part of the committee's consideration of the strategic review of the office of the Queensland Ombudsman and we will hear evidence from representatives of the office of the Queensland Ombudsman.

Prior to the meeting, the committee asked the Queensland Ombudsman to respond to a number of questions. I would like to take this opportunity to thank the Ombudsman and his staff for their assistance to the committee in providing their response. It will soon be uploaded to the committee's website.

Only the committee and invited witnesses may participate in the proceedings today. I remind witnesses that deliberately misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, members of the public may be excluded from this meeting at my discretion or by order of the committee.

These proceedings are being recorded by Hansard and broadcast live from the parliament's website. Media may be present and will be subject to my direction at all times. The media rules, endorsed by the committee, are available from the secretariat if required. All of those present today should note that it is possible that they might be filmed or photographed during the proceedings. I ask everyone present to turn off mobile phones or on to silent mode.

CLARKE, Mr Phil, Ombudsman, Queensland Ombudsman

ROBERTSON, Ms Leanne, Director, Corporate Services Unit, Queensland Ombudsman

WELLARD, Ms Jessica, Acting Deputy Ombudsman, Queensland Ombudsman

CHAIR: I now welcome Mr Phil Clarke, the Ombudsman; Jessica Wellard, the Acting Deputy Ombudsman; and Leanne Robertson, the Director of the Corporate Services Unit. Good morning. I invite you to make a short opening statement after which the committee members will have some questions for you.

Mr Clarke: Thank you, Mr Chair. I appreciate the opportunity to be with the committee today to consider the strategic review of the office. My comments in opening will be very brief. Firstly, I would like to acknowledge the very professional and positive review that was undertaken by Ms Webbe. It was entirely a positive experience for the office and it was very welcome.

In my view, a strategic review of independent offices is a vital element of their independence in making sure that that independence is carried out in a positive way both in support of the parliament and to build confidence in the community that the independence is being properly administered. Both the 2012 and the 2017 strategic reviews were positive experiences for the office.

The 2017 review report contains many recommendations of which I am supportive. I have laid out those for you in my responses to questions on notice. I have also commenced consideration and implementation of many of those recommendations already. I will shortly write to the committee about the review of the office's strategic plan, which reflects a number of the review's recommendations and I look forward to your comment about that strategic plan.

Overall, subject to the completion of this inquiry, I am very optimistic and I look forward to working through the full list of recommendations and benefiting from the improvements that, hopefully, will flow from those recommendations. I am happy to take the committee's questions.

CHAIR: Would you like to tell us about your progress with incorporating all the investigation types within the revised performance measures? This comes from recommendation 2.

Mr Clarke: Yes, thank you. Certainly, I would. As the reviewer pointed out, the current performance framework for the office emphasises the management of complaints and complaint investigations. Currently, the measurement of performance within the office measures out-of-jurisdiction matters in terms of contacts, inquiries and complaints, and investigations of complaints. Those matters have been a focus for the report for some time. Because of the difference between managing complaints and managing own-initiative investigations, the simple business of undertaking those investigations is significantly different. It has not been included in the timeliness, particularly the timeliness performance measure for the office. However, I was supportive of the recommendation to incorporate it.

The strategic plan review that is nearing completion in the office now proposes to amend the definitions of the performance—timeliness of investigations—to incorporate all of our work, including PIDs, complaint investigations and own-initiative investigations. I agree with the reviewer that 12 months as a nominal time frame for the finalisation of any investigation is reasonable. From time to time there can be reasons investigations also go beyond the 12-month time frame, but they are quite infrequent. If the committee found it necessary, I am happy to give an explanation about each one of those. There are so few that we could give independent explanations for the extended time frames.

I am pleased to report to the committee that we have already commenced the work of redefining the definitions for the performance measures to incorporate all of our investigative work into that performance measure. From the adoption of the next strategic plan we will be in a position to report on it in a proper way.

Mr LISTER: Mr Clarke, congratulations on a most satisfactory report card.

Mr Clarke: Thank you.

Mr LISTER: When you were in the audience you heard me asking Ms Webbe about recommendation 36. I have had people approach me with concerns about having a complaint investigated by the Ombudsman and, by necessity, having information shared with the agency about which they are complaining that could be used by that agency to disadvantage them, or that they perceive could disadvantage them. When I read a rather nuanced discussion about inconsistencies between the Right to Information Act and your own requirements for secrecy under your own act, it made me wonder to what extent is the information provided by a complainant shared with the agency about which they are being complained. One individual has said to me that they were approached by an officer in the Ombudsman office saying, 'Thank you for the information. Do I have your permission to share this with the agency in order that we can proceed to an investigation?' How does that sit with what I understood to be an ironclad assurance that there was no sharing of information in order to protect the privacy and the interests of the complainant?

Mr Clarke: Thank you for the question. It is an important issue for complainants who are concerned about their individual privacy and their individual circumstance where they might have concerns about reprisal, or similar things. I regard it as a concern right across the whole range of work that we undertake.

While I cannot comment on the specific circumstances of the case—because I cannot recall the circumstances—the simple fact is that sometimes we have to reveal information to an agency to allow an investigation to proceed. Depending upon the circumstances and the facts that are easily determined, for example, in an investigation we may be able to conduct an investigation privately—confidentially—without revealing the identity of the person making the complaint. In many cases that can be done, but there are circumstances when it cannot be done, because the individual may need to be identified so that the circumstance of the complaint is meaningful for an agency. Otherwise, we just have too little information to be able to deal with it.

However, as you alluded to in your question, when we are likely to release information that would identify a complainant to the agency when the complainant is not already known to the agency—and in many circumstances that is the case—our practice is to seek permission from the complainant to be able to do that. I might ask Ms Wellard to make some comments about specific cases, but in the majority of occasions I think it would be fair to say that the complainants release that information because of the protections under the Ombudsman Act.

If someone reprises a complainant, an Ombudsman officer or anybody else in the conduct of an Ombudsman investigation, it is an offence under the Ombudsman Act. There are also protections under the PID Act and a range of other things to protect people who are involved in the investigative process. Individual complainants may or may not be familiar with those protections, but they apply in all of the circumstances to our work.

The specific example that has been dealt with in recommendation 36 is that inconsistency between section 92 of the Ombudsman Act and the provisions of the Right to Information Act. It becomes particularly relevant after an investigation is completed. When an investigation is ongoing, the protections under the Ombudsman Act to be able to protect individuals and use any of the offence provisions under the Ombudsman Act are essentially quite apparent and we can apply them. However, when an investigation is closed and what we are dealing with is public records—so the investigation is finished but there is a public record, for example, the transcripts of any interviews that might have been had or any written submissions that might have been had from a witness—that is when the provisions of the RTI Act become inconsistent with the Ombudsman Act.

Recommendation 36 and the submission in regard to changing the balance between the RTI Act and the Ombudsman Act provisions particularly relate to closed cases and making sure that we can protect people's evidence and people themselves post an investigation as efficiently as we can in the investigative stages. Perhaps I could ask Ms Wellard to make some comments specific to the issue that you raised.

Ms Wellard: Obviously, without being aware of the specific instance I cannot comment on the specifics of that case, but I can advise that it is not a common concern that is raised throughout the complaints that we see. When a complainant comes to us, it becomes a question of practicality. They have to give us a certain amount of information for us to be able to understand their complaint. We frame that up quite well in our online form on our website. We ask, 'What happened?' 'When did it happen?' and, 'What outcome are you seeking?' Essentially, that is the core information that we need to get to understand the particular concern.

There are a few broad principles that may be of relevance to this situation in terms of how we approach our complaint intake. Obviously, any complainant has a choice about accessing our service. They can choose to come to us and ask us to conduct an investigation of their concern. There is an understanding that that requires a certain level of information to be provided. A broad principle underpinning everything that we do would be principles of natural justice—so procedural fairness. If one party tells us something we are forming an unbiased view of what happened. At times, we may need to share some of that information with the other party to get their views on it.

As one further comment, it sounds from the context that it may have been a request in the context of a direct referral, which is something that we do quite frequently with complainants when they come in and bring a complaint to us and we assess that it is premature for our office to deal with it. We directly refer the complainant to the agency if they give us their consent. The question is along the lines of, 'Thank you for the information. We've decided that it's premature for us to deal with it, because you have a right of appeal or review through the agency's complaints system. Would you like us to disclose that information, package it up and send it on your behalf?' We see that as a courtesy for complainants as much as anything—a convenience. That usually involves this question of consent—'Do you consent for us to provide what you have given to us directly to the agency for them to contact you?' It may have been raised in that context.

Most of the time, consent is given. If consent is not given, then we will provide further advice to say, 'Thank you. Here is how you will need to provide the information yourself.' Again, that is a free choice for a complainant to make. If consent is not given and if we are told that specific information should not be shared it may, of course, impact on what we can do as an office to progress a complaint and we would always have a conversation with the complainant.

Mr LISTER: That all makes sense. Thank you. Are you aware of any instances where investigations that have taken place by the Ombudsman have led to the invocation of the protections available to those who are making a complaint? You talked about protections within your own act and some others. Are you aware of cases where a person has invoked those protections?

Mr Clarke: In terms of breaches of the Ombudsman Act, I do not recall any time in which I have started a proceeding against somebody for an offence under the Ombudsman Act in regard to a reprisal or taking action against a complainant. The only action that I recall was some years ago an action was started against someone seeking to misrepresent themselves as an officer of the Ombudsman office, but that was in a totally different circumstance. That breach proceeding was commenced and finalised. That is the only time I recall doing that.

Mr LISTER: That confidence on the part of the complainant that those protections will be exercised and that it is not impossible to prove their case would be central to certain people having confidence that they can approach the Ombudsman or, as Ms Wellard said, share the information that they are providing.

Mr Clarke: It is pivotal to the independence discussion as well. It goes to the situation that no person—no person—may direct the office how to conduct an investigation. That goes essentially to the protections of what will be investigated and, in particular, in your set of circumstances for the complainant to whom you alluded, how an investigation will be conducted.

Ultimately, depending upon the circumstances and the gravitas of the complaint, the office may choose to do the matter, for example, as an own-initiative investigation to totally protect all the individuals, because the Ombudsman will decide to do it in my own name. That has occurred sometimes in the past. There are very limited circumstances, but it has occurred in the past where an investigation was such that it was appropriate for me to commence an own-initiative investigation. The explanation to the agency was that I had chosen to do the investigation rather than it was based upon a complaint from any particular person, but they are very unusual circumstances.

Mr LISTER: Thank you very much.

Mrs McMAHON: My question goes to the issue of confusion generated by the title of 'Ombudsman' used by other bodies. Do you have any examples of confusion that has occurred in Queensland because of the use of the term 'Ombudsman' for persons other than the parliamentary Ombudsman?

Mr Clarke: I cannot quote you specific examples, though by way of explanation I can expand on the comments that are included in the reviewer's report. The issue that I am most concerned about in terms of the use of the term 'Ombudsman' when the level of independence of the office does not warrant, in my view, the use of the term is essentially in terms of the expectation of citizens and the confusion that might be derived from that. In both the creation of the Training Ombudsman and the Health Ombudsman, I briefed against using the term 'Ombudsman' to the respective ministers. The South Australian government, for example, has a similar office to the Training Ombudsman. They call it the Training Advocate, which I think is a better reflection of the actual function, because that office is set up to advocate on behalf of trainees and the apprentices in the execution of their contracts and their training.

It most often plays out in people understanding the differences between a truly independent Ombudsman office and an office that exercises some degree of advocacy. People will come to our office and not understand the difference between the powers of an Ombudsman who makes recommendatory decisions, such as my office of the Ombudsman does, and the powers of a Health Ombudsman to commence proceedings against an individual, against a practitioner. Citizens do not understand the difference between those things. That is where I think the principal issue arises. For that reason, I cannot necessarily point you to an individual who pointed out that they were confused about this role and that role and another role, but I know that in the office we have people who do not understand why the Ombudsman cannot remake a decision, cannot direct a certain course of action to occur.

I attribute some of that confusion to the overuse of the term 'Ombudsman'. For example, there is now a substantial practice of having an industry ombudsman across the country and to try to reverse that would be somewhat frivolous. In my view, those terms have built up a level of expectation in the community as to the level of intervention that an Ombudsman office will be able to undertake. Citizens who have experienced those ombudsman functions and the parliamentary Ombudsman function sometimes struggle to understand why, for example, I cannot simply remake a decision that an agency made and direct the agency to do something different. It is a different construct, as I am sure you understand, but I am not sure that it is clear to citizens across-the-board. In my view, the overuse of the term contributes to that significant level of confusion.

Mrs McMAHON: Might that be reflected in the numbers that we have all seen reference to in the first contacts that are had with your office that are then given out to the appropriate government body entity or advocate that you guys do not record as a contact?

Mr Clarke: There are many thousands of contacts to our office that are automatically redirected from either telephone or web—it is usually telephone or web, they would be the most significant channels—because people become aware that the office in many circumstances cannot but in some circumstances is not the most appropriate body to deal with the matter. For example, redirected to the

Health Ombudsman office. Under the Ombudsman Act I probably could investigate many of the issues that arise out of the public health system. What we cannot investigate, of course, are the private practitioners. That is an example of where we could do the work but are not the most appropriate body to do the work. We do get a lot of redirection, yes.

Mr McDONALD: In regard to the issue of staff being employed under the Public Service Act and the Ombudsman Act, could you outline the positives and the negatives? My concern is do you think people employed under the Public Service Act working in your office gives some autonomy, independence, from your office?

Mr Clarke: Thank you for the question. It is a complex question and the reviewer in the report is correct that the arguments are not straightforward in terms of independence. However, independence is a key consideration in terms of the structural arrangements that are appropriate for the workforce. I note, for example, the Crime and Corruption Commission has a different arrangement for industrial relations than our office does and officers up to a certain pay level in the Crime and Corruption Commission are employed under the Public Service Act. Beyond that all the officers are contracted and on limited term contracts. I think they are renewable, but there is an ultimate term which officers are able to achieve.

There are different views and different mechanisms that might be used to move either part of the workforce into the Public Service Act. My concern that I expressed to the reviewer at the time was to make sure that it was not done as essentially a quick policy decision, that any shift was taken in full consideration of the impacts on the various provisions in the Ombudsman Act and making sure those provisions were not diminished or undermined in any way. Provided that that level of analysis is undertaken, I think that it is possible that at least part of the ombudsman workforce could be employed under the Public Service Act without essentially diminishing the independence of the office. I would think it is more problematic for the senior staff in the office and there may need to be an alternative arrangement for senior staff in the office.

The issue of particular significance in that space is, for example, how reviews are conducted. If I have jurisdiction over the Public Service Commission, and the Public Service Commission is undertaking reviews of disciplinary actions of my officers there is an obvious conflict between the Public Service Commission making decisions about the office and the office making decisions about the Public Service Commission. That is an obvious conflict of interest situation. That is an example of the type of thing that requires clarification so that it will be very clear about how those things will be handled. As I said, that does not mean it cannot happen, it just means we have to give careful consideration as to how it might happen.

The issues that staff allude to that might be benefitted by moving to the Public Service Act do relate, for example, to the costs associated in maintaining a certain level of our own employee relations. We do have to negotiate a separate terms and conditions agreement. It is not an industrial agreement because it is actually approved by the Governor in Council not the Industrial Relations Commission. Steps have been taken during my term, the last seven and a half years, and they were done prior to that, to heavily align the terms and conditions of employment of the officers in the office with the Public Service.

The truth of the matter is our stated set of terms and conditions that are approved by the Governor in Council is pretty much an index of the Public Service Commission provisions of employment and service. We apply the standards, we apply the directives, we apply many of the elements of Public Service employment directly to the office by approval of the Governor in Council. Those elements that cannot be applied because they are in conflict with the Ombudsman Act, and there is a relatively short list, are the provisions that need to be specifically addressed in any particular discussion around officers moving from the Ombudsman Act to the Public Service Act.

I also note the Auditor-General's comments that while they are not exactly the same as the challenges that might occur in the ombudsman office, I think they just are a salutary reminder that independent offices are not the same as the public sector at large and there are specific issues that need to be addressed and any discussion to move in that direction should be very carefully considered indeed.

Mr McDONALD: In regard to recommendation 63 and the HR concern in relation to managing poor performance, could you explain to the committee why that 2017 staff survey might have returned such a low figure and what are you doing to address it?

Mr Clarke: Thank you for the question. We did some subsequent work in the office. We had a subsequent review undertaken post survey to look at issues that staff raised particularly in terms of fairness—what the report described as discrimination but ultimately turned out not to be discrimination,

essentially fair treatment of staff in that space. What that review found was that what people were concerned about was that they were being treated equally across the office. Irrespective of which team they worked in, the staff had a perception that the approach adopted by their local team leader or local manager was not always consistent. We have quite a degree of movement of people across the office into different teams and when they move from one team to another—some staff had a perception that the expectations of the manager were slightly different and that the application of the office's policies and procedures was not consistent. That was one issue that arose. We are dealing with that through improved training of senior staff in terms of that process.

There was a perception in recruitment and selection in the office that we do not always have the same recruitment and selection process. In fact, we have a very standardised procedure. But again what people were concerned about was whether the selection panels were sufficiently independent to guarantee an independent outcome. I might ask Ms Robertson to talk about that in a moment, but the answer to that is we have already started to undertake training in unconscious bias by the members on our panels. We are also looking to improve the balance of panels so we have more external people on selection panels than internal people particularly for permanent and more senior positions, and we are making sure that we have a stronger career support process for all of the staff in the office.

We are a small agency by definition. Career opportunities, particularly for senior positions, do not come along very frequently inside the office. People who are committed to staying in the office, they see their career long-term as being in the office, and want to work their way up the organisational structure, their career opportunities are going to come along far less frequently than they will if they regard the whole of the public sector as their career option, for example, where there is a quarter of a million jobs. Those career choices that people make and the opportunities that the office can provide for people are necessarily restricted by our size.

We are trying to do two things: one is get greater consistency in performance management so that individuals experience the performance management and career achievement planning process in the office equally, or as equally as we can, and then to have a supplementary process on top of that where someone who has a particular career direction they want to go in can participate in that process to get specific support for their career and the direction they want to go in. Perhaps if I could ask Ms Robertson to make some comments.

Ms Robertson: There is little I can add to what the Ombudsman has said. We are reviewing our recruitment and selection guidelines in-house which are heavily reliant on the Public Service Commission directives. Some of the issues that the reviewer raised about involvement of external people on our panels is certainly an issue that we are reflecting in those guidelines. We have this Friday an external consultant coming in to provide training to our chairs and panels as an opportunity to revitalise that. As we are moving into the next financial year we will also move into some improvements in our performance planning in terms of how we work with managers as well as further work around career development, both in terms of current work and skills as well as more broader development that might suit people moving into the broader Public Service. It is an opportunity to align to, for example, PSC standards and their capability and leadership framework.

CHAIR: The next question is in regard to recommendation 48. There is encouragement to develop a shared learning strategy to connect agencies with common issues learnt from investigative outcomes and improving the administrative practices and procedures. Can you tell the committee about any changes that you have implemented in response to this recommendation? I also have a second question.

Mr Clarke: Thank you for the question. Over time the officers had a range of newsletters and other strategies in place to try to push out, I guess, the learnings into agencies from investigations. One of the ideas that was tried, and it is still in place but is not used very frequently, is an ombudsman advisory. When we first put in place ombudsman advisory, which would be five years ago, I think, five or six years ago, the idea was specifically to address these issues. We would have, not a newsletter, but actually an advice outcome of investigation and issue that we could then circulate on subscription across the public sector to people who had an interest in particular areas.

That was put in place in the context of immediately post the 2012 strategic review where the issue about administrative release of information from investigations was considered and not supported at the time. The use of the ombudsman advisory process was therefore heavily constrained. In other words, in that environment, for example, I could not provide advisories about certain organisations because the content would immediately identify the organisation. I could do it about councils, for example. I could say a council had an issue around this sort of thing and I could push it out to a council because there are sufficient numbers of councils that it can be sufficiently deidentified so that the material does not contradict section 92 provisions.

However, the nature of that process whereby we cannot identify parties to or release information in regard to an investigation does make it very restricted. It would be a significant enhancement, I think, if provision for administrative release of information under the Ombudsman Act was available to me for a purpose similar to that set out in recommendation 48, so that where it was for a training purpose or a purpose of sharing information to improve public administration the capacity for me to decide, in a deidentified way if necessary, that information should be released would be a useful thing for me. I actually have legal advice to tell me that I cannot release some of this information. It is a difficult situation. I would like to be able to do it. We attempted to do it through the ombudsman advisory process, but it is more desirable, I think, that there is an administrative release channel for me to use.

There are two ways in which I can release information at the moment under sections 52 and 54 of the act. One is to table it in the House; the other is to get the Speaker's approval to release the information otherwise. I do not want to have to constantly go back to the Speaker to get approval to release a particular piece of information. That solution is simply unworkable. I think the intent of the recommendations about greater engagement and greater capacity to share information simply underline the need for some form of an administrative release arrangement under the Ombudsman Act to be able to support that.

CHAIR: I do not need to ask you the second question because you have covered it in your detailed response. This may be a little bit out there, but what would prevent the office from, for example, talking about a specific investigation or something that you have conducted in a role play sort of scenario where it is completely deidentified? Whilst you rely on some of the facts, you can perhaps in an educated role then say in the newsletter, 'This is something that we have seen recurring.' From your point of view you could say, 'It would be good for the agencies to address these matters in this manner,' and it would be, for want of a better word, a Dorothy Dixer. I know it probably would involve a fair bit—I am not trying to create work for your office.

Mr Clarke: In fact, we try to do exactly that. We do not do it essentially as a role play, but we have deidentified versions. On the Ombudsman website, for example, there is public information about, 'Is your complaint about child safety? Is your complaint about rates and charges for a council?' That is information useful to both the complainant and an agency about how to deal with the matters. That particular channel by which we are releasing information is specifically targeted at complainants so that they are informed about how to deal with it.

As I said, the Ombudsman advisory that we attempted to put in place and to a lesser extent the number of newsletters that we circulate—the degree of deidentification becomes the issue. If I talk about a school student, there is only one Department of Education in Queensland, so it is not hard to figure out that that is targeted at the Department of Education. As I said, it is easier to do with councils. I can talk about general administrative practice in agencies. I could say, 'An agency had an issue with recruitment selection,' or some other issue, but if I talk about it being a housing issue, equally it is apparent where it is from. If I talk about it being corrections, it is even generally apparent where it is from. That is what I am alluding to. I actually do not see a particular harm to the department of housing, for example, if I published a matter identifying the department as 'this issue arose in the department of housing' without identifying the complainant. The schema of the Ombudsman Act I think was originally intended to protect complainants more than agencies. Effectively, the way it is drafted it essentially prohibits the release of information.

The capacity to have an administrative release arrangement which took account of the various contexts—so, in other words, yes a particular department might be identified but given that departments are not particularly going to be negatively impacted for example, there is no possibility for a reprisal against a department if information is released. Whereas the protection of the information about the individual who complained or where there is other identifying information would give us a better framework within which we could push information out to agencies and make it more consumable—if that is the way I can describe it—because people can understand better the nature of the thing we are talking about rather than having it so deidentified that it is a state agency and a person cannot even identify the region from which they came et cetera. It is almost not irrelevant, but it is not very interesting for agencies to consume that information. I think the point made in the review report is we have to take steps to make it more engaging with agencies and public offices, and I think an administrative release arrangement would help us do that.

Mr McDONALD: One thing that occurred to me, Mr Clarke, when you answered my question before, you referred to the crime and corruption commission as having a different HR structure using contracts and the Public Service Act. I know the crime and corruption commission also do secondments

from different agencies. I know one of the things that the chairman said was a benefit from that secondment was the learnings that could then go back into the agencies once the secondment was finished. Have you got any thoughts about that in regards to assisting your HR issues?

Mr Clarke: In fact we second people from the public sector into the office all the time. There are specific provisions in the Ombudsman Act to allow people to be seconded in and particularly related to their independence; they are seconded under the Ombudsman Act, not the Public Service Act et cetera. Those provisions are quite effective in terms of people coming into the office and then going back to their job. There are some issues with regard to seconding people from the Ombudsman into the public sector, and that is because of the interpretation of a particular section of the Public Service Act about employment. I think it refers to 'an officer employed under the Public Service Act'.

We have recently had some clarification from the Public Service Commissioner with regard to an individual officer. The fact that we had to seek that clarification was a frustration, but the clarification went to the benefit of the officer so the situation was clarified and is able to be dealt with. I am grateful to the Public Service Commissioner for that. However, that frustration is an example of some of the frustrations that can occur in a small office such as ours where career development is a challenging thing to be able to do satisfactorily. Having any frustrations in that space is unfortunate. One of the benefits that would definitely arise from the recommendation with regard to employment under the Public Service Act for a significant proportion of the workforce is that it would remove that frustration.

The point I made earlier about the Crime and Corruption Commission industrial arrangements, as I understand them—and I am not a student of them, but as I understand them—is that the senior staff in the office are employed for specific terms under specific arrangements. I think that would also have to be considered as part of this arrangement as well.

Mr McDONALD: Can you second from local government?

Mr Clarke: Yes, I can second from—from local government it would probably be a temporary appointment rather than a secondment, but we can make temporary appointments under the act. I can do them myself. I actually set the terms and conditions of employment for temporary employees.

Mr McDONALD: It is good to know you have that flexibility option.

Mr Clarke: I do.

Ms McMILLAN: Congratulations on a positive review. In the context of some of the recommendations, do you think the system is still being overburdened by minor matters, or do you feel that we are progressing to a situation where we have the balance correct?

Mr Clarke: It is an ongoing issue for the office to be able to strike that balance between what you might call minor issues and significant issues. It is sometimes referred to as the balance between the urgent and the important. The number of complaints received by the office has generally stabilised in the last few years. The number of out of jurisdiction matters conducted by the office that we report, as the committee will be aware, is dropping quite quickly. We have paid quite a lot of attention over the last few years to get OOJ matters to the state where OOJs are now less than 50 per cent in general terms of the number of complaints received. The OOJ matters and the capacity to be able to redirect people automatically I think is getting into a much better position than it has historically been.

The discussion about minor and major, though, is in the complaints space. When something is a complaint in jurisdiction for the Ombudsman office, is it sufficiently significant or important for the Ombudsman to investigate the matter? The committee will be aware of all the process checks we have at the front end of receiving a complaint, in other words, whether the agency concerned has had a chance to deal with it. Because we do not turn our mind at a point in time to whether a matter is meritorious or not at that front end, it is simply whether it has been through the process.

We tend not to give a great deal of consideration to minor and major. That is informed by if something is obviously insignificant or obviously trivial—so if it is about a single bus ticket for example or something along those lines, and we have had complaints about single bus tickets—we tend not to—in fact, it is beyond tend not to—we will not send that material on to an agency for its consideration even if it normally would fit our premature set of process controls. However, as Ms Wellard reminded me this morning, we had a meeting the other day with the chief executive of the Local Government Managers Australia and a couple of CEOs came in and wanted to talk to me specifically about the strategic review and what we might do. We started talking about minor and major considerations and they were talking about barking dog complaints. 'Is a barking dog complaint a minor matter or a major matter?'

Mr McDONALD: It depends how close you live!

Mr Clarke: It turns out if it is actually a matter about application of local laws in a procedurally fair way that might flow on to the application of other local laws in that particular council, it is not just as trivial; it is not a minor complaint simply because you have a barking dog. There is an initial impression of complaints as being minor or major, and they can be revealed on the circumstances, on the fact of a matter, and that would allow us to make a fairly clear decision. However, there are also things which a council, for example—in this case it would have been a council—would have said, 'Oh this is just another barking dog complaint,' and it may actually have turned on the skills of their local laws officers in being able to interpret their local law and apply it in a procedurally fair way so that they got an outcome. It would not just be applied to barking dog complaints but to the full range of local laws complaints that they might otherwise administer. It can evolve as well.

At the end of the day, we try to make sure that minor complaints and minor matters are dealt with using proportionality. Our ultimate objective is to get proportionality to be one of the most driving considerations in making decisions. If you have a relatively minor maladministration which affects a small number of people—perhaps only one—then that obviously does not deserve the same level of response as a more significant maladministration which affects perhaps thousands or tens of thousands of people. That is how we assess the proportionality when we decide what matters to take on or not take on.

Matters that get taken on at an own initiative level in the office—decisions we make through our committee structure or I might make individually—generally have to have those two dimensions: they have to be significant in the level or the degree of injustice or the degree of maladministration, and they must have the potential to impact upon thousands or tens of thousands of people in the community for them simply to have enough momentum to get beyond all the other things we might otherwise investigate. In the office it is generally not a decision about what to investigate. Generally the consideration is what not to investigate because we have a very long list of things that we might investigate. The issue about minor and major is in play all the time and is essentially a consistent part of the discussion about how much effort do we put into this case.

CHAIR: Our time has expired. Thank you for your time this morning. That concludes our meeting. Thank you to the parliamentary staff. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare the public meeting closed.

The committee adjourned at 10.30 am.