



Strategic Review of the
Office of the Qld
Ombudsman
Submission 012

Brisbane City Council ABN 72 002 765 795

Office of the Lord Mayor and Chief Executive Officer
Chief Executive's Office
Level 23 266 George Street Brisbane Qld 4000
GPO Box 1434 Brisbane Qld 4001
T 07 3403 8888 F 07 3334 0043
www.brisbane.qld.gov.au

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13 August 2012

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

Dear Sir

Submission to the Legal Affairs and Community Safety Committee – Review of the Queensland Ombudsman

I refer to Mr Ray Hopper MP's letter of 16 July 2012 seeking submissions from interested stakeholders into the strategic review of the Office of the Queensland Ombudsman (the Ombudsman).

On behalf of Brisbane City Council, I am pleased to contribute this submission in response to Mr Hopper's letter. In making this submission, Council notes the contents of the Report of the Strategic Review of the Office of the Queensland Ombudsman (the Report), tabled on 17 May 2012.

The submission covers the following issues:

1. The Ombudsman's role in helping individuals access government bodies.
2. Pre-existence of numerous review bodies/organisations.
3. The Ombudsman's expertise/resourcing to undertake review of complex/technical matters.
4. Examples of interaction between Council and the Ombudsman's office.

1. The Ombudsman's role in helping individuals to access government bodies

It is noted that the Ombudsman's Office has, by necessity, increased its role as a 'referral point' for complaints and requests for actions. Clearly, many government bodies and agencies have complex structures and customer service systems and the average person finds it more convenient to have their individual questions answered or needs addressed through the Ombudsman's Office.

With the increasing public awareness of the role of the Ombudsman, the Office is gaining popularity as the first option for obtaining advice or lodging a grievance about public sector agencies. This is clearly reflected in the Report, which states that 'contacts' with the Office have increased by more than 75% in the past five years.

Council places significant emphasis on ensuring that the public can access a Council officer using a variety of channels and that the officer contacted will provide immediate assistance regardless of the issue. We are keen to work with the Ombudsman's Office to further improve our strategies in this area.

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However, Council is also keen to ensure that we are given the opportunity to resolve complaints using the full range of our existing complaints management and resolution processes. It should be acknowledged that there are times when a complainant has not lodged their complaint with the original agency purely because they do not wish to do so. This is not a sufficient reason for the Ombudsman's Office (or any other review body) to intervene.

Council would like to be confident that all 'contacts' are processed in strict accordance with the Ombudsman's own guidelines, roles and responsibilities. This aligns with the Report which states that "a client focus is important but should not be the over-riding remit of the Office to the detriment of the critical role agencies must play in resolving their complaints and learning from the process".

This approach may also assist in the implementation of Recommendation 3 of the Report which states that "the possible extension of the current roles and responsibilities of the Ombudsman to include an advocacy role on behalf of complainants is not supported".

Council would submit that there have been occasions where it would appear that the Ombudsman is taking on the role of advocate for the complainant. Council supports the view that the Ombudsman should remain an impartial review body and not advocate for complainants under any circumstances.

2. Pre-existence of numerous review bodies/organisations

Council has an obligation to respond to a range of review bodies many of which appear to overlap in their scope and role. In some cases, this applies to the Ombudsman's Office and there is the potential for a public agency such as Council to receive conflicting advice or direction.

It is at times difficult and confusing for Council to determine the exact role of an individual review body based on the actions undertaken by the body in any specific case. It is even more confusing for the average citizen seeking advice or advocacy for their individual issue.

Examples of review bodies to which Council may be subject, depending on the issue and the interpretation of that issue by the review body, include:

- Queensland Ombudsman
- Crime and Misconduct Commission
- Integrity Commissioner
- Office of the Information Commissioner
- Anti-Discrimination Commission Queensland
- QCAT
- Public Service Commission
- Minister for Local Government
- Local Government Employee Disciplinary Appeal Board
- Industrial Relations Commission
- Human Rights and Equal Opportunities Commission

This submission does not infer that the Ombudsman's role inappropriately encroaches on these review bodies. However, due to the number of review bodies there appears to be an overlap of jurisdictions and therefore the possibility of ineffective/inefficient processes and overregulation.

Additionally, the various levels of the judicial system provide review functions for individual complainants.

3. The Ombudsman's expertise/resourcing to undertake review of complex/technical matters

In many instances, the Ombudsman is required to review highly complex and technical matters. In Council's case, some of these matters require the expert interpretation and application of a range of legislative frameworks as well as technical processes. Council employs a range of appropriately qualified staff to ensure that technical and legal interpretation is both correct and appropriate.

It is acknowledged that despite this, there will be occasions when our actions are not seen as appropriate, correct or compliant. In such cases it would be appropriate for any resulting investigation to make use of similarly qualified technical expertise.

It would appear that on occasion, the investigative staff of the Ombudsman's Office could attempt to apply their own interpretation to matters which fall outside the scope of their expertise.

It is acknowledged that the Ombudsman's Office does not have the necessary resources to interpret every legal and technical requirement as well as the individual agency they are investigating. Perhaps a simple solution to the problem of specialised interpretation would be to obtain independent technical advice as required.

Please note that the above comment is based on specific past experiences and is intended as a positive suggestion for improving the investigative processes currently, or likely to be, undertaken by the Ombudsman's Office.

4. Examples of interaction between Council and the Ombudsman's office

As the largest local government authority in Australia, Council has significant complexities that characterise its business and operation. Interaction with the Ombudsman's Office does not always reflect an appreciation of that breadth of scope or the competing demands on Council staff and resources. This is evidenced in the examples provided below.

a) Removal of caravan from Yeronga Memorial Park

The Ombudsman claimed that Council did not have the authority to remove a caravan from its location in Yeronga Memorial Park. However, as trustee of the park, Council has the lawful authority to remove any property from its land. After a number of very preliminary interactions with Council, the Ombudsman forwarded a proposed report to Council. It appeared from the proposed report that the Ombudsman was taking the view of the complainant without proper regard to evidence, as the relevant information is clearly articulated in Council's local laws and corporate rules. The approach taken by the Ombudsman in this instance could be characterised as quite adversarial toward Council. Further, taking such a formal approach meant the Council had to respond in an equally formal way which can be quite resource intensive and directs staff away from their business as usual work.

b) Field Services Committee decision not to relocate a sign on the Wynnum foreshore

The Ombudsman requested Council to arrange for a new submission to be made to the Committee and requested the Committee to reconsider its decision "even if that results in the same outcome with respect to the sign". This request appears to reflect an approach that is focussed on process without regard to proper outcomes of that process. This is at odds with the public sector principles of efficiency and economy.

c) *Tennyson Reach*

The Ombudsman's Office conducted a review into contracts entered into by Council with Mirvac Qld Pty Ltd for the purchase of land and construction of a parkland. As part of that review, a request for an interview was sent to the CEO on 30 May 2012. It provided the CEO with two options for a three-hour interview on 19 or 21 June, some 11 working days after receiving the letter. This request did not take into account the commitments and responsibilities of the CEO of an organisation as large as Council, particularly during the week before the Council Budget was due to be handed down. Council staff contacted the Ombudsman's Office to request an alternative interview time and while this was granted, the interaction with staff from the Ombudsman's Office was indicative of an adversarial approach to the investigation.

d) *Own investigation into Councillor Conduct Review Panel.*

Council provided detailed information on over 70 complaint matters to the Ombudsman over the period November 2011 to January 2012. The Ombudsman reviewed the information and provided Council with a preliminary report on 9 May 2012 with a request to respond in writing by 1 June 2012. This request did not take into account the 2012 quadrennial election for and the subsequent impact on preparing the Council Budget within a much reduced timeframe. This example is reflective of a typical approach from the Ombudsman which does not afford Council an appropriate time to respond to often technical and complex matters that require expert advice and input from a range of officers in order to provide a full and accurate response.

Thank you for the opportunity to participate in the review.

Yours sincerely



Colin Jensen
CHIEF EXECUTIVE OFFICER

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