



John Orr

Submission No 4

September 15 1998

Mr Gary Fenlon MLA  
Chair  
Legal Constitutional and Administrative Review Committee  
Parliament House  
Alice Street  
Brisbane.  
4000

ATT: MS KERRY NEWTON

Dear Mr Fenlon

#### OMBUDSMAN

Please find enclosed a submission to the committee in its review of the Ombudsman.

I have only commented on issues

- in the terms of *The Report of the Strategic Review of the Queensland Ombudsman* and
- where I have specific experience as a journalist, citizen or former staffer with your predecessor committee, the Parliamentary Committee for Electoral and Administrative Review in dealing with the Ombudsman and its role.

Specifically, I attach comment on **findings 5 and 8** as expressed in the Executive Summary and **recommendations 6.28 and 39** of the Report.

As you are aware my specific knowledge of the Ombudsman's operations relates to a complaint about Bond University. I do not expect your committee to visit my complaint but note some real questions of administrative law have arisen from it – hence, this submission as to the review of the Ombudsman.

As an aside, I think the ordinary citizen's view of government and body politic is today so jaundiced, so cynical, so near contemptuous, that improvements in the performance of the Ombudsman and other bodies of public administration is imperative in lifting public perceptions of our system of government.

In general terms I think the Ombudsman and his staff do a fine job.

2

I have experienced nothing but courtesy and genuine concern in my dealings with them over a complaint regarding the loss of a file and failure to investigate by the Commissioner for Consumer Affairs and my argument as to their jurisdiction over Bond University.

That said, there are certain specific areas where the Ombudsman's office needs to improve its performance.

I think the Strategic Review has been a good starting point - terms of reference seem suitable and the report comprehensive and its findings and recommendations well argued.

I intend to only address aspects of its report where my personal experience either underlines its recommendations or adds something to them of small merit.

If the political will is there to accompany its recommendations, the public interest will be well served.

I wish your committee well in its deliberations.



**John Orr.**

## COMMENTS ON EXECUTIVE SUMMARY

### **Finding 5. Complaints, Delay, Infrequent Contact.**

The only comment I can make is to repeat the old legal maxim "*justice delayed is justice denied.*" In my case, a complaint has not been resolved in more than a year, the level of reportage on the status of the complaint tortoise-like. In the real world, life begins in nine months.

It is my opinion, such delay is unacceptable for someone who by definition is already seeking redress for administrative failure and I would submit that would be the ordinary citizen's view. Again, it is ultimately a matter of resources and the Government's commitment to meet the caseload the Ombudsman faces.

### **Finding 8 ... A Need To Be Proactive, Systemic and Preventative.**

One aspect of the complaint I made is open to question as to whether the Ombudsman has jurisdiction. As part of that complaint it was similarly necessary to ascertain whether the Freedom of Information Act applied to Bond University.

For that purpose, it was necessary to determine what was a "public agency" in law.

At the advice of the Ombudsman, I made two near-identical submissions as to what a public agency should be in law, one to him as Ombudsman, one in his capacity as Information Commissioner. I note I was required to make "legal submissions" despite the fact I have no legal qualification. As a matter of practice, I find this unreasonable.

Citizens without legal qualifications should not be imposed upon to do extensive research on whether the Ombudsman has jurisdiction – surely that is more properly the role of the Ombudsman himself. There are many in our community could not make such a submission without the cost of a QC and a solicitor. Nor do I believe they should be asked to do so.

In the event, The Information Commissioner decided he had no jurisdiction. The Ombudsman has decided to wait upon the other aspect of the complaint - a fresh investigation by the Commissioner for Consumer Affairs – before deciding whether he has jurisdiction to assist. (The Consumer Affairs Investigations Branch, in style reminiscent of Inspector Clouseau, has conceded the file was lost and has embarked on another investigation still unfinished another year later).

I submit this is not the pro-active nature expected – why should the Ombudsman "sit" on the matter merely because it is under scrutiny elsewhere?

Surely one can expect a finding of one view or another on jurisdiction.

*Interestingly, this raises another issue, the holding of the position of Information Commissioner by the Ombudsman ... a dual role.* There may be at some time a conflict of interest. It is not unthinkable that the Ombudsman may have to look at the Information Commissioner given the widespread complaints about delays in the provision of information across every Government department. The dilemma is obvious.

In my personal experience, the problem is exemplified by the Information Commissioner's decision that Bond University is not a public agency, in short that it was more like a mining company established under legislation for profit than a private hospital or charity for public benefit. Not only did that finding contain factual errors, documents have since come to light, under FOI, that indicate the Information Commissioner's finding is legally flawed. Bond University relied upon the view is that it is a public agency and indeed cited a case that it is akin to a private hospital set up under legislation in successfully applying for a refund of several millions of dollars of stamp duty and other tax relief from the State of Queensland.

The Information Commissioner appeared unaware of this.

The difficulty of the Ombudsman in over-turning his own decision signed under another letterhead is obvious ... and, in my view that is a good reason for the offices to be separated.

## **COMMENT ON SPECIFIC RECOMMENDATIONS.**

### **Recommendations 6 and 28 ... public perception of the Ombudsman.**

I agree with all aspects of the report's recommendation 6 and add only the suggestion that the Ombudsman and the public may be better served by moving to a "shop-front" operation much like the NSW Department of Fair Trading. It would be advantageous for the Ombudsman to have a "shop-front" operation rather than be isolated on level 22 of the Jestset Centre. While this obviously has resource implications, it would be seen by the public as exemplifying a government commitment to empowering the ordinary citizen and making bureaucracy more accountable.

Similarly, the Ombudsman himself could take a much higher media profile in the manner Ms Phillipa Smith did as Commonwealth Ombudsman. This is not a criticism of the Queensland Ombudsman but is an obvious way to go forward.

One suggestion another made to me in preparation of this submission is that the nomenclature of the office be changed and that an alternative title ... perhaps Citizen's Advocate ... or Parliamentary Commissioner as the Act describes it, be adopted.

That would deny the proud Scandinavian heritage of this civil law initiative but may aid public understanding and effectiveness. I note this is contrary to Recommendation 28, which recognises the confusion surrounding the term "Ombudsman" in public perceptions and suggests exclusivity for the State Office in the use of the term. I offer no view but to note there is a real need for better communication.

### **Recommendation 29 ...an overall review of administrative appeal mechanisms.**

My only comment can be that such is well over-due. I support the general thrust of the recommendation as to availability of such mechanisms throughout Queensland. In particular, though I also see the need for an over-arching appeal mechanism.

Indeed, I recall from my time working for a Parliamentary Committee, that it considered the Electoral and Review Commission's Report recommending a form of an Administrative Appeals Tribunal (AAT) as exists in other States be formed.

It was a mistake by the Government of the day and the Parliament that this concept was discarded in favour of Judicial Review by the courts which can be costly, unsatisfactory and intimidating for ordinary citizens.

The courts sometimes get it wrong and it would be in the public interest for a less complex, less costly, friendlier tribunal with subsequent recourse to the courts if necessary.