



16/09/98.

The Research Director,  
Legal, Constitutional & Administrative Review Committee,  
Parliament House,  
George Street,  
BRISBANE, QLD. 4000.

Dear Sir or Madam,

Herewith the comments of our group in respect of the Report of the Strategic Review of the Queensland Ombudsman (Parliamentary Commissioner for Administrative Review 1998).

Yours faithfully,

A handwritten signature in cursive script that reads "Alan Randle".

Alan Randle  
Secretary

AUSTRALIAN JUSTICE FOR ALL

# COMMENTS ON THE REPORT OF THE STRATEGIC REVIEW OF THE QUEENSLAND OMBUDSMAN (PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE REVIEW 1998)

## From AUSTRALIAN JUSTICE FOR ALL – AN INCORPORATED BODY UNDER THE NAME OF Australian Justice and Reform (AJAR)

A comparison of the New Zealand legislation (NZ Ombudsmen Act 1975) – on which our legislation appears to be based – and the UK Parliamentary Commissioner Act 1967 with Queensland's Parliamentary Commissioner Act 1974 reveals that there is great scope for improving the legislation to enable the Commissioner to become more proactive in his function.

Professor Wiltshire's report clearly covers the staffing requirements of the office, but it is more vital to look at the powers given to the QLD commissioner as compared to the UK and NZ equivalents.

Within reasonable limits, the UK ombudsman is empowered to award "fines" payable by departments and agencies to "victims", e.g. a fine paid to the complainant for failing to provide a service expeditiously to the complainant. The NZ ombudsman, without reference to Parliament, is empowered to cause to be published for inspection by the public his report together with incorporated comments by the relevant organisation (see Section 23 of the NZ Act).

These two items outlined above illustrate the emasculation of the QLD commissioner vis-à-vis the counterparts mentioned and the watering down of his role at the time the legislation was enacted. *This is further confirmed by the apparent attitude to the "client service charters" described in 7.6.2 of the report.*

It is of little use to the community if the role of the commissioner is a hidden one. The community needs to **bear witness** to the activities of the commissioner and his role should be a more overt one.

**Our Recommendation A:** *The incorporation of a system of "fines" as per the UK model to make the government departments, agencies and local government more accountable to the complainant.*

**Our Recommendation B:** *The requirement to make available to the public information as to the reported recommendations made by the Commissioner on matters it handles is of greatest importance. (See NZ model – Section 23)*

### **RESOURCES.**

It would appear to be manifestly wrong that the Executive controls the resourcing of the office of the Commissioner. As a body set up to act as "people's policeman of the administration", it appears to be contradictory that it can effectively be hamstrung by a lack of resources. **According to the Wiltshire Report, this is, in fact, the case.**



Once again, this would reassure the public of the Commissioner's independence and, through open debate, the public would be aware of any efforts to hamstring the Commissioner.

**Our Recommendation C:** *The Act should be amended to remove any control that the Executive may have over the Commissioner, with all resourcing being approved, after open debate in the House, by Parliament.*

### **POWERS OF THE COMMISSIONER.**

Whereas the act (section 19) gives the Commissioner the same investigative powers as that given to a royal commission, it would appear that this does not apply to the publication of decisions reached. It is unlikely that a royal commission's report would not be broadly publicised. Yet, the Act fails to pass on to the Commissioner that right (duty?).

This should be corrected for the same reasons (public accountability) previously raised.

### **Section 7.6.3 from the Wiltshire Report and Recommendation 11.**

Whereas one can understand the need for additional staffing as well as career development, bearing in mind the limited framework of the Commissioner's office for career moves, **it would appear to be contradictory to employ and /or second staff from departments, agencies and local government to become "policemen" of the activities of the same departments, agencies and local government.**

It would appear to more correct to seek secondments from the *private sector* as such players would be better equipped for the *neutral role* required by the office.

The whole concept of recruitment and secondment from governments, agencies and local government appears to be contradictory to the ideal of an independent office. Reconsideration of this philosophy is essential for the independence of the Commissioner.

**Our Recommendation D.** *Staffing of the office of the Commissioner be seconded from the private sector.*

### **Recommendation 8**

Whereas one can see the justification for preventative action by the Commissioner (covered in a number of the recommendations), this should be seen as an expansion of the role of the Commissioner. As such, **it clearly requires an increase in resources.**

There is clear indication in the report that there is a slowness of action by the Commissioner – delay caused to a great extent because of an inadequacy of resources. There may well be improvement available by greater efficiency, but Prof. Wiltshire confirms that there is a resources problem.

It is illogical to expect the Commissioner to perform the additional tasks suggested by Prof. Wiltshire without giving the Commissioner additional resources.

We are in total agreement that preventative action is of great importance and concur with Prof. Wiltshire in this regard. Nevertheless, this should not be at the expense of the investigative role the Commissioner performs on behalf of "victims" of administrative decision making.

**Our Recommendation E:** *The Commissioner clearly requires an increase in resources in order to be able to perform the additional tasks as outlined by Prof. Wiltshire. If Parliament wants to confirm the role of the Commissioner, his powers and responsibilities given to him, he must be supported by adequate resources to exert those powers.*

#### **Recommendation 15.**

Once again, reference is made to consultation with Queensland Treasury. Whereas we agree with the need for more rapid response in the investigative functions of the Commissioner, we do not see the role of a government department (in this case, reference to the Treasury). The concept of conflict of interest remains if there is any involvement in the affairs of the Commissioner by the administration.

**Our Recommendation F:** *The budget and funding of the Commissioner's office is debated and approved by Parliament without the involvement of the Executive or any of its departments (in this case Treasury). This is the only effective way to ensure the true separation of powers.*

#### **Section 7.6.4.**

We agree with Prof. Wiltshire that the Agency Satisfaction Survey provides disquiet.  
**Why is there no reference to feedback from complainants????**

What is really troubling is the tendency of agencies to ignore input from the Commissioner. If the public is to have any confidence in the role of the Commissioner:

#### **Our Recommendation G: We recommend that:**

- G.1 There must be a procedure of disseminating to the public decisions of the Commissioner, and
- G.2 A follow-up to ensure that the department/agency took the necessary steps, and
- G.3 A public statement should be released by the Commissioner should the recommended steps not be taken
- G.4 Costs of such investigations to be passed back to the department or agency involved (assisting in overcoming some of the budgetary problems suffered by the Commissioner).
- G.5 Recompense by the commissioner ordered on behalf of victims of the non-implementation of the recommendations by the department or agency.

It is clear from the statistics shown that government departments, agencies and local government pay lip service to the Commissioner. **In many cases, this represents a disregard for the public. Publicity and imposition of financial disincentives to the departments/agencies should achieve greater compliance.**



(Note in this regard the power of the UK Ombudsman to impose "restitution payments" to complainants.

Conclusion:

The public perception, at present, may well be that the Commissioner's actions are too secretive. There needs to be greater openness to engender public confidence in the office.

While departments and agencies pay lip service to decisions and recommendations from the Commissioner, the public will continue to feel that the office is of little importance.

It is essential that :

- The powers of the Commissioner be reinforced
- Decisions be publicised
- Complainants disadvantaged by the continued ignoring of recommendations by departments/agencies be "recompensed" through the "fine" system and that such recompense be publicised as a deterrent/embarrassment to the relevant department, agency or local government
- There is greater resource independence for the Commissioner, including the source of recruits to the office.
- The Commissioner be entitled to charge fees to departments/agencies found to be at fault and/or where the Commissioner, after investigation, recommends changes to procedures. *(Were the departments/agencies to get such advice from elsewhere or to use their own resources to investigate, say, procedures, they would have to bear the costs of such investigations. There is no reason that the Commissioner should not be reimbursed).*
- *The Commissioner be empowered to award, under certain circumstances, payments to be made by departments/agencies to complainants "as penalty as well as recompense" . (See UK legislation.)*