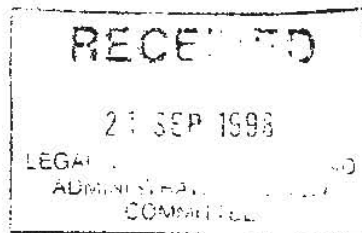




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21 September 1998

Mr Gary Fenlon MLA
Chair
Legal, Constitutional and Administrative
Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Fenlon

RE: STRATEGIC REVIEW OF THE OMBUDSMAN

Please find attached comments of the Anti-Discrimination Commission of Queensland in relation to the Strategic Review of the Ombudsman.

The Commission appreciates the opportunity to respond to the Report of the Strategic Review and also appreciates that the Committee's Acting Research Director, Mr David Thannhauser, granted the Commission an extension until 21 September 1998, to submit its response.

Should you require clarification of any information included in the submission the Commission's Director of Policy, Complaints and Community Relations, Margo Couldrey, is available to assist and can be contacted on 3239 6092.

Yours sincerely

Margo Couldrey

KW
KAREN WALTERS
Anti-Discrimination Commissioner
Queensland

STRATEGIC REVIEW OF THE OMBUDSMAN

Submission by

Anti-Discrimination Commission Queensland

21 September 1998

Strategic Review of the Ombudsman

Background:

It is appropriate to commence with some background on the establishment and operation of the Anti-Discrimination Commission Queensland (ADCQ) as this provides the context for many of the comments which follow, regarding the review's recommendations.

The ADCQ is a relatively new organisation, having been established on 10 December 1996. Prior to this the *Anti-Discrimination Act 1991* was administered by the Human Rights and Equal Opportunity Commission (HREOC) via a co-operative agreement between the Commonwealth and Queensland Attorneys-General. Up until four weeks before the expiry of the agreement on 9 December 1996 the Queensland Government hoped to negotiate a new agreement which would maintain the "one-stop-shop" concept by which federal and state anti-discrimination laws were administered through a single office.

By the time it became clear that a new agreement would not be reached, and that HREOC was to close its three Queensland offices, there was less than a month to establish the new Anti-Discrimination Commission Queensland.

This meant the new organisation had to open its doors for business on 10 December 1996 in four offices - Brisbane, Rockhampton, Townsville and Cairns without a formal strategic plan. In addition, the establishment of basic infrastructure including office accommodation, staffing, budget and management systems had to be accomplished simultaneously with service delivery.

A further challenge arose from the fact that the expiry of the funding agreement and closure of the "one-stop-shops" were the subject of significant public criticism and debate by stakeholders. In terms of workload, a total of 758 active matters were transferred to the new Commission on 10 December 1996, including a significant backlog of matters which had been lodged prior to 30 June 1995 and which were therefore in excess of 18 months old.

The Commission has therefore grappled with many of the issues which clearly are confronting the Office of the Ombudsman, and can perhaps contribute from the perspective of its own experience.

In summary then the Commission's comments will be made from three angles:

- 1 As a rights based organisation which firstly provides an avenue for grievances to be lodged about discrimination and sexual harassment and secondly by statute has a set of broad, systemic and proactive community relations and policy functions, the Commission therefore shares elements of commonality with the Office of the Ombudsman (the Office).

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- 2 As a newly established organisation, which inherited a significant backlog of work and was widely criticised upon establishment as being "unable to deliver the goods" and thus had significant inroads to make in establishing credibility and profile.
- 3 As an agency which has been the respondent in complaints made to the Office. Comments can therefore be made from the perspective of a client of the Office.

Role and functions of the ADCQ:

The Anti-Discrimination Commission Queensland is established by the *Anti-Discrimination Act 1991* which was proclaimed on 30 June 1992.

The *Anti-Discrimination Act 1991* aims to promote equality of opportunity for everyone by protecting them from unfair discrimination in various areas of public life, from sexual harassment and from other conduct such as discriminatory advertising and victimisation.

The Commission's functions are set out in section 235 of the Act.

They fall into two broad categories. The first is a redress function:

- to inquire into and attempt to conciliate complaints of discrimination and sexual harassment; and
- to carry out investigations relating to contraventions of the Act.

The second is a set of broad, systemic and proactive community relations and policy functions:

- to undertake research and educational programs to promote the purposes of the Act;
- to consult with various organisations on ways of improving services and conditions affecting groups subjected to contraventions of the Act; and
- to promote an understanding, acceptance and the public discussion of human rights in Queensland.

The *Anti-Discrimination Act 1991* also establishes the Anti-Discrimination Tribunal. Complaints which are unable to be conciliated may be referred to the Anti-Discrimination Tribunal for hearing and determination.

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Comments on selected recommendations:

R.6: As an organisation newly established in December 1996 amidst much public criticism, the Commission has implemented a number of the strategies outlined in R.6 with considerable success and can therefore testify to their effectiveness.

- a A series of 11 brochures, two posters and a video have been produced to target a range of audiences. Some materials have been produced in languages other than English and on audio tapes to increase their accessibility to people of non-English speaking background and people with disabilities. Some brochures have been written in simple language and others are more detailed to reflect the need of respondent groups for more complex information about application of the legislation. The brochures have been in heavy demand. Requests for bulk materials attract a cost-recovery fee.

In addition, the Commission is about to trial a program of distribution of brochures through selected Queensland Government Agent (QGAP) offices in rural and remote parts of Queensland. Like the Office of the Ombudsman the Commission is small and needs to consider cost effective ways of making its services known across Queensland.

- b Website:

The Commission launched its website on 10 December 1997 and since then has proceeded to develop it in compliance with guidelines produced by the federal Disability Discrimination Commissioner. The Commission has found the website significantly enhances its education capacity by making information available throughout all parts of Queensland, also to schools and educational institutions, target groups we previously had difficulty servicing due to volume.

The website also reduces costs of postage and use of paper brochures as many enquirers can be referred to the website. The Commission has made its annual report, newsletters and brochures available on the site.

Statistics indicate monthly "hits" in the vicinity of 4700 and approximately 120 enquiries are referred to the site per month to download materials.

- c The Commission regularly conducts training for respondent groups on effective internal grievance processes and maintains resources on same in the Brisbane reference library which metropolitan clients can access.

Strategic Review of the Ombudsman**d Newsletter:**

The Commission produces a newsletter three times per year. Feedback from stakeholders is consistently excellent, particularly about features such as case studies, case law and "questions and answers".

e Lectures and papers:

The Commission has found training and education sessions and conference papers to be effective in raising public profile and understanding of the Act. In the 1997/98 year Commission staff conducted in excess of 150 sessions. In addition the Commission delivers some training at a fee, and is finding demand is exceeding supply of such sessions. Charging of fees is done in accordance with a Commission-wide policy which carefully balances statutory obligations against responsible use of limited resources.

R.7: The Commissioner determined upon taking office that there was a perception, particularly in the public and business sectors, rightly or wrongly, that the former Commonwealth administered Commission was biased.

The new Commission therefore embarked upon a deliberate strategy to broaden its view of stakeholders and establish positive links with the diversity of groups in the public, private and community sectors.

Such strategies involved widely publicised reform of complaint handling procedures, and forums with Chief Executive Officers of public sector agencies followed by free seminars for public sector complaint handlers on the role of the Commission and its complaint handling processes. These seminars are now fee-generating and are offered as both introductory and advanced sessions.

Forums were also held with all key stakeholder groups in the business and community sectors, followed by the establishment of protocols with individual industry groups for matters such as training of their members.

R.9: The Commission currently participates on a number of committees and advisory groups. Such participation does not pose conflict of interest dilemmas providing the Commission's role is clearly enunciated. This role on committees is significant in both its educational outcomes and the impact it can have on shaping policy, and is considered essential by the Commission.

R.12: The Commission as part of its new computerised data system, has just developed complainant and respondent evaluation questionnaires and will commence trials of these in coming months. It is agreed that they have the potential to provide significant feedback to shape and improve service delivery and identify systemic issues.

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R.13: The Commission agrees that the capacity to identify systemic issues arising from patterns of complaints is fundamental to developing preventive strategies.

To this end the Commission has adapted from other states a computerised complaint handling and records management system (CHARMS) which has the capacity to generate reports about particular industry groups, geographical areas, etc. The system is not only a tool to manage and monitor workload, but also a tracking and planning system. It has only been installed in ADCQ since 1 July 1998 and is therefore still in trial phase.

In addition, complaint managers are skilled in identifying systemic or policy issues arising from complaints, and report such issues directly to the Commissioner and Director of Policy. Two examples of interventions arising from identification of systemic issues include:

- a Racism in Schools project. The Commission will conduct this project after noting repeated reports of racist harassment and bullying between students; and
- b Repeated sexual harassment complaints by young women working on boats in North Queensland has led to discussions with the peak industry group regarding possible co-operative activities to address the concern.

R.14: As mentioned in relation to R.6(e) the Commission has developed a fee for service policy which is generating revenue. Fees are charged for some education sessions and publications and a careful balance is maintained to ensure free sessions are also conducted in accordance with statutory obligations.

R.15: The ADCQ inherited 758 active matters from the former Commission when it was established on 10 December 1996, 134 of which had been lodged in excess of 18 months previously. The Commission was well aware of the substantial criticism of the former Commission which arose from the backlog of complaints and subsequent delays in complaint handling. Therefore as previously mentioned, the following strategies were implemented:

- complaint handling processes were reviewed and reformed;
- every file which had been transferred from the former Commission was reviewed;
- a backlog project team was established to give priority to the backlogged complaints with the aim of removing the backlog by 1 August 1997 (achieved);

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- a monthly report to the Attorney was prepared with performance indicators for complaint management such as time taken, as well as qualitative information such as significant case outcomes, outlines of education sessions undertaken and media interviews conducted, and details of publications in progress. The monthly reports also provide an important tool for managers and staff in tracking progress and are used to prepare the annual report.

R.17: The Commission identifies complaints suitable for "early intervention" in the assessment phase which must occur within 28 days of receipt in accordance with the statutory timeline.

R.18: In addition to the "early intervention" strategy mentioned in R.17, all complaints are assessed on their individual merits to determine the level of investigation required. The Commission has essentially moved away from a linear or formula approach to complaint handling to one which is based upon judgement and professional skills of conciliators and guided by the statute and requirements for fair process and natural justice.

The Brisbane office has two dedicated intake officers who perform the valuable role of providing advice to both potential complainants and potential respondent groups, about the application of the Act, as well as referring enquirers to more appropriate avenues. They also deal with written enquiries and complaints of a more routine nature.

R.23: The Commissioner has issued delegations to the Principal Conciliators and Regional Directors who manage complaint handling staff and they exercise decision making powers and sign correspondence on a day to day basis. Routine correspondence is signed by individual complaint handlers. In addition the Director of Policy, Complaints and Community Relations and the Principal Legal Adviser have delegations for further decision making as the need arises, e.g. when the Commissioner is absent. The Commission has found that this has developed managers' skills to a high degree.

A management team has been established which meets monthly and discusses key issues significant to the direction of the organisation. These are supplemented by fortnightly meetings of all staff, to which the three regional offices are linked by telephone.

Strategic planning was undertaken with a facilitator and involved all staff from all four offices meeting to draft a plan. This has resulted in ownership and investment by all staff in the strategic direction of the organisation

A wide range of staff are involved in public interface activities such as conducting training and education and attending forums.

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All complaint handling staff have public presentation and education activities included in their position descriptions. It has been found that participation in both complaint handling and community relations programs enables complaint handlers to stay in touch with the diversity of viewpoints of the community, ensures valuable sharing of their complaint handling expertise in education, enhances their job satisfaction and provides an opportunity for skills development.

- R.25:** The Commission currently shares resources and office space with the Dispute Resolution Centre in Townsville.

Information technology has been a challenging issue for the whole organisation. The data system inherited from the former Commonwealth-administered Commission was in imminent collapse and development of a new one for workload monitoring and planning to ensure the Commission met its accountability requirements was imperative. The Commission decided to adapt a complaint handling system used in several other anti-discrimination jurisdictions as critical features of the development had already been completed and the system offers the opportunity for national benchmarking.

- R.29:** It is the Commission's standard policy to check if other grievance processes are on foot and if so, the Commission generally places a stay on its process pursuant to section 140 of the *Anti-Discrimination Act* and considers the outcomes of any other grievance processes when it assesses matters.

Of course in many other grievance processes, the discrimination aspects are not dealt with, as this jurisdiction is a specialist one. For this reason complaints will often proceed in this jurisdiction even though they have already proceeded through another avenue. The special nature of the discrimination jurisdiction is recognised by section 154 of the *Anti-Discrimination Act* which specifies that a worker may proceed with industrial relief and then proceed to the anti-discrimination jurisdiction. The Commission of course supports the principle of avoiding "double-dipping".

- R.30:** The Commission is most supportive of joint activities which make effective use of ideas and resources. The Commission has undertaken joint activities with a number of agencies.

Summary:

In summary, the Commission considers that the Office of the Ombudsman plays a crucial role in sound public administration in Queensland. The Commission has several areas of commonality with the Office of the Ombudsman, particularly with respect to challenges faced in key areas of operations and public profile. The Commission would be most willing to make itself available to the Committee to provide further information and to share the strategies it devised to overcome challenges.