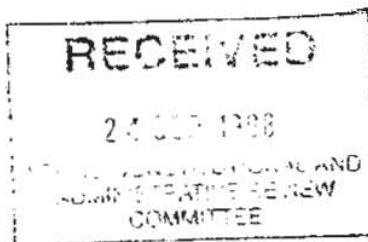


Submission NO 33  
Spec 14.1



**Bar Association  
of Queensland**

Level 5 Inns of Court  
107 North Quay  
Brisbane Qld 4000

Ph: (07) 3236 2477  
Fax: (07) 3236 1180  
DX: 905

RWG:jc

23 September 1998

Ms Kerryn Newton  
Research Director  
Legal, Constitutional and Administrative Review Committee  
Parliament House  
George Street  
**BRISBANE**

**BY FACSIMILE: 3406 7070**

Dear Ms Newton

**RE: STRATEGIC REVIEW OF THE OMBUDSMAN**

I enclose herewith a Submission by the Bar Association of Queensland in response to the invitation extended by Mr Gary Fenlon MLA, Chair of LCARC to comment on the recommendations made by Professor Wiltshire in the *Report of the Strategic Review of the Queensland Ombudsman*.

On behalf of the Association may I extend to you our thanks for the opportunity to comment on this important area of Administrative Law.

Yours faithfully

**BAR ASSOCIATION OF QUEENSLAND**

A handwritten signature in cursive script, appearing to read "R. W. Gotterson".

**R. W. GOTTERSON QC**  
President

## STRATEGIC REVIEW OF THE QUEENSLAND OMBUDSMAN

The Legal Constitutional and Administrative Review Committee of the Legislative Assembly of Queensland ("LCARC") is presently seeking public comment on the recommendations made in the Wiltshire report. The Chair of that Committee has invited the Bar Association to make a submission, given the Association's potential interest in the matter.

### Analysis of Report and recommendations

1. The Wiltshire report demonstrates the detailed analysis and thought which went into the strategic review. The Report reveals that there are many internal procedures and other aspects of the Office of Ombudsman which should be improved. It also suggests a number of areas where the Office should be pro-active and preventative, including advising government units with respect to minimising the potential for administrative indiscretion and maladministration.
2. Perhaps of particular interest to the Bar is Recommendation No. 29, which deals with the review and streamlining of Queensland administrative appeal mechanisms. This point is the subject of the following comment in the Executive Summary which accompanies the Report.

"12. Queensland currently has a very unwieldy maze of public administration appeal mechanisms which is causing confusion in general, and particularly regarding the role of the Ombudsman. It is also placing heavy burdens on Departments, agencies and local governments. Considerable potential exists for rationalisation of this maze and achievement of synergies and lodge appeals. This is all the more urgent because trends affecting Queensland's public sector towards the next century reveal an increasing propensity for appeals against administrative discretion and hence an expanding workload for the Ombudsman.

The report itself said (p.70) that:

"In the report on "review of Appeals from Administrative Decisions" (Parliamentary Committee for Electoral and Administrative Review, May 1995) , it was reported that, at 1 January 1993, there were 131 review bodies able to review about 2,000 decisions under 474 legislative provisions providing for review of administrative decisions. There would be many more now."

The formal Recommendation was in the following terms:

"R.29. Parliament and the government should conduct an overall review fo all of the administrative appeal mechanisms in Queensland with a view to streamlining, diminishing the complexity and costs of the administrative appeals machinery, and reducing the burden on the administration, whilst at the same time ensuring there is no net diminution of the rights of citizens to complain about administrative discretion, the presumption should be in favour of incorporating the avenue into the functions of the Ombudsman's Office rather than creating a single purpose channel and new body to oversee it."

3. There is much to be said for the consolidation of all of these various appeal mechanisms into a single appeal body. Provided that that new body became

well-known and its procedures were not complex, costly or time-consuming, the community and all affected persons would undoubtedly benefit. Whether or not the Ombudsman should constitute that new body or in some way oversee its operations is another question. In some cases, the Ombudsman would probably not be an appropriate entity to constitute that new body, such as in situations where the use of *Judicial Review Act 1991* were contemplated. But there are many other areas of public administration where the exercise of administration discretion could appropriately be the subject of a less formal review - by a person such as the Ombudsman. The multiplicity of present appeal bodies would likely tend to confuse rather than inform members of the community who may be desirous of using the available procedures. It may also tend to discourage citizens from pursuing rights which have been denied them. That situation is undesirable.

4. Of course, there will be many situations where a decision within the public sector is reviewable by a more senior officer within that body. It will be a matter for judgement as to whether an independent appeal mechanism is introduced at that level or whether that should await the completion of an internal reappraisal of the decision concerned, indeed it might be thought that it would be unduly cumbersome if an appeal attended each stage of an internal review. But at some appropriate stage, there should be a procedure available to the public to have the decision reviewed by an independent person.

### *Conclusions*

5. The Recommendations of the Wiltshire Report will lead to an improvement in the operations of the Office of the Ombudsman and also in the proper functioning of the public administration in Queensland.
6. The Recommendation (No.29) which advocates the review of all the administrative appeal mechanisms in Queensland with a view to their rationalisation, streamlining and perhaps consolidation as a positive and desirable measure.
7. The Bar Association supports the Recommendations which have been made in the Report.