



RECEIVED
 20 SEP 1998
 LEGAL, CONSTITUTIONAL AND
 ADMINISTRATIVE REVIEW
 COMMITTEE

Submission NO 34
 Spec 314.1

Minister for Health

20 SEP 1998

MI070835
 0036-3145-001

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

Dear Mr Fenlon *Gerry*

RE: REPORT ON THE STRATEGIC REVIEW OF THE OFFICE OF THE QUEENSLAND OMBUDSMAN

Thank you for your letter of 13 August 1998 concerning recommendations made in the recent report on the strategic review of the Office of the Parliamentary Commissioner for Administrative Investigations. I am pleased to provide the following submission from Queensland Health.

It is noted that the Executive Summary in the aforementioned report indicates that Professor Wiltshire's review revealed a number of concerns with respect to the role, function and efficiency of the Queensland Ombudsman's Office.

The issues raised in Professor Wiltshire's report which appear to impact most heavily on Queensland Health are those matters included in the Executive Summary, as follows:

(Executive Summary point 5)

Delay, a lack of contact with state government agencies and confusion over the role and mandate of the Ombudsman's Office.

(Executive Summary point 8)

The need to be less responsive to individual complaints with an emphasis on becoming more proactive in the pursuit of systemic administrative problems.

(Executive Summary point 12)

That there is currently an unwieldy maze of public administration appeal mechanisms in Queensland and that such complaint and grievance handling processes require rationalisation.

As points 5, 8 and 12 in the Executive Summary of Professor Wiltshire's report are the issues which have the greatest impact on Queensland Health, this response will focus on those recommendations contained in the Wiltshire report which appear to address the above listed issues.

Office Level 19
 Queensland Health
 Building
 147-163 Charlotte Street
 Brisbane Q 4000

Postal GPO Box 48
 Brisbane Q 4001

Phone (07) 3234 1182
 +617 3234 1182
Fax (07) 3229 4731
 (07) 3221 0871

The Department's submission with respect to this matter has been prepared so as to correspond to the strategic review's relevant recommendation numbers as requested in your recent letter. Departmental officers have conducted some research with respect to the reporting relationship between Queensland Health and the Office of the Ombudsman. Notwithstanding that certain confidentiality requirements exist pursuant to both the *Health Services Act 1991* and the *Parliamentary Commissioner Act 1974*, the Department has endeavoured to cite case examples in support of the statements made in this submission wherever possible.

(Executive Summary point 5)

Delay, a lack of contact with state government agencies & confusion over the role and mandate of the Ombudsman's Office.

As a result of a recent analysis conducted by Queensland Health, it is evident that significant delays have been experienced by the Department when corresponding with the Office of the Ombudsman. Delays involving twelve to fourteen months are not uncommon and frequently delays of eighteen months have been experienced. Some extreme cases have recently been noted involving a failure on behalf of the Ombudsman's Office to notify Queensland Health as to the outcome of investigations and the closure of the relevant Ombudsman's file. One such case involved a complaint about inappropriate drug labelling which had been resolved by the Office of the Ombudsman, however notification as to the outcome of the Ombudsman's enquiries was not conveyed to Queensland Health for five years. Another example includes a complaint concerning a rehabilitation clinic. This complaint was finalised but not communicated to Queensland Health until three years after the event.

These matters are further exacerbated by the fact that notwithstanding significant delay experienced by Queensland Health when dealing with the Queensland Ombudsman's Office, complaints about departmental delay and involving relatively short time-frames are frequently taken up by the Ombudsman's Office. An example of such a case includes Queensland Health's provision of advice to a patient over a ten month period but which was caused by a delay in a Coronial inquest.

The aforementioned examples not only demonstrate significant delays being experienced but a lack of contact and suitable communication with line agencies, in this case Queensland Health. The remaining issue concerning confusion over the mandate and role of the Ombudsman's Office can also be supported by reference to some case examples.

The question as to the Ombudsman's jurisdiction to investigate health related complaints often involves matters which have been or should be referred to other review agencies. For example, it is not uncommon for Queensland Health to respond to an Ombudsman's enquiry which raises questions solely about a patient's medical care and/or health rights. Such matters are not administrative in nature and therefore fall outside the jurisdiction of the Ombudsman and should be dealt with pursuant to the *Health Rights Commission Act 1991*. A recent example involves a case reviewed by the Patient Review Tribunal and which was then reinvestigated by the Ombudsman contrary to Section 13 of the *Parliamentary Commissioner Act 1974*.

Recommendations 6, 7, 8, 10, 11, 18 and 21.

Professor Wiltshire's report appears to suggest that problems such as those mentioned above could be resolved by the implementation of the following recommendations. Queensland Health would enjoy the opportunity to partake in information sharing and other inter-departmental strategies which would jointly assist our respective agencies.

Recommendation 6.

Advocates the introduction of information kits for State Government departments and the issue of quarterly newsletters in an effort to keep line agencies informed as to any recent developments at the Ombudsman's Office. Queensland Health supports recommendation 6.

Recommendation 7.

Refers to the need for the Office of the Ombudsman to work more closely with state government departments. A perusal of the Ombudsman's most recent annual report clearly indicates significant numbers of highly qualified staff whose skills and abilities could perhaps be used in a consultancy role and Queensland Health supports this recommendation.

Recommendations 8 and 10.

Indicate that state government departments should establish formal contact or liaison officers to deal with Ombudsman's enquiries. Queensland Health does not currently have an Ombudsman's liaison officer (as is the case with similar agencies eg, the Criminal Justice Commission). Often when investigating Ombudsman's complaints, the unit/section or officer involved, is required to investigate its own conduct. From an investigative perspective this practice is undesirable and the department is therefore supportive of the reforms associated with recommendations 8 and 10.

Recommendation 11.

Proposes a formal program of secondments between state government agencies and the Office of the Ombudsman. Such a program currently exists in the Ombudsman's offices in Britain, New Zealand and New South Wales and has the benefit of providing skills and expertise across a wide variety of government services. The Parliamentary Committee may further be interested to learn that Queensland Health has employed former personnel from the Ombudsman's Office in both the legal and audit areas, and whose skills have been of benefit to the department. Queensland Health encourages the Committee to adopt this recommendation.

Recommendation 18.

Recommendation 18 is clearly an attempt to address the substantial problem presently being experienced with delay. Any new procedures directed at addressing delay and which might for example include early intervention, initial assessment and other screening processes are supported by Queensland Health.

Recommendation 21.

States that the Ombudsman should introduce a formal training/staff development program. A heavy emphasis has been placed on staff training and development by Queensland Health. This department views its human resources as the most valuable assets in the public health sector. Accordingly, considerable resources have been directed towards training and development in recent years. If such an ethos does not already exist at the Office of the Parliamentary Commissioner, then Queensland Health clearly supports recommendation 21.

(Executive Summary point 8)

The need to be less responsive to individual complaints with an emphasis on becoming more proactive in the pursuit of systemic administrative problems.

Recommendations 8, 10, 11 and 21

The following recommendations appear to be directed toward changing the ideology by which the Ombudsman's office investigates matters on an individual or case by case basis. Professor

Wiltshire's report suggests that a more proactive approach with a focus on resolving systemic administrative problems should be adopted. Queensland Health has experienced the aforementioned case by case methodology referred to and remains unable to reconcile the Department's internal statistics with references in the Ombudsman's recent Annual Report which suggests systemic problems in some areas. For example the Ombudsman's Office recently advised Queensland Health about systemic problems involving the Patient Transfer Assistance Scheme. However Departmental analysis conducted with respect to Ombudsman's complaints over the last twelve months has revealed that there have been very few complaints about the Patient Transfer Assistance Scheme.

Recommendation 8

Which calls for the establishment of formal contact or liaison officers, to clearly progress a whole of department approach to problem areas as opposed to dealing with Ombudsman's complaints on a case by case basis. As indicated above the Department supports this recommendation.

Recommendation 10

Canvasses the idea of developing approved complaint handling procedures. Such a system is already in existence with respect to Criminal Justice Commission complaints which are currently supervised state wide by the Director of the Audit and Operational Review Branch. Queensland Health confirms that a similar protocol could be readily implemented with respect to the Ombudsman's Office, and therefore supports this recommendation.

Recommendation 11

Provides the possibility of implementing a formal program of inter-office secondments. This Department is of the view that such a procedure would readily assist both the Ombudsman's Office and Queensland Health to identify systemic administrative shortcomings and to design effective reform proposals in a timely manner. As previously indicated the Department recommends that your committee adopt this proposal.

Recommendation 21

Requires the implementation of a formal staff training program, particularly directed towards new recruits. Queensland Health is of the view that protracted and difficult administrative investigations requiring significant reforms cannot be achieved without appropriate staff training and development programs. We urge the Committee to view this recommendation as a priority.

(Executive Summary point 12)

That there is currently an unwieldy maze of public administration appeal mechanisms in Queensland and that such complaint and grievance handling processes require rationalisation.

Recommendation 29

Appears to be Professor Wiltshire's sole recommendation dealing with the multiple Queensland Government review bodies to which State Government Departments are currently answerable. In the case of Queensland Health a significant number of review panels, tribunals, appeal boards and other grievance and complaint handling agencies, exist. The Department is of the view that considerable confusion exists as to which is the appropriate body. Such confusion appears to exist not only among members of the public but also among the various review bodies. For example a recent case experienced by Queensland Health involves an employment dispute which has been under review by the Ombudsman's Office for the past two years and which has remained unresolved. Recent legal opinion with respect to that matter has revealed that as this dispute was

the subject of a settlement in a conference before the Industrial Relations Commission, the Ombudsman's Office may have been acting *ultra vires* in further investigating this complaint. Further examples include several grievances which were made direct to either myself or my predecessor and which later became the subject of an Ombudsman's enquiry, most often because it was not established that these previous complaints had been dealt with at a Ministerial level.

The Committee would no doubt be aware that my colleague the Honourable Attorney-General and Minister for Justice Mr M Foley MLA is currently considering the Government's position with respect to the establishment of a Queensland Administrative Review Tribunal concept based on an informal version of the Administrative Appeals Tribunal (AAT) model.

Queensland Health remains concerned at the extensive number of review and appeal bodies to which the department is answerable. Such processes require considerable and valuable resources which could be better spent on one of the Government's main priorities, namely the provision of high quality health care. This department supports the implementation of Recommendation 29.

I trust that these matters are of assistance during your evaluation of Professor Wiltshire's Strategic Review and I look forward with interest to your findings. I would be pleased to make available any departmental officers for further advice with respect to this matter and I would like to take this opportunity to thank you for facilitating Queensland Health's submissions to the Committee.

Yours sincerely



Wendy Edmond MLA
MINISTER FOR HEALTH