

LEGISLATIVE ASSEMBLY OF QUEENSLAND

**LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW COMMITTEE**

***THE REPORT OF THE STRATEGIC MANAGEMENT REVIEW OF
THE OFFICES OF THE QUEENSLAND OMBUDSMAN AND THE
INFORMATION COMMISSIONER***

Report No. 26

July 2000

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

REPORTS	DATE TABLED
1. Annual report 1995-96	8 August 1996
2. Report on matters pertaining to the Electoral Commission of Queensland	8 August 1996
3. Review of the Referendums Bill 1996	14 November 1996
4. Truth in political advertising	3 December 1996
5. Report on the Electoral Amendment Bill 1996	20 March 1997
6. Report on the study tour relating to the preservation and enhancement of individuals' rights and freedoms and to privacy (31 March 1997—14 April 1997)	1 October 1997
7. Annual report 1996-97	30 October 1997
8. The Criminal Law (Sex Offenders Reporting) Bill 1997	25 February 1998
9. Privacy in Queensland	9 April 1998
10. Consolidation of the Queensland Constitution – Interim report	19 May 1998
11. Annual report 1997-98	26 August 1998
12. The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?	18 November 1998
13. Consolidation of the Queensland Constitution: Final Report	28 April 1999
14. Review of the <i>Report of the Strategic Review of the Queensland Ombudsman</i> (Parliamentary Commissioner for Administrative Investigations)	15 July 1999
15. Report on a study tour of New Zealand regarding freedom of information and other matters: From 31 May to 4 June 1999	20 July 1999
16. Review of the Transplantation and Anatomy Amendment Bill 1998	29 July 1999
17. Annual report 1998-99	26 August 1999
18. Issues of electoral reform raised in the Mansfield decision: Regulating how-to-vote cards and providing for appeals from the Court of Disputed Returns	17 September 1999
19. Implications of the new Commonwealth enrolment requirements	2 March 2000
20. The Electoral Amendment Bill 1999	11 April 2000
21. Meeting with the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations) regarding the Ombudsman's <i>Annual Report to Parliament 1998 – 1999</i>	19 April 2000
22. The role of the Queensland Parliament in treaty making	19 April 2000
23. Issues of Queensland electoral reform arising from the 1998 State election and amendments to the <i>Commonwealth Electoral Act 1918</i>	31 May 2000
24. Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution	18 July 2000
25. Annual report 1999-00	19 July 2000

PAPERS	
Truth in political advertising (Issues paper)	11 July 1996
Privacy in Queensland (Issues paper)	4 June 1997
The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights? (Issues paper)	1 October 1997
Upper Houses (Information paper)	27 November 1997
Inquiry into issues of Queensland electoral reform (Background paper)	25 November 1999
The role of the Queensland Parliament in treaty making (Position paper)	25 November 1999
Freedom of Information in Queensland (Discussion paper)	8 February 2000
Four year parliamentary terms (Background paper)	11 April 2000
Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution (Position paper)	27 April 2000

1. INTRODUCTION

On 21 June 2000, the Premier tabled in the Legislative Assembly the *Report of the Strategic Management Review of the Offices of the Queensland Ombudsman and the Information Commissioner* ('the review report').¹

The review report is referred to the Legal, Constitutional and Administrative Review Committee ('the committee' or 'LCARC') pursuant to the *Parliamentary Commissioner Act 1974* (Qld) ('the PC Act') and the *Freedom of Information Act 1992* (Qld) ('the FOI Act').²

Section 8 of the *Parliamentary Committees Act 1995* (Qld) provides that a parliamentary committee is to deal with an issue referred to it under an Act (whether or not the issue is within its areas of responsibility), and that a committee may deal with an issue by considering it and reporting on it, and making recommendations about it, to the Legislative Assembly.

The committee has considered the review report.

Given its integral involvement in events leading to the conduct of the management review (outlined in section 2 below), the committee now reports to Parliament regarding the review report.

2. BACKGROUND TO THE MANAGEMENT REVIEW

In addition to its responsibilities concerning legal, constitutional, electoral and administrative review reform, the LCARC has a number of specific statutory functions regarding certain statutory offices. The PC Act confers on the LCARC responsibilities relating to the appointment, removal and suspension of the Parliamentary Commissioner for Administrative Investigations ('the Ombudsman'). This Act also provides that the LCARC has responsibilities in relation to development of the Ombudsman's budget and the conduct of 'strategic reviews' of the Ombudsman. The FOI Act confers similar responsibilities on the committee with respect to the Information Commissioner.

¹ The Consultancy Bureau Pty Ltd (commissioned by the Queensland Government), *Report of the Strategic Management Review of the Offices of the Queensland Ombudsman and the Information Commissioner*, The Brisbane Printing Place, June 2000 (available at: <<http://www.premiers.qld.gov.au/review/index.htm>>).

² See the PC Act, s 32(13) and the FOI Act, s 108A(13).

In 1997/98, Professor Kenneth Wiltshire AO conducted the inaugural strategic review of the Ombudsman in accordance with s 32 of the PC Act. Professor Wiltshire's report on his strategic review was tabled in Parliament in May 1998.³

In accordance with its responsibilities regarding the Ombudsman specifically and administrative review reform generally, this committee subsequently resolved to review Professor Wiltshire's report.

The committee reported on its review on 15 July 1999: see LCARC report no 14 *Review of the Report of the Strategic Review of the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations)*.⁴ In its report, the committee recommended that, as a matter of priority, the Premier—as the Minister responsible for the PC Act—commission an external management review of the Office of the Queensland Ombudsman.⁵

The committee's recommendation stemmed from the fact that Professor Wiltshire had stressed that the strategic review was not a management review as such. As a result, the committee felt that it had not been in a position to build a clear overall picture of the economy, efficiency and effectiveness of the Office. This caused the committee some concerns particularly given its role in relation to developing the Ombudsman's budget.⁶

On 26 August 1999, the Premier informed the Legislative Assembly that he endorsed the committee's recommendation regarding a management review of the Ombudsman's Office.

On 15 September 1999, the Legislative Assembly carried a resolution calling on the Premier to conduct a management review of the Ombudsman pursuant to s 32 of the PC Act.

³ Queensland Government, *Report of the Strategic Review of the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations)*, GoPrint, Brisbane, May 1998 (available at: <<http://www.parliament.qld.gov.au/comdocs/legalrev/Wiltshire%20Strategic%20Report-Ombudsman%20for%20internet.PDF>>).

⁴ GoPrint, Brisbane, July 1999 (available at: <<http://www.parliament.qld.gov.au/comdocs/legalrev/lcar014.pdf>>).

⁵ Note 4 at 51-52 (recommendation 19).

⁶ Note 4 at 50.

On 23 November 1999, the Premier introduced into the Assembly the Parliamentary Commissioner and Freedom of Information Amendment Bill 1999 ('the bill'). The purpose of the bill, according to the explanatory notes, was largely to:

- amend s 32 of the PC Act to:
 - put it beyond doubt that a strategic review can be a management review and involve an assessment of the efficiency, economy and effectiveness of the Ombudsman's Office;
 - require the reviewer to give the Minister and the Ombudsman a draft of the reviewer's report and to provide the Ombudsman with the opportunity to respond to any matters contained in the report; and
 - refer strategic review reports to the LCARC;
- insert a provision equivalent to s 32 (as amended by the bill) into the FOI Act to provide for the conduct of strategic reviews of the Office of the Information Commissioner at least every five years; and
- enable combined reviews of the Offices of the Ombudsman and Information Commissioner where the same person holds both offices and the ministers responsible for the administration of both Acts agree to a combined review.⁷

The preparation of the bill followed agreement by the Premier, the Attorney-General and the committee that it was prudent and cost effective to expand the then planned management review to encompass the Office of the Information Commissioner. Both offices are managed by the same accountable officer, are combined for budgetary purposes and are supported by a single Corporate and Research Division.

Further, in March 1999 the Queensland Parliament referred the FOI Act to the committee for review ('the FOI review'). The committee considered that a management review of the Office of the Information Commissioner would be timely as it would enable the committee to consider the review report before handing down its report on the FOI review.

The Legislative Assembly passed the bill on 8 December 1999. The bill was assented to on 14 December 1999.

⁷ The Premier is the minister responsible for the PC Act and the Attorney-General is the minister responsible for the FOI Act.

3. THE COMMITTEE'S INVOLVEMENT IN THE MANAGEMENT REVIEW

The (amended) sections of the PC Act and FOI Act relating to the conduct of strategic reviews make it clear that the responsible ministers must consult with the committee and the Ombudsman/Information Commissioner about the appointment of the person to conduct the review and the review terms of reference.⁸

A Consultative Reference Group was established comprising representatives of the Premier, the Attorney-General, the LCARC and the Ombudsman (in both his capacity as Ombudsman and Information Commissioner) to act as a forum for consultation for the duration of the review. This group was chaired by the Chair of the LCARC.

On 16 December 1999, following consultation within this forum, the Governor in Council appointed The Consultancy Bureau Pty Ltd to conduct the combined management review and approved the terms of reference for the review as adopted by the Consultative Reference Group at its meeting of 1 December 1999.

In accordance with the review terms of reference (and the timeframes and guidelines set by the Consultative Reference Group), the reviewer prepared a written progress report at the end of the first and second months of the review and a proposed report at the end of the third month. The Consultative Reference Group met following the presentation of each of these reports.

The committee also met separately with the reviewer on a number of occasions.

The Ombudsman in both his capacity as Ombudsman and Information Commissioner took the opportunity to provide written comments on the reviewer's proposed report. Those comments which were not incorporated in the report itself are appended to the respective volume of the review report.⁹

⁸ See the PC Act, s 32(5) and the FOI Act, s 108A(5).

⁹ See the PC Act, s 32(9) & (10) and the FOI Act, s 108A (9) & (10) regarding the statutory basis for the Ombudsman/Information Commissioner providing comments and the way in which comments are to be treated.

4. THE COMMITTEE'S COMMENTS ON THE REVIEW REPORT

4.1 Overall comments

The review terms of reference required the reviewer to undertake a comprehensive management review of the Offices of the Ombudsman and Information Commissioner to generally assess and provide advice and recommendations about the economy, effectiveness and efficiency of the offices.¹⁰

Specific matters which the review terms of reference required the reviewer to focus on included current and alternative approaches to case management, office structure and the delegation of responsibility, management systems and processes, human resource management issues, administrative systems and processes, and funding arrangements.

The review also incorporated a review of the classification of the positions in both offices.¹¹ (The conduct of the classification review was consistent with recommendation 22 of Professor Wiltshire's strategic review report.¹²)

The reviewer conducted the review in accordance with the methodology set out in the terms of reference and as further discussed in the Consultative Reference Group forum.

In particular, the reviewer conducted the review in a consultative manner with both management and staff. The committee is satisfied that all officers were provided with the opportunity to participate and have input into the review both through focus groups and individually with the review team.¹³

In its report, the reviewer makes 122 constructive recommendations designed to enhance the economy, efficiency and effectiveness of both offices. (Volume 1 of the report concerns the Office of the Ombudsman and volume 2 concerns the Office of the Information Commissioner.)

There is a strong correlation between many of Professor Wiltshire's strategic review recommendations, the committee's comments

on those recommendations in LCARC report no 14 and the reviewer's recommendations. (As required by the review terms of reference, the reviewer reports on the Ombudsman's implementation of the strategic review recommendations in chapter 13 and attachment 10 of volume 1 of the review report.)

The committee commends the reviewer on the thoroughness of the review and the comprehensive manner in which the review report addresses the review terms of reference.

The review team conducted itself in a most professional manner and met the tight deadlines set by the review terms of reference.

The committee is pleased to report that the review report fulfils the committee's expectation of a management review as initially recommended in its report no 14 (concerning Professor Wiltshire's strategic review report).

Below the committee makes some specific comments regarding the review as it relates to each office.

4.2 Office of the Ombudsman (volume 1)

The reviewer makes 97 recommendations regarding the Office of the Ombudsman.¹⁴

The reviewer essentially recommends a change in philosophy and approach for the Office of the Ombudsman moving from what the reviewer sees as the current emphasis on the formal investigation of individual complaints to 'more informal, systemic and demand management approaches'.¹⁵

In his response to the report, the Ombudsman has expressed some reservations regarding the recommended approach to the extent that, as the reviewer suggests, less emphasis should be placed on investigating the actual merits of decisions, particularly where professional judgments are involved.¹⁶

Nevertheless, the committee is pleased to note that:

- the reviewer reports the office has implemented a number of Professor

¹⁰ The review terms of reference are reproduced as attachment 1 to volume 1 of the review report.

¹¹ As to the results of the classification review see the review report, volume 1 at 124 and attachment 9.

¹² Note 3 at 62.

¹³ In this regard also see the review report, volume 1 at 54 and volume 2 at 3.

¹⁴ Some of these recommendations also relate to the Office of the Information Commissioner given that both offices share corporate support.

¹⁵ Review report, volume 1 at xi.

¹⁶ See section 3 of the Ombudsman's response which appears in volume 1 of the review report prior to the attachments.

Wiltshire's strategic review recommendations¹⁷ and taken a number of other positive initiatives during the review;¹⁸ and

- the Ombudsman has confirmed the office's willingness to commit to many of the review recommendations to improve efficiency, economy and overall performance.¹⁹

The reviewer has made one recommendation for possible amendment to the Ombudsman's legislation, the PC Act.²⁰ Given this committee's statutory area of responsibility regarding administrative review reform, the committee will pursue this matter with the Ombudsman and the Premier.

In chapter 17 of volume 1 of the report the reviewer outlines an implementation strategy setting out immediate implementation priorities (predominantly concerning matters which will assist with reducing the backlog of cases and confirm a commitment to improving management and human resource practices), and priorities to be addressed within the next twelve months (relating more to demand management and advice and awareness functions).

The reviewer has identified a role for the committee in monitoring implementation of the review recommendations given that this will require revision of the office's strategic and operational plan and a reallocation of funding to address certain identified priorities.²¹

The committee intends to take an active interest in the office's consideration and implementation of the review recommendations.

4.3 Office of the Information Commissioner (volume 2)

The 25 recommendations which relate to the Office of the Information Commissioner essentially propose that the office adopt a number of new approaches, processes and practices with a view to favourably influencing productivity, response times and costs within the office.

¹⁷ Review report, volume 1 at 125 and attachment 10. The reviewer recommends that the Office implement the remaining strategic review recommendations: recommendation 90 at 126.

¹⁸ Review report, volume 1 at 16.

¹⁹ Review report, volume 1 at 16, 143 and the Ombudsman's response at 7, 13, 18, and 23.

²⁰ Review report, volume 1, recommendation 5 at 19.

²¹ Review report, volume 1 at 143.

As noted in section 2 above, the committee is currently conducting a wide-ranging review of Queensland's FOI Act. In particular, paragraphs B(v) and C of the FOI review terms of reference require the committee to consider '*whether the mechanisms set out in the Act for internal and external review are effective, and in particular, whether the method of review and decision by the Information Commissioner is excessively legalistic and time-consuming*' and '*any related matter*'.

The management review terms of reference required the review to include consideration of the terms of reference for the committee's FOI review.

The reviewer has made a number of recommendations and observations which are relevant to the committee's FOI review.

In fact, many of the reviewer's recommendations and observations directly canvass issues raised in the committee's February 2000 discussion paper regarding its FOI review.²² These issues concern matters such as: the need for an entity to perform an FOI advice and awareness function; costs associated with external review; the office's approach to reviewing applications; timeliness and time limitations regarding external reviews; demand management strategies including strategies to deal with voluminous and serial applications; the joint Ombudsman/Information Commissioner role; and internal review as a precondition for external review.

The committee will consider the reviewer's recommendations and observations, together with the Information Commissioner's response to the review report, in detail in the context of its current review of the FOI Act.

The committee notes that in his response the Information Commissioner states that he will accept and/or trial the reviewer's suggestions for improved performance.²³

5. CONCLUSION

The committee considers that the management review of the Offices of the Ombudsman and Information Commissioner has been a most worthwhile and valuable exercise.

²² The fact that the reviewer considered the committee's discussion paper is made clear on page 3 of volume 2 of the review report.

²³ Review report, volume 2, Information Commissioner's response at paras 2, 11 and 21.

The review represents the first external 'management' review of the Ombudsman's Office since that office's establishment in 1974, and the first external review (of either a 'management' or 'strategic' nature) of the Office of the Information Commissioner since that office commenced operations in January 1993.

As the body responsible for investigating administrative action taken by government departments and agencies, the committee is keen to see the Office of the Ombudsman embrace, and be seen to embrace, best management practices and set, by example, high standards of good administration.

Likewise, it is important that the Office of the Information Commissioner performs as originally intended, namely, as a specialised dispute resolution service which is speedier, cheaper for participants, and more informal and user friendly than the court system and tribunals which follow court-like procedures.

The committee considers that many of the reforms recommended by the reviewer have the potential to assist the offices function more effectively and efficiently. Therefore, the committee encourages both offices to fulfill their commitment to give all review recommendations careful consideration with a view to their implementation.

Implementation of many of the review recommendations will demand a fundamental change in approach. The challenge ahead for management is to facilitate a participative change process which is viewed by staff at all levels as a positive step forward for the offices.

Continual review of management and administrative practices, including those initiatives already implemented and those to be implemented as a result of the review, will also be essential.

The committee looks forward to working with both offices to ensure that the benefit of conduct of the review is fully maximised.

Gary Fenlon MLA
Chair

LCARC MEMBERSHIP – 49TH PARLIAMENT

Mr Gary Fenlon MLA (Chair)
Mrs Judy Gamin MLA (Deputy Chair)
Mr Denver Beanland MLA
Ms Desley Boyle MLA
Mr Warren Pitt MLA[#]
Dr Peter Prenzler MLA*

* Dr Prenzler was appointed to the committee on 11 November 1998, replacing Mr Charles Rappolt whose resignation from Parliament was received by the Speaker on 4 November 1998.

Mr Warren Pitt MLA was appointed to the committee on 29 February 2000 as a replacement for Mr Geoff Wilson MLA who was seconded to the Parliamentary Criminal Justice Committee

STAFF

Ms Kerryn Newton (Research Director)
Ms Veronica Rogers (Principal Research Officer)
Ms Tania Jackman (Executive Assistant)

CONTACTING THE COMMITTEE

Copies of this report and other LCARC publications are available on the Internet via the Queensland Parliament's home page at:

<<http://www.parliament.qld.gov.au/committees/legalrev.htm>>

The committee's contact details are:

Legal, Constitutional & Administrative
Review Committee
Parliament House
George Street, Brisbane, Qld, 4000

Telephone: (07) 3406 7307
Fax: (07) 3406 7070
Email: lcarc@parliament.qld.gov.au