

Report No 52, December 2005

**Meeting with the Queensland Ombudsman; Meeting with the
Queensland Information Commissioner ~ 29 November 2005**

LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Meeting with the Queensland Ombudsman;
Meeting with the Queensland Information Commissioner

29 November 2005

December 2005

Report No. 52

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

51ST PARLIAMENT

CHAIR:	Dr Lesley Clark MP, Member for Barron River
DEPUTY CHAIR:	Miss Fiona Simpson MP, Member for Maroochydore
MEMBERS:	Mr Paul Hoolihan MP, Member for Keppel
	Mr Ronan Lee MP, Member for Indooroopilly
	Mr Mark McArdle MP, Member for Caloundra
	Mr Andrew McNamara MP, Member for Hervey Bay
	Mr Ian Rickuss MP, Member for Lockyer
A/RESEARCH DIRECTOR:	Ms Julie Copley
A/PRINCIPAL RESEARCH OFFICER:	Ms Renee Giskes
A/EXECUTIVE ASSISTANT:	Ms Jaana Hokkanen

COMMITTEE CONTACT DETAILS

Copies of this report and other Legal, Constitutional and Administrative Review Committee publications are available on the committee website which may be accessed via the Queensland Parliament's home page at: <http://www.parliament.qld.gov.au/LCARC>.

Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Telephone: (07) 3406 7307

Facsimile: (07) 3406 7070

E-mail: lcarc@parliament.qld.gov.au

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

	REPORTS	DATE TABLED
1.	Annual report 1995-96	8 August 1996
2.	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.	The Electoral Amendment Bill 1996	20 March 1997
6.	Report on a 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
26.	The <i>Report of the strategic management review of the Offices of the Queensland Ombudsman and the Information Commissioner</i>	19 July 2000
27.	Review of the Queensland Constitutional Review Commission's recommendation for four year parliamentary terms	28 July 2000
28.	The prevention of electoral fraud: Interim report	14 November 2000

REPORTS		DATE TABLED
29.	Annual report 2000-01	2 August 2001
30.	Progress report on implementation of recommendations made in the <i>Report of the strategic management review of the Offices of the Queensland Ombudsman and the Information Commissioner</i>	8 August 2001
31.	Review of the Members' oath or affirmation of allegiance	25 October 2001
32.	Freedom of Information in Queensland	20 December 2001
33.	The Electoral (Fraudulent Actions) Amendment Bill 2001	27 March 2002
34.	Meeting with the Queensland Ombudsman – 12 April 2002	14 May 2002
35.	Annual report 2001-02	23 August 2002
36.	The Queensland Constitution: Specific content issues	27 August 2002
37.	Meeting with the Queensland Ombudsman – 26 November 2002	12 December 2002
38.	Meeting with the Queensland Ombudsman – 29 April 2003	6 June 2003
39.	The role of the Queensland Parliament in treaty making – Review of tabling procedure	17 July 2003
40.	Annual report 2002-03	21 August 2003
41.	Review of the Queensland Constitutional Review Commission's recommendations regarding entrenchment of the Queensland Constitution	27 August 2003
42.	Hands on Parliament – A parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes	11 September 2003
43.	Meeting with the Queensland Ombudsman (25 November 2003) and final report on implementation of recommendations made in the <i>Report of the Strategic Management Review of the Offices of the Queensland Ombudsman and the Information Commissioner</i>	17 December 2003
44.	Meeting with the Queensland Ombudsman - 11 May 2004	17 June 2004
45.	Annual Report 2003/2004	19 August 2004
46.	A preamble for the Queensland Constitution?	30 November 2004
47.	Meeting with the Queensland Ombudsman – 23 November 2004	21 December 2004
48.	Publication of Committee Proceedings – 22 February 2005	10 March 2005
49.	Meeting with the Queensland Ombudsman (24 May 2005); meeting with the Queensland Information Commissioner (24 May 2005); and report on matters raised in a Ministerial Statement by the Premier and Minister for Trade on 23 March 2005	9 June 2005
50.	Constitutional and other Legislation Amendment Bill 2005 (Old)	28 September 2005
51.	Annual report 2004/2005	30 September 2005

PAPERS		DATE TABLED
	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

PAPERS	DATE TABLED
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
Inquiry into the prevention of electoral fraud (Issues paper)	8 September 2000
The Queensland Constitution: Specific content issues (Issues paper)	18 April 2002
The Queensland Constitution: Entrenchment (Proposals for Comment)	27 August 2002
Hands on Parliament - A Parliamentary Committee Inquiry into Aboriginal and Torres Strait Islander Peoples' Participation in Queensland's Democratic Process (Issues paper)	12 December 2002
A preamble for the Queensland Constitution? (Issues paper)	17 June 2004
Voices and Votes – A Parliamentary Committee Inquiry into Young People's Engagement in Democracy in Queensland (Discussion paper)	8 July 2005
The Accessibility of Administrative Justice (Discussion paper)	1 December 2005

CHAIR'S FOREWORD

This is a report on:

- the fourth general meeting of the Legal, Constitutional and Administrative Review Committee of the 51st Parliament ('the committee') with the Ombudsman in accordance with the committee's functions under section 89 of the *Ombudsman Act 2001* (Qld); and
- the first general meeting of the committee with the Information Commissioner in accordance with the committee's functions under section 108C of the *Freedom of Information Act 1992* (Qld).

By way of this round of biannual meetings, the committee is pleased to have had the opportunity to receive information about, and to discuss, the activities of the Offices of the Ombudsman and Information Commissioner.

That information and transcripts of the respective discussions are contained in the committee's report.

This report is tabled soon after the release of the report, *Queensland Public Hospitals Commission of Inquiry*, prepared by Hon Geoffrey Davies AO. A matter addressed in the committee's report is a proposal made by the Ombudsman to the Bundaberg Hospital Commission of Inquiry (and subsequently to the Queensland Public Hospitals Commission of Inquiry and the Queensland Health Systems Review); namely, that the Ombudsman should have a supervisory role regarding public interest disclosures of serious maladministration made to an agency under the *Whistleblowers Protection Act 1994* (Qld). Hon Davies' report recommended the adoption of that proposal.

To this report, the committee appends a copy of a letter from the committee to the Premier dated 14 December 2005 (see **appendix E**). That letter conveys the committee's support for the Ombudsman's proposal, as recommended by Hon Davies' report.

I thank the Ombudsman, Mr David Bevan; Deputy Ombudsmen, Mr Rodney Metcalfe and Mr Frank King; the Manager, Corporate Services Unit, Mr Shaun Gordon; the Manager, Advice and Communication Unit, Ms Adeline Yuksel; and the Assistant Ombudsman, Ms Louise Rosemann for meeting with the committee, and other staff of the Ombudsman's office involved in providing information to the committee.

I also thank the Information Commissioner, Ms Cathi Taylor, for meeting with the committee and other staff of the Information Commissioner's office who prepared information for the committee.

The committee appreciates the timely and co-operative manner in which information, including written responses to questions on notice, was provided by both Offices.

The committee commends the staff of both Offices for the way in which they carried out their functions in 2004-05, as reported in the respective annual reports.

I also thank Hansard for the transcription of the meeting, committee members for their contribution to the meetings, and the committee's staff for their assistance with the meetings.

[Original Signed]

Dr Lesley Clark MP
Chair

TABLE OF CONTENTS

	<u>Page No</u>
1. INTRODUCTION	1
1.1 Biannual meetings with Ombudsman	1
1.2 Biannual meetings with Information Commissioner	1
1.3 Recent activities of Ombudsman and Information Commissioner	1
2. COMMITTEE RESPONSIBILITY IN RELATION TO THE OMBUDSMAN AND INFORMATION COMMISSIONER.....	1
2.1 General committee responsibility regarding administrative review reform	1
2.2 Meeting with the Ombudsman	2
2.2.1 <i>Specific committee functions regarding the Ombudsman</i>	2
2.2.2 <i>Funding of the Ombudsman</i>	2
2.2.3 <i>Strategic review of the Office of the Ombudsman</i>	3
2.2.4 <i>Biannual meetings with the Ombudsman</i>	3
2.3 Meeting with the Information Commissioner	3
2.3.1 <i>Specific committee functions regarding the Information Commissioner</i>	3
2.3.2 <i>Funding of the Information Commissioner</i>	4
2.3.3 <i>Strategic review of the Office of the Information Commissioner</i>	4
2.3.4 <i>Biannual meetings with the Information Commissioner</i>	4
3. THIS REPORT.....	5
3.1 Meeting with the Ombudsman	5
3.2 Meeting with the Information Commissioner	7
4. COMMITTEE COMMENTS.....	8
4.1 Meeting with the Ombudsman	8
4.2 Meeting with the Information Commissioner	9
APPENDIX A - QUESTIONS ON NOTICE TO THE OMBUDSMAN; OMBUDSMAN'S RESPONSES	
APPENDIX B - TRANSCRIPT OF MEETING WITH THE OMBUDSMAN	
APPENDIX C - QUESTIONS ON NOTICE TO THE INFORMATION COMMISSIONER; INFORMATION COMMISSIONER'S RESPONSES	
APPENDIX D -TRANSCRIPT OF MEETING WITH THE INFORMATION COMMISSIONER	
APPENDIX E –LETTER FROM THE COMMITTEE TO THE PREMIER DATED 14 DECEMBER 2005	

1. INTRODUCTION

1.1 BIENNIAL MEETINGS WITH OMBUDSMAN

The Legal, Constitutional and Administrative Review Committee of the 51st Parliament ('the committee'), and its predecessor committee, have met biennially with the Ombudsman since April 2002. This process of biennial meetings was adopted following the commencement of the *Ombudsman Act 2001* (Qld) which confers functions on the committee in respect of the Ombudsman. The meeting on 29 November 2005 was the eighth such meeting and was timed to follow the release of the *Queensland Ombudsman Annual Report 2004-2005*.¹

1.2 BIENNIAL MEETINGS WITH INFORMATION COMMISSIONER

In February 2005, the Office of the Information Commissioner was created as a separate entity and a stand-alone Information Commissioner was appointed. Previously, the Ombudsman had also assumed the functions of the Information Commissioner. Amendments to the *Freedom of Information Act 1992* (Qld), which came into effect on 1 September 2005, confer the committee with functions in respect of the Information Commissioner mirroring those the committee has in respect of the Ombudsman.

For the purposes of this round of biennial meetings, the committee and the Information Commissioner agreed to adopt a process similar to that in place for the committee's meetings with the Ombudsman. The committee's meeting with the Information Commissioner on 29 November 2005 was the first such meeting, and was timed to follow the release of the *Office of the Information Commissioner Annual Report 2004-05*.²

1.3 RECENT ACTIVITIES OF OMBUDSMAN AND INFORMATION COMMISSIONER

By way of this report, the committee reports to the Parliament on the recent activities of the Offices of the Ombudsman and the Information Commissioner. It comprises respectively:

- committee observations on those activities;
- written answers to the committee's questions on notice; and
- transcripts of the committee's meetings with the Ombudsman and the Information Commissioner.

The report includes information about:

- the general exercise of investigative functions;
- significant activities of the Ombudsman to improve the quality of decision-making and administrative practices in agencies, particularly the *Good Decisions Training Program* and the *Complaints Management Project*; and
- the commitment of the Information Commissioner to the timely resolution of external reviews conducted by her Office and to increasing the clarity of written communications produced by the Office.

2. COMMITTEE RESPONSIBILITY IN RELATION TO THE OMBUDSMAN AND INFORMATION COMMISSIONER

2.1 GENERAL COMMITTEE RESPONSIBILITY REGARDING ADMINISTRATIVE REVIEW REFORM

The Legal, Constitutional and Administrative Review Committee ('LCARC') has responsibility for:

¹ *Queensland Ombudsman Annual Report 2004-2005*, tabled on 14 November 2005, available at: www.ombudsman.qld.gov.au.

² *Office of the Information Commissioner Annual Report 2004-05*, tabled on 7 November 2005, available at: www.infocomm.qld.gov.au.

- administrative review reform;
- constitutional reform;
- electoral reform; and
- legal reform.³

The committee's area of responsibility about administrative review reform includes considering legislation about:

- access to information;
- review of administrative decisions;
- anti-discrimination; or
- equal employment opportunity.⁴

In addition, the *Ombudsman Act* and the *Freedom of Information Act* confer the committee with specific functions in relation to the Ombudsman and the Information Commissioner, respectively.

2.2 MEETING WITH THE OMBUDSMAN

The functions of the Queensland Ombudsman, as set out in the *Ombudsman Act*, include investigating administrative action taken by agencies and improving the quality of decision-making and administrative practices in agencies.⁵ The *Ombudsman Act* further provides that the Ombudsman is an officer of the Parliament,⁶ and requires the Ombudsman to report to Parliament by way of reporting to the committee.⁷

2.2.1 Specific committee functions regarding the Ombudsman

Specific functions are conferred on the committee by the *Ombudsman Act*, including to:

- monitor and review the performance by the Ombudsman of the Ombudsman's functions under the *Ombudsman Act*;
- report to the Legislative Assembly on any matter concerning the Ombudsman, the Ombudsman's functions or the performance of the Ombudsman's functions that the committee considers should be drawn to the Assembly's attention;
- examine each annual report tabled in the Assembly under the *Ombudsman Act* and, if appropriate, comment on any aspect of the report; and
- report to the Assembly any changes to the functions, structures and procedures of the Office of the Ombudsman the committee considers desirable for the more effective operation of the *Ombudsman Act*.⁸

2.2.2 Funding of the Ombudsman

The Treasurer must also consult with the committee in developing the proposed budget of the Ombudsman for each financial year.⁹

³ *Parliament of Queensland Act 2001* (Qld), s 85.

⁴ *Parliament of Queensland Act 2001* (Qld), s 86.

⁵ *Ombudsman Act 2001* (Qld), s 12.

⁶ *Ombudsman Act 2001* (Qld), s 11.

⁷ *Ombudsman Act 2001* (Qld), s 87.

⁸ *Ombudsman Act 2001* (Qld), s 89.

⁹ *Ombudsman Act 2001* (Qld), s 88(3).

2.2.3 Strategic review of the Office of the Ombudsman

A review of the Ombudsman's functions, and of the Ombudsman's performance of those functions, must be conducted at least every five years. The Governor in Council appoints an appropriately qualified person to undertake such a review, and decides the terms of reference for the review. The Attorney-General must first consult with the committee and the Ombudsman about such appointment and terms of reference.¹⁰

The report by the reviewer on the review ('review report') must be referred to the committee in accordance with section 84(2) of the *Parliament of Queensland Act*.¹¹ The committee must consider the review report and report on it to the Legislative Assembly.¹²

At the time of the committee's meeting with the Ombudsman, the 2005 strategic review of the Office of the Ombudsman had commenced. The review is being conducted by Mr Henry Smerdon, and at the time of this report the committee has met with Mr Smerdon in relation to the strategic review on two occasions.

2.2.4 Biannual meetings with the Ombudsman

In order to meet the functions and requirements set out in the *Ombudsman Act*, the committee has established a continual, open dialogue with the Ombudsman. This process includes:

- holding two general meetings with the Ombudsman each year;
- timing these biannual meetings so that one is held following the tabling of the Ombudsman's annual report, and the other preceding the estimates process;
- forwarding to the Ombudsman, prior to each meeting, written questions on notice concerning the committee's special functions;
- the Ombudsman providing written responses to those questions;
- considering those written responses; and
- meeting with the Ombudsman, and some senior officers of the Office of the Ombudsman, to further discuss the questions and ask additional questions without notice.

Following each biannual meeting with the Ombudsman, the committee reports to the Legislative Assembly on the matters it has discussed with the Ombudsman.

2.3 MEETING WITH THE INFORMATION COMMISSIONER

The functions of the Queensland Information Commissioner, as set out in the *Freedom of Information Act*, include:

- investigating and reviewing decisions of agencies and Ministers regarding the release of documents under the *Freedom of Information Act*; and
- providing information and help to agencies and members of the public on matters relevant to the external review of decisions by the Information Commissioner or the Office of the Information Commissioner.¹³

2.3.1 Specific committee functions regarding the Information Commissioner

Amendments to the *Freedom of Information Act* by the *Freedom of Information and Other Legislation Amendment Act 2005* (Qld) commenced on 1 September 2005. The amendments inserted a new section 108C which provides the committee with functions in respect of the Information Commissioner equivalent to those set out in section 89 of the *Ombudsman Act*, namely to:

¹⁰ *Ombudsman Act 2001* (Qld), s 83.

¹¹ *Ombudsman Act 2001* (Qld), s 85(7).

¹² *Parliament of Queensland Act 2001* (Qld), s 84(3).

¹³ *Freedom of Information Act 1992* (Qld), s 101C.

- monitor and review the performance by the Information Commissioner of the Information Commissioner's functions under the *Freedom of Information Act*;
- report to the Legislative Assembly on any matter concerning the Information Commissioner, the Information Commissioner's functions or the performance of the Information Commissioner's functions that the committee considers should be drawn to the Assembly's attention;
- examine each annual report tabled in the Assembly under the *Freedom of Information Act* and, if appropriate, comment on any aspect of the report; and
- report to the Assembly any changes to the functions, structures and procedures of the Office of the Information Commissioner the committee considers desirable for the more effective operation of the *Freedom of Information Act*.

2.3.2 Funding of the Information Commissioner

The *Freedom of Information Act* does not contain an equivalent of section 88(3) of the *Ombudsman Act*. The committee need not be consulted regarding the proposed budget of the Information Commissioner for each financial year.

2.3.3 Strategic review of the Office of the Information Commissioner

A review of the Information Commissioner's functions, and of the Information Commissioner's performance of those functions, must be conducted at least every five years. The Governor in Council appoints an appropriately qualified person to undertake such a review, and decides the terms of reference for the review. The Attorney-General must first consult with the committee and the Information Commissioner about such appointment and terms of reference.¹⁴

The report by the reviewer on the review ('review report') must be referred to the committee in accordance with section 84(2) of the *Parliament of Queensland Act*.¹⁵ The committee must consider the review report and report on it to the Legislative Assembly.¹⁶

At the time of the committee's meeting with the Information Commissioner, the 2005 strategic review of the Office of the Information Commissioner had commenced. Mr Henry Smerdon is conducting the strategic review, and at the time of this report the committee has twice met with Mr Smerdon in relation to the strategic review.

2.3.4 Biannual meetings with the Information Commissioner

As discussed in greater detail in report no. 49,¹⁷ prior to the passage of the *Freedom of Information and Other Legislation Amendment Act 2005*, legislative arrangements regarding the Office of the Information Commissioner and the committee were piecemeal. As, prior to February 2005, the Ombudsman also assumed the functions of the Information Commissioner, LCARCs met with the Information Commissioner following each biannual meeting of the committee with the Ombudsman. On 24 May 2005, in anticipation of new committee functions conferred by the amending Act, and for other reasons set out in report no. 49, the committee met with the Information Commissioner.

At this time, the committee has adopted the process of meeting biannually with the Information Commissioner.

¹⁴ *Freedom of Information Act 1992* (Qld), s 108A.

¹⁵ *Freedom of Information Act 1992* (Qld), s 108AB(7).

¹⁶ *Parliament of Queensland Act 2001* (Qld), s 84(3).

¹⁷ LCARC, *Meeting with the Queensland Ombudsman (24 May 2005); meeting with the Queensland Information Commissioner (24 May 2005); and report on matters raised in a Ministerial Statement by the Premier and Minister for Trade on 23 March 2005*, report no. 49, Goprint, Brisbane, June 2005, available at: www.parliament.qld.gov.au/LCARC.

3. THIS REPORT

3.1 MEETING WITH THE OMBUDSMAN

The eighth general meeting of the Legal, Constitutional and Administrative Review Committee and the Ombudsman was held on 29 November 2005. The meeting followed the tabling of the *Queensland Ombudsman Annual Report 2004-2005* on 14 November 2005.¹⁸ Matters discussed with the Ombudsman included matters arising out of the annual report.

Prior to the meeting, the committee had:

- by letter dated 8 November 2005, forwarded to the Ombudsman written questions on notice - the questions and the responses to them (provided by the Ombudsman by letter dated 24 November 2005) appear as **appendix A**;
- considered the Ombudsman's responses;
- considered the *Queensland Ombudsman Annual Report 2004-2005*, a copy of which was forwarded to the committee in accordance with section 87 of the *Ombudsman Act* by letter dated 31 October 2005;
- considered the *Queensland Ombudsman Strategic Plan 2005 to 2009*, a copy of which was forwarded to the committee by the Ombudsman by letter dated 4 July 2005; and
- met with Mr Henry Smerdon, 2005 Strategic Reviewer, on 25 October 2005.

At the meeting, the committee discussed in more detail with the Ombudsman and senior officers of the Ombudsman's Office issues arising from the questions on notice and the Ombudsman's responses. The meeting was transcribed, and the transcript appears as **appendix B**.

The issues discussed with the Ombudsman at the meeting included:

- complaint statistics for 2004-05, in particular:
 - the number of open complaints/complaints still under consideration at 30 June 2005 (398), which was the lowest number for some time and a reduction from those open 30 June 2004 (469);
 - the number of complaints older than 12 months at 30 June 2005 (37, or approximately 9%), compared to 30 June 2004 (36, or approximately 8%); and
 - an 11% reduction in the number of complaints received (7867, compared to 8978 in 2003-04), areas of significant reductions and possible reasons;
- the ability of the Office to handle, in a reasonably timely manner, a case load of between 400 and 500 complaints at any one time;
- the Ombudsman's intention to liaise with Treasury to amend the output measures and targets set for the Office in its *Strategic Plan 2005-2009* to more accurately reflect all the services provided by the Office, including its administrative improvement activities;
- the report on the *Workplace Electrocution Project*, tabled in the Legislative Assembly on 30 June 2005, which was the largest investigation of maladministration the Office had undertaken;
- the Ombudsman's submission to the Bundaberg Hospital Commission of Inquiry (see section 4.1) and resource implications for the Office of the Ombudsman if it took on a supervisory role in relation to public interest disclosures of serious maladministration, as proposed in the submission;

¹⁸ Note 1.

- the possible benefits of a review of the *Whistleblowers Protection Act 1994* (Qld), given the absence of a review since its enactment;
- the outcome of a challenge in the Supreme Court by the Douglas Shire Council of a decision of the Ombudsman, the first occasion a decision of the Ombudsman had been challenged in the courts;
- the *Good Decisions Training Program*, in particular:
 - the delivery of six training sessions free of charge to various agencies prior to 30 June 2005; and
 - the subsequent delivery of the program on a cost-recovery basis to state and local government agencies (approximately 750 officers were expected to have received training under the program by 12 December 2005);
- the *Complaints Management Project*, in particular:
 - assistance provided by the Office of the Ombudsman to 11 public sector agencies to implement complaints management systems that comply with recognised standards for complaints handling;
 - preparation of a report on the first part of that project, *Complaint Management Project Phase 1*, to be used as a resource for other agencies;¹⁹
 - trends in complaints regarding agencies that had participated in the project; and
 - assistance the Office of the Ombudsman had provided to agencies which, although not formally involved in the project, were seeking to develop their own systems in compliance with the recognised standards;
- a request made by the Ombudsman to the Public Service Commissioner in October 2005 for the issue of a directive under the *Public Service Act 1996* (Qld) requiring each department and public service unit to develop and implement a complaints management system in compliance with the relevant standards;
- work the Office was undertaking with the Department of Local Government, Planning, Sport and Recreation to develop guidelines and model complaints procedures to assist local governments to comply with amendments to the *Local Government Act 1993* (Qld) introduced by the *Local Government Legislation Amendment Act 2005* (Qld);²⁰
- the Ombudsman's jurisdiction regarding entities performing functions on behalf of an agency;
- the current strategic review of the Office of the Ombudsman;
- staff retention;
- the new website for the Office of the Ombudsman; and
- activities regarding correctional centres, including:
 - differences in complaints between privately and publicly operated correctional centres; and
 - a review of the corrections program being undertaken by the Office of the Ombudsman;
- possible future changes to the process by which the committee meets with the Ombudsman; and
- a proposed short-form submission regarding the 2006-07 budget planning process.

At the meeting, the Ombudsman also provided a correction to his response to question 6 of the committee's questions on notice concerning general budgetary issues. The Ombudsman's response stated that a decision regarding any additional funding proposal in relation to the budget planning process for 2006-07, expected to commence in February 2006, would be made following the outcome of the strategic review. At the meeting, the Ombudsman advised the committee that, after the response to the committee's question on notice had been provided, the Department of Justice and Attorney-General required a short-form submission to that process by 6 December 2005.

¹⁹ This report was subsequently tabled in the Legislative Assembly on 2 December 2005.

²⁰ The effect of these amendments is that each local government is required to establish a general complaints process.

3.2 MEETING WITH THE INFORMATION COMMISSIONER

On 29 November 2005, the committee also met with the Information Commissioner.²¹ This was the first meeting of the committee and the Information Commissioner in order for the committee to meet its functions under section 108C of the *Freedom of Information Act*. The meeting followed the tabling of the *Office of the Information Commissioner Annual Report 2004-05* on 7 November 2005.²² Matters discussed with the Information Commissioner included matters arising out of the annual report.

Prior to the meeting, the committee had:

- by letter dated 8 November 2005, forwarded to the Information Commissioner written questions on notice - the questions and the responses to them (provided by the Information Commissioner by letter dated 24 November 2005) appear as **appendix C**;
- considered the Information Commissioner's responses; and
- considered the *Office of the Information Commissioner Annual Report 2004-05*, tabled on 7 November 2005, a copy of which was forwarded to the committee in accordance with section 101 of the *Ombudsman Act* by letter dated 7 November 2005;
- considered the *Information Commissioner Queensland Strategic Plan 2005-2009*, a copy of which was forwarded to the committee by the Information Commissioner by letter dated 6 July 2005; and
- met with Mr Henry Smerdon, 2005 Strategic Reviewer, on 25 October 2005.

At the meeting, the committee discussed in more detail with the Information Commissioner issues arising from the questions on notice and the Information Commissioner's responses. The meeting was transcribed, and the transcript appears as **appendix D**.

The issues discussed with the Information Commissioner at the meeting included:

- the priority the Information Commissioner is placing on:
 - the timely resolution of external reviews conducted by her Office, and recent improvements in that area; and
 - the clarity of written communications produced by the Office;
- complaint statistics, including an apparent recent trend in increased applications and possible reasons for such a trend, the median time within which applications are resolved, and reasons for some applications remaining unresolved for extended periods;²³
- efforts by the Office of the Information Commissioner to reduce the number of complaints more than 12 months old, and operational challenges for the Office in dealing with such complaints;
- the focus by the Office on informal resolution, and increased focus on matters not resolved through initial information processes;
- investment in the professional development of staff, and consequential benefits;
- the current strategic review of the Office of the Information Commissioner;
- the needs of applicants from non-English speaking backgrounds;

²¹ The Information Commissioner was not accompanied by senior staff from the Office of the Information Commissioner.

²² Note 2.

²³ In its report of its previous meeting with the Information Commissioner, report no. 49 (note 17), the committee stated that the Office of the Information Commissioner had resolved 250 complaints to date in 2004-05 and was on target in terms of complaint resolution for the 2004-05 year. However, this statement should have been that the Office was on track to meet its target of 250 complaints resolved in the 2004-05 year. This inaccuracy was drawn to the committee's attention by the Information Commissioner following the tabling of report no. 49 and the committee agreed to clarify the statement in this report of its November 2005 meeting with the Information Commissioner.

- issues raised in applications for external review relating to the fees and charges regime under the *Freedom of Information Act*;
- the desirability for agencies to have administrative access schemes which provide guidance on access to documents outside of the regime under the *Freedom of Information Act*;
- issues regarding the sufficiency of searches for documents by agencies, including the communication of those processes to an applicant; and
- training sessions for agencies conducted by the Office, and the relationship between the FOI information and awareness activities of the Office of the Information Commissioner and those of the FOI unit in the Department of Justice and Attorney-General.

4. COMMITTEE COMMENTS

4.1 MEETING WITH THE OMBUDSMAN

The committee is pleased to note the significant activities of the Ombudsman to improve the quality of decision-making and administrative practices in agencies, particularly the *Good Decisions Training Program* and the *Complaints Management Project*.

In 2004-05, the committee notes the reduction in the number of complaints received by the Ombudsman, by 11% from the previous financial year. At the same time, Office of the Ombudsman continued to finalise more complaints than it received, and the number of open complaints at 30 June 2005 was significantly lower than the number at 30 June 2004.

The committee believes that the investigation by the Ombudsman of administrative action by agencies has not, in the previous financial year, been unduly affected by the staff retention issues the committee discussed with the Ombudsman at its meeting on 24 May 2005.²⁴ Such investigations remain an important focus of the work of the Office of the Ombudsman, as does their timely resolution, particularly through informal means, where appropriate.

The committee notes the measures undertaken by the Ombudsman to address staff turnover in 2004-05. Recent staff losses, as outlined by the Ombudsman in his responses to the committee's questions on notice, indicate that the issue of staff retention is now not as significant as that discussed with the Ombudsman at the meeting on 24 May 2005.²⁵ The Ombudsman has also advised the committee that the issue of investigators' salary levels has been raised in the context of the 2005 strategic review of the Office of the Ombudsman.

The committee supports the proposal, discussed in the *Queensland Ombudsman Annual Report 2004-2005* (at pages 24-25), that the Ombudsman be given an oversight role in relation to public interest disclosures (PIDs) involving serious maladministration made under the *Whistleblowers Protection Act*. That proposal was first raised in a submission of the Ombudsman to the Bundaberg Hospital Commission of Inquiry, a copy of which was subsequently provided to the Queensland Health Systems Review and the Queensland Public Hospitals Commission of Inquiry. The proposal would provide the Ombudsman with similar functions in relation to PIDs of serious maladministration as are conferred on the Crime and Misconduct Commission in relation to PIDs involving serious misconduct. In supporting the proposal, the committee discussed with the Ombudsman at the meeting on 29 November 2005 the need, should the proposal be adopted, for appropriate additional budgetary allocation to be made to the Office of the Ombudsman.

Subsequent to the committee's meeting with the Ombudsman, the Hon Geoffrey Davies AO handed down his report, *Queensland Public Hospitals Commission of Inquiry*. Paragraph 6.150 of that report recommended a central oversight role by the Ombudsman of PIDs involving serious maladministration along the line proposed by the Ombudsman.

²⁴ LCARC, report no. 49, n 17.

²⁵ LCARC, report no. 49, n 17.

On 14 December 2005, the committee wrote to the Premier conveying its support for the proposal, as recommended by the Hon G Davies. A copy of that letter appears as **appendix E**.

Since the committee's meeting with the Ombudsman on 29 November 2005, the Ombudsman provided the committee, by way of letter dated 9 December 2005, the budget forward proposals prepared by the Office of the Ombudsman for the 2006-07 financial year. The committee will consider its response to this proposal so as to fulfil the responsibility of the committee discussed in section 2.2.2.

The committee looks forward to visiting, on the invitation of the Ombudsman, the offices of the Ombudsman in early 2006.

4.2 MEETING WITH THE INFORMATION COMMISSIONER

As noted above, this is the first general meeting of the committee and the Information Commissioner since the enactment of legislation conferring the committee with a 'monitor and review' role regarding the functions of the Information Commissioner. The committee thanks the Information Commissioner for the detailed information provided to assist the committee to carry out its statutory responsibilities.

We are pleased to note that the Information Commissioner has as a priority reduction of the time taken to bring external review applications to resolution. The committee trusts that, over time, the many measures being put in place to carry out this reduction will be of useful effect. In addition, the committee is pleased to report on training activities being provided to public agencies in conjunction with the FOI unit in the Department of Justice and Attorney-General. Enhancement of the understanding of the FOI Act, including by way of assistance to those in agencies who make decisions regarding the application of the *Freedom of Information Act*, is an important function of the Office of the Information Commissioner.

APPENDIX A

- Questions on notice to the Ombudsman
- Ombudsman's responses

MEETING WITH THE QUEENSLAND OMBUDSMAN

29 NOVEMBER 2005

QUESTIONS ON NOTICE

COMPLAINT STATISTICS

1. Please provide the committee with the 2004-2005 complaint statistics including:
 - a) complaints received and finalised;
 - b) the proportion of cases finalised within 12 months of lodgement;
 - c) the proportion of cases at the end of the reporting period which were more than 12 months old;
 - d) the average time taken to deal with complaints;
 - e) the proportion of cases resolved informally; and
 - f) the proportion of cases where early intervention occurred.
2. How do the 2004-2005 complaint statistics compare to the Output Measures and Targets set for 2004-2005 in the Office's Strategic Plan?
3. In relation to finalised complaints, at 30 June 2005, 14 of the 132 recommendations for systemic improvement had not been addressed by agencies. Why have these recommendations not been implemented by the respective agencies?
4. The committee notes that, in 2004-2005, the proportion of complaints handled within 10 days of receipt fell from 81% the previous year to 71% (Annual Report, 13), and that the Annual Report states that, 'It is likely that this drop is attributable to the loss of experienced officers from key areas.' Is a reduction in the timeliness of complaint handling likely to be an ongoing difficulty?
5. What impact would an increase in the role of the Office, such as an additional supervisory role for public interest disclosures of serious maladministration made to any agency under the *Whistleblowers Protection Act 1994* (Qld) (as proposed to the Bundaberg Hospital Commission of Inquiry and the Queensland Health Systems Review), have on complaint resolution?

GENERAL BUDGETARY ISSUES

6. At the meeting with the committee on 24 May 2005, it was indicated that the committee would be provided with a copy of a proposal for increased funding to be made to the mid-year budget review process. Please provide an update regarding any request for an increase in funding.

STAFF RETENTION

7. What measures are currently being adopted to address the high turnover of staff in 2004-2005?

IMPROVING PUBLIC ADMINISTRATION

8. Are there indications that measures taken by the Office to improve public administration are playing a significant role in reduced numbers of complaints?
-

9. Has there been noticeable demand from state and local government agencies for the delivery of the Good Decisions Training Program:
 - in Brisbane; and/or
 - in regional centres?
10. Please describe actions taken by high complaint-generating agencies following feedback from the Office of the Ombudsman regarding complaints.

HUMAN RESOURCE ISSUES

11. The committee notes the reference in the Annual Report 2004-2005 to a staff survey conducted in June 2005. What initiatives have been, or will be, implemented in response to the results of the staff survey?



Response to Questions on Notice

Meeting with
Legal, Constitutional and
Administrative Review
Committee

29 November 2005

(Submitted 24 November 2005)

Index

OVERVIEW.....	1
COMPLAINT STATISTICS	2
GENERAL BUDGETARY ISSUES.....	9
STAFF RETENTION.....	9
IMPROVING PUBLIC ADMINISTRATION	10
HUMAN RESOURCE ISSUES	12
OTHER SIGNIFICANT ISSUES.....	13
COMPLAINTS MANAGEMENT PROJECT.....	13
UPDATE ON WEBSITE REDEVELOPMENT	15
SIGNIFICANT PUBLICATIONS	16
CORRECTIONS	16
APPENDIX 1: EARLY INTERVENTION ACTIONS	18

Overview

The last financial year, which saw the thirtieth anniversary of the Office, was both a challenging and rewarding one for us. We finished the year with the number of open complaints at its lowest level for many years thanks to the dedication and industry of my officers aided by a reduction in the number of complaints we received. Furthermore, the number of complaints more than 12 months old was also reduced to just below the record low number achieved in the preceding financial year.

The Office also managed to meet its targets for the number of centres we visited as part of our Regional Visits Program. Where possible, we combined these visits with our visits to correctional centres. We visited each of the 13 prisons in the State twice during the year to receive and investigate complaints and to inspect prison records and systems.

In June we finalised the Workplace Electrocution Project, which is the largest investigation of maladministration ever undertaken by the Office. Our report to Parliament on 30 June 2005 was the culmination of a four-year investigation into nine separate electrocution incidents that led to 12 fatalities. This project has been the catalyst for significant improvements to electrical safety and workplace health and safety in Queensland.

We have also reached significant milestones with our main administrative improvement initiatives, the Good Decisions Training Program and the Complaints Management Project.

In the case of our training program, we have started delivering the training on a cost-recovery basis to officers of both local and State government agencies. The training is adapted to the needs of particular agencies and feedback to date has been extremely positive.

In the case of our Complaints Management Project, most of the 11 agencies participating in the project now have complaint policies and procedures in place that meet the recognised standards for complaint handling. A comprehensive public report has been prepared on the project to date, which will be made available as a resource for other agencies seeking to implement or improve their own complaint management systems. The report will be presented to the Speaker on 1 December 2005 for tabling in Parliament. In the next phase of the project, we will be developing strategies to encourage all State and local government agencies to implement quality systems for handling complaints.

We have continued to develop our complaints management database to make our complaint data and analysis more relevant to individual agencies. This year we provided 16 reports to agencies analysing their complaints information.

Finally, the five-yearly strategic review of the Office is underway and we are looking forward to the reviewer's report and recommendations to help us to chart our path for the next five years.

[Original Signed]

David Bevan
Queensland Ombudsman

Complaint statistics

1. Please provide the committee with the 2004-2005 complaint statistics including:

- (a) complaints received and finalised;
- (b) the proportion of cases finalised within 12 months of lodgement;
- (c) the proportion of cases at the end of the reporting period which were more than 12 months old;
- (d) the average time taken to deal with complaints;
- (e) the proportion of cases resolved informally; and
- (f) the proportion of cases where early intervention occurred.

(a) Complaints received and finalised

Table 1

Complaints Received and Finalised 2004-2005	As at COB 30 June 2005
Complaints brought forward from 2003-2004	469
Plus Complaints received during 2004-2005	7867
Plus complaints reconsidered during 2004-2005 (i.e. received & closed on or before 30 June 2004 & reopened on or after 1 July 2004)	11
Less Complaints finalised during 2004-2005	7949
Complaints under consideration	398

While the number of complaints we finalised dropped from 9,031 in 2003-2004 to 7,949 in 2004-2005 we continued to finalise more complaints than we received.

It is difficult to explain why the number of complaints we received dropped by 11% from the previous financial year. In nine of the twelve months fewer complaints were received than in the corresponding months in 2003-2004. Areas where significant reductions were recorded include:

- Complaints that were not within our jurisdiction fell from 1882 in 2003-2004 to 1646 last financial year (13%)
- Complaints about State government agencies fell from 5156 to 4505 (13%); reductions as large as 30% were recorded for some agencies
- Complaints about local governments also fell, but not as dramatically, from 2017 to 1894 (6%).

(b) Proportion of complaints finalised within 12 months of lodgement

Chart 1

Timeframe for the completion of complaints 2004-2005								
Days to resolve	< 10	< 30	< 60	< 90	< 180	< 270	< 360	> 360
Number	5654	920	492	262	321	118	42	140
Percentage	71.13%	11.57%	6.19%	3.30%	4.04%	1.48%	0.53%	1.76%
% Progressive	71.13%	82.70%	88.89%	92.19%	96.23%	97.71%	98.24%	100.00%

Of the 7,949 complaints finalised, 7809 (98%) were finalised in less than 360 days.

(c) Proportion of complaints at the end of the reporting period which were more than 12 months old

Chart 2

Age Profile of complaints under consideration at 30 June 2005								
Days open	< 10	< 30	< 60	< 90	< 180	< 270	< 360	> 360
Number	28	29	66	42	74	71	52	36
Percentage	7.04%	7.29%	16.58%	10.55%	18.59%	17.84%	13.07%	9.05%
% Progressive	7.04%	14.32%	30.90%	41.46%	60.05%	77.89%	90.95%	100.00%

There were 398 complaints open at 30 June 2005. This is significantly lower than the number open at 30 June 2004 (469). The number of complaints more than 12 months old at 30 June 2005 was 36 (approximately 9%), which was almost the same as for 30 June 2004 (37).

(d) Average time taken to deal with complaints

See Chart 1

(e) Proportion of complaints resolved informally

Table 2

Intervention approach complaints finalised 2004-2005		
Intervention Approach	Total	%
**Assessment Only	6330	79.63%
Informal Investigation / Other	117	1.47%
**Informal Investigation / Resolution	1182	14.87%
**Preliminary Inquiry Only	320	4.03%
Grand Total	7949	100.00%

** complaints in these categories were resolved informally.

This year we finalised 98.53% of complaints using informal methods (2003-2004: 99%).

One hundred and seventeen complaints (1.47%) in 2004-2005 were finalised using more formal investigative processes but we did not need to use formal powers under Part 4 of the *Ombudsman Act 2001*.

These processes included:

- conducting a record of interview
- obtaining statements from persons
- asking an agency to provide a detailed written report addressing issues relevant to a complaint.

(f) Proportion of cases where early intervention occurred

It is the policy of the Office that early intervention takes place on all complaints. The rate of early intervention is one of the Office's external performance measures. The target is 90%.

Early intervention action was taken in 71% of complaints received in 2004-2005. The response to question 4 is also relevant to explaining our performance against this measure as there is a high degree of correlation between this measure and the number of complaints finalised within 10 days.

"Early intervention" means that, within ten working days of our receiving a complaint, we took some positive action to deal with it. Appendix 1 contains a list of the actions that, if taken within 10 days of receipt of the complaint, constitute early intervention.

Although early intervention remains a performance measure, there is now greater emphasis on properly managing all stages of a complaint, not just the initial stage, by:

- regular case reviews
- the use of case management plans for complaints handled by the investigative teams.

2. *How do the 2004-2005 complaint statistics compare to the Output Measures and Targets set for 2004-2005 in the Office's Strategic Plan?*

Table 3

Output Measure	2004-05 Target	2004-05 Actual
Quantity:		
Complaints finalised	9000	7949
Quality:		
Proportion of sustained complaints rectified	95%	99%**
Proportion of complaints resolved informally compared to formal investigation	85%	99%**
Proportion of complaints where early intervention occurred	90%	71%
Proportion of recommendation for improvements to administrative practice accepted by agencies	90%	97%**
Proportion of complaints finalised within 12 months of lodgement	95%	98%**
Proportion of open complaints at the end of each reporting period that are more than 12 months old	10%	9%**
Location:		
Number of regional centres outside of Brisbane visited to receive and resolve complaints	61	66**
Proportion of complaints received from outside of Brisbane	75	75%**

** denotes target met or exceeded

This year we met or exceeded seven of the nine output measure targets. The first measure (Complaints finalised) depends on the number we actually receive. In fact, we finalised more complaints than we received.

The impact on complaint numbers of changes to our business processes and refinements to our recording and reporting methods in Catalyst is detailed in our response to question 4.

We intend to liaise with Treasury to alter our output measures and targets to more accurately reflect all services we provide to the citizens of Queensland.

3. *In relation to finalised complaints, at 30 June 2005, 14 of the 132 recommendations for systemic improvement had not been addressed by agencies. Why have these recommendations not been implemented by the respective agencies?*

As recorded at page 28 of the Annual Report, 14 of the 132 recommendations made in 2004-2005 had not been addressed by agencies as at 30 June 2005. This was essentially a timing issue in that the agencies concerned had not had sufficient time by that date to consider and respond to the recommendations.

All of the 14 recommendations have now been accepted by agencies. As outlined in the Annual Report, three of those recommendations related to the Douglas Shire Council. After the

Supreme Court dismissed the Council's application, it adopted and implemented my recommendations.

Four recommendations made in relation to two other cases were accepted and implemented by the respective agencies after 30 June 2005.

The remaining seven recommendations were made to one agency to improve its policy and procedures for assessing tenders, making appropriate delegations and recording its decisions. These recommendations have been accepted and the agency is working towards implementation by 1 December 2005.

We monitor all of our recommendations on a regular basis to see that they have been accepted and implemented. In this way we can ensure that deficiencies in public administration are addressed, thus leading to improved decision-making.

4. *The committee notes that, in 2004-2005, the proportion of complaints handled within 10 days of receipt fell from 81% the previous year to 71% (Annual Report, 13), and that the Annual Report states that, 'It is likely that this drop is attributable to the loss of experienced officers from key areas'. Is a reduction in the timeliness of complaint handling likely to be an ongoing difficulty?*

We hope that the problem of staff retention will not continue to be as significant a problem as it was in the last financial year. The officers who have the biggest impact on this measure are the Assistant Ombudsman and the Senior Investigator of the Assessment and Resolution Team. In October 2004, our inaugural Assistant Ombudsman of the team (one of our most experienced officers) retired. The team's Senior Investigator, another experienced officer, accepted a secondment at a higher level to another agency early in 2005 before being permanently appointed to a third agency.

As the replacements for these officers gain greater experience in their roles, this indicator is starting to improve. Of the complaints recorded during the 2005-2006 September Quarter (1827), 75% were handled within 10 days of receiving the complaint, an increase of 4% over 2004-2005 (71%).

5. *What impact would an increase in the role of the Office, such as an additional supervisory role for public interest disclosures of serious maladministration made to any agency under the Whistleblowers Protection Act 1994 (Old) (as proposed to the Bundaberg Hospital Commission of Inquiry and the Queensland Health Systems Review), have on complaint resolution?*

Our submission to the Bundaberg Hospital Commission of Inquiry (BHCOI) makes it clear that our Office could not take on the responsibility of receiving notification of public interest disclosures (PIDs) under the *Whistleblowers Protection Act* (WPA) and ensuring they are appropriately dealt with, without an increase in our resources.

A detailed assessment would have to be made of the additional resources we would need based on the number of PIDs we would expect to receive. This assessment would not be a simple task because:

- No centralised records are maintained of the number of PIDs received across the public sector
- Each agency is required to report the number of PIDs it receives in its annual report and therefore it may seem feasible to calculate the total number of reported PIDs by consulting the annual reports of all agencies. However, we believe there is much inconsistency from agency to agency in the criteria applied in identifying matters as PIDs and that it is highly likely that the number of PIDs is significantly under-reported.

My recommendation that my Office take on this role arose from my concerns about a hiatus in the whistleblower scheme in Queensland. The Parliamentary Crime and Misconduct Committee also raised this issue in its *Three Year Review of the Crime and Misconduct Commission* (Report No 64 tabled in Parliament on 10 September 2004). The Committee made the following observations about the WPA:

"...the Whistleblowers Protection Act 1994 does not establish a centralised system by which one agency or authority is responsible for protecting whistleblowers in Queensland. Essentially each public sector entity has responsibility for receiving public interest disclosures about the conduct of their officers, managing the disclosure process and taking steps to protect its officers from reprisals." (page 96)

The Committee recommended:

"That the Government give consideration to a full review of whistleblower protection in Queensland and the Whistleblowers Protection Act 1994 in accordance with the recommendations of the 4th PCJC in Report No 55." (page 100)

Pursuant to this recommendation, the Public Service Commissioner established a committee comprising representatives of the Office of Public Service Merit and Equity (OPSME), the Crime and Misconduct Commission (CMC), the Ombudsman's Office, the Department of Justice and Attorney-General, and the Department of Premier and Cabinet. Some of the main ideas being considered are to:

- form an inter-agency committee of OPSME, CMC, Office of the Ombudsman, Queensland Audit Office, and the Department of the Premier and Cabinet for informal oversight of the administration of the Act;
- develop a whistleblower policy template to improve consistency of application across the large number of entities under the Act;
- build a network of whistleblower contact officers in public agencies for education and knowledge management; and
- add further education initiatives to the OPSME's whistleblower website.

Although I support these initiatives, I do not think they go far enough. In particular, they do not address the deficiencies in the current arrangements under the Act relating to the coordination, supervision or review of disclosures that do not involve official misconduct.

In my view, just as agencies must refer disclosures of official misconduct to the CMC for consideration (ss.38, 48 *Crime and Misconduct Act 2001*), they should also have an obligation to refer disclosures involving serious maladministration to the agency that has the statutory role of investigating maladministration, namely, the Queensland Ombudsman.

Under the model I propose, agencies would have an obligation to refer to the Ombudsman all PIDs that involve serious maladministration but do not amount to official misconduct. Where a disclosure is received, the Ombudsman would:

- investigate the disclosure; or
- refer the disclosure back to the agency the subject of the disclosure, or refer it to another complaints entity with relevant jurisdiction, and supervise, monitor or review the investigation (just as the CMC does in relation to official misconduct allegations); or
- if the disclosure is assessed as not amounting to serious maladministration, refer it back to the relevant agency or to an appropriate investigative body.

This would mean that two agencies, the CMC and the Ombudsman, would have responsibility for ensuring appropriate action is taken on the full range of possible serious disclosures, working in a coordinated way through an interagency committee that would include the Public Service Commissioner.

These roles for the Ombudsman and CMC are consistent with their existing statutory responsibilities and would assist significantly in achieving consistency and coordination in the application of the WPA and the conduct of investigations of PIDs across the public sector.

One of the benefits of a requirement to notify the Ombudsman's Office of all PIDs involving serious maladministration is that we could monitor whether any agency appears to be under-reporting PIDs having regard to factors such as its size and history of reporting. We could then explore whether this reflects inadequate systems in the agency for identifying and recording disclosures as PIDs or whether it indicates the agency has in place administrative systems of high quality. In the former case, we would liaise with both the agency and the Public Service Commissioner (who has a lead role in the administration of the WPA) to help the agency improve its administrative practices.

My submission to the BHCOTI on whistleblowers was in the above terms. When that Commission was terminated it was left to the Queensland Health Systems Review (conducted by Mr Peter Forster) to deal with this issue. As reported in our Annual Report we are concerned that our submission was not given sufficient consideration and that key features of the model we proposed were misunderstood.

There was also a misunderstanding about what our role would be. In the great majority of cases, our role would not be to investigate PIDs but to ensure they are properly dealt with by the agency concerned or by another appropriate investigative body such as the proposed Health Commission, the Commission for Children and Young People and Child Guardian or the Anti-discrimination Commission.

Our specific concern with the Forster model is that it does not contain sufficient safeguards for whistleblowers in the public health system.

However, our wider concern is that the current system does not give sufficient support to whistleblowers throughout the public sector.

General budgetary issues

6. *At the meeting with the committee on 24 May 2005, it was indicated that the committee would be provided with a copy of a proposal for increased funding to be made to the mid-year budget review process. Please provide an update regarding any request for an increase in funding.*

The mid-year budget review process was to have occurred in October 2005. As you would be aware, the Premier released a mini-budget in early October in response to the Department of Health priorities. I was not formally advised that the mid-year review process had been cancelled and my officers only became aware of this on 21 October 2005 when advised by officers of the Department of Justice and Attorney-General.

Our mid-year budget review bid, if it had progressed, would have been based on our current accommodation issues. The Ombudsman's Office has been located at 288 Edward Street since 1979. I am advised that ours is one of the longest continuous government leases in a non-government building in the CBD. Our bid would have focussed around the length of this tenancy and the need to either undertake a major refurbishment of the accommodation or relocate to an alternative CBD site.

I will await the outcome of the Strategic Review, expected to be finalised early in 2006, before deciding whether to prepare any additional funding proposal in relation to the budget planning process for 2006-2007, which will commence in February 2006. If a proposal is prepared, I will provide a copy to the Committee for its consideration.

Staff retention

7. *What measures are currently being adopted to address the high turnover of staff in 2004-2005?*

I first brought the high turnover rate of staff to the Committee's attention at our meeting in May 2005. On that occasion, I mentioned that seven investigators had secured positions at a higher level within other agencies and that I would be suggesting to the consultant undertaking the strategic review of the Office that consideration be given to investigators' salary levels. I have brought this issue to the reviewer's attention.

My HR officers have also prepared a Succession Plan for 2005-2006 in response to this issue which includes the following strategies:

- Use the results of the staff survey conducted in June 2005 to address concerns;
- Trial a graduate recruitment program for the Office;
- Develop a Training and Development Plan that includes training to address issues identified as relevant to staff retention;
- Develop a cross-agency mentoring program with other complaint agencies;

- Continue to conduct exit interviews of all staff leaving the Office to ascertain their reasons for leaving;
- Promote and facilitate opportunities for staff to perform the roles of higher classified positions within the Office;
- Continue the Staff Award and Recognition program.

Since May 2005, only three officers have left the Office to take up employment elsewhere. A temporary officer accepted a full-time position in another department at the same level. The second officer was successful in gaining appointment at a higher level in another agency and the third officer obtained a secondment in another agency at a higher level until 30 June 2006.

Improving public administration

8. Are there indications that measures taken by the Office to improve public administration are playing a significant role in reduced numbers of complaints?

The anticipated outcomes of our projects and activities to improve public administration, as detailed in our 2004-2005 annual report (pp26-28), are not yet readily measurable in terms of complaint numbers. It is too early to say whether these activities are contributing to the reduction in the number of complaints received by the Office.

Our Good Decisions Training Program teaches government decision-makers to make soundly based decisions that should result in fewer complaints about the decisions of those who participate in the training. We have already provided the training to a substantial number of officers in two local governments and more training is planned for those councils in 2006. Once the majority of decision-makers in those councils have undertaken the training we will monitor their complaint rates and hope to see the rates decreasing.

One of the main challenges for us as a small agency is how to deliver the training to a potentially huge number of government decision-makers so as to have a significant impact on overall complaint numbers. This is an issue we will explore further as demand for the training increases.

Our other large administrative improvement project is the Complaints Management Project which seeks to assist agencies to deal more effectively with complaints made about their decisions.

One of the hallmarks of a good internal complaint system is its visibility and accessibility to the agency's customers. Where an agency implements and promotes its internal complaint management system, it is likely that complaints will rise in the short term until the analysis of complaint data enables the agency to identify and implement better practices.

It is unlikely that this project has already had a significant impact on complaint numbers or will have such an impact in the short term.

I have provided an update on this project under the heading "Other significant issues" on page 13.

9. *Has there been noticeable demand from state and local government agencies for the delivery of the Good Decisions Training Program:*

- *In Brisbane; and/or*
- *In regional centres?*

Since 1 July 2005, we have delivered or been contracted to deliver 30 sessions of our Good Decisions Training Program (GDT. Based on an average of 25 participants per session, we will have delivered training to approximately 750 officers, largely from local government, by 12 December 2005.

Up to this stage, promotion of the program has largely been by "word of mouth" and direct contact with agencies predominantly in connection with our Regional Visits Program. This has led to training being provided to council officers in Atherton, Townsville, Thuringowa and Cairns.

Our largest client to date has been the Gold Coast City Council (GCCC), which requested the delivery of the training to 400 of its staff between October and December 2005. The council has also indicated that it would like us to continue to deliver the training to their staff on a regular basis from 2006. We have also delivered training to around 100 staff from Caboolture Shire Council.

In recent weeks, I have also been promoting the training to Directors-General at meetings to discuss our Complaints Reports. Several of these agencies have indicated an interest in the program and my officers are currently following up on these expressions of interest.

The following table contains a breakdown of the training sessions to date.

Regional		
Agency	Sessions booked	Sessions delivered
Atherton/Eacham/Herberton	1	1
Gold Coast City Council	16	8
Townsville City Council	1	1
Thuringowa City Council	1	1
Caboolture Shire Council	4	4
Kilcoy Shire Council	1	1
Cairns City Council	1	1
Sub-total	25	17
Brisbane		
Agency	Sessions booked	Sessions delivered
CCYP&CG	3	3
Department of Child Safety	1	1
Adult Guardian	1	1
Sub-total	5	5
TOTAL	30	22

Feedback from agencies has been highly positive. For example, of the 228 participants who submitted feedback sheets, 98% said they would recommend the training to other officers and

a similar percentage said that the information presented would help them to make sound decisions in their daily work. This positive response is also reflected in requests for ongoing training in 2006 from the Gold Coast City Council, the Department of Child Safety and the Caboolture Shire Council.

We are currently developing a project plan for our training program which will set the direction for how we use our current resources to deliver the program effectively to targeted local and State government agencies. The plan will combine the delivery of training with our Regional Visits Program.

10. Please describe actions taken by high complaint-generating agencies following feedback from the Office of the Ombudsman regarding complaints.

As outlined in the response to Question 4 for our meeting on 23 November 2004, the recommendations made in complaints reports are for general improvements to agency practices. The reports do not request agencies to report back on action taken.

For example:

- we may identify an apparent trend in a particular category of complaint and suggest to the agency that it review its own complaint data to see if the trend is substantiated and, if so, to develop some prevention strategies
- an increase in an agency's complaints in a category or a number of categories may suggest that officers have inadequate communication skills and we may recommend that relevant officers undertake customer service training
- if the proportion of complaints we refer back to an agency is substantially higher than the State-wide average, we may recommend to the agency that it take steps to increase the visibility of its own complaint management system so that members of the public are aware how to raise their concerns directly with the agency in the first instance.

Human resource issues

11. The committee notes the reference in the Annual Report 2004-2005 to a staff survey conducted in June 2005. What initiatives have been, or will be, implemented in response to the results of the staff survey?

In June 2005, the Office undertook a staff survey for the first time in its 30 year history. The tool used was the Queensland Public Agencies Staff Survey (QPASS), widely used by State government agencies. Since this time, the consultants (Queensland University of Technology) have provided me with their report on the results of the survey.

Key findings in the report were:

- Committed staff who share the values of fairness, independence and objectivity;
- Staff have positive interaction with each other;
- Knowledge is reasonably well shared; and
- Organisational performance was rated highly indicating a perception that the organisation is generally effective in its objectives.

The findings also indicated that staff felt the following issues should be addressed:

- Excessive workloads;
- Lack of opportunities for training and career development; and
- Intra-office communication.

A consultant was engaged to work with each of the three staff groups used for the QPASS survey to review the results of the survey and elaborate on the key issues that concerned staff. Staff undertook this exercise in August 2005 and provided management with their comments. Management has responded to these comments and work is progressing on some of the issues in conjunction with the Staff Consultative Committee.

Initiatives that have been taken or will be taken to address staff concerns include:

- Strategic and operational planning processes will include greater staff involvement;
- Implementation of a Project Management Framework to create greater rigour around how projects are planned and resourced in the Office to address perceptions of competing work demands;
- Shared HR activities with other complaint agencies, such as a cross-agency mentoring program and training initiatives;
- More effective communication strategies within the Office focussing on improving understanding throughout the Office of the work done by individual teams; and
- Delivery of the training and professional development opportunities identified by the Training Needs Analysis project undertaken in June 2005.

Other significant issues

Complaints Management Project

We formally concluded Phase 1 of the Complaints Management Project on 30 June 2005. We have however continued to work with some of the 11 participating agencies to finalise the last elements of their complaints management system. To date, nine agencies have essentially completed the project. Queensland Transport is currently trialing their policy and procedures in one work area, prior to broader implementation. The Department of Corrective Services has created a new position that is responsible for developing and implementing the department's complaint system by 30 June 2006.

Because of the significant community interest in public sector accountability, including complaint handling (particularly in light of the recent revelations in the public health sector), I have prepared a report on Phase 1 of the project. The report will provide a resource for public sector agencies not involved in Phase 1, which they can use in developing their own complaints systems. The report, which will be presented to the Speaker for tabling in Parliament on 1 December 2005:

- outlines the strategies used in Phase 1 of the project and its outcomes;
- provides a summary of each participating agency's involvement in the project; and
- provides a platform for launching Phase 2 of the project.

Phase 2

In Phase 2 of the Project, we will be urging all other State government agencies to implement their own complaints management systems and helping local governments to comply with recent amendments to the *Local Government Act 1993* that impose requirements for complaint handling.

As part of our Phase 2 initiatives, I requested the Public Service Commissioner to issue a directive requiring all departments and other public sector units to develop and implement a complaints management system that complies with the Australian Standard for Complaints Handling. In response, the Commissioner advised me by letter on 10 November 2005:

"I support the idea of issuing such a directive in principle, subject to further consideration of the Australian complaints handling standard and consultation with agencies on any draft directive."

The tools developed in Phase 1 of the project have been updated and revised to provide a comprehensive guide to assist agencies through the development process. These tools, which will be available in the report and on our website, are:

Effective Complaints Management Fact Sheets: This is a series of 14 fact sheets introducing the essential components of an effective complaints management system. It also provides examples of best practice.

Effective Complaints Management Self-Audit Checklist: The checklist assists agencies to evaluate their current complaints management system by guiding them towards the development of an action plan to address any identified deficiencies. The checklist is based on the Fact Sheets and is designed to be read in conjunction with them.

Developing Effective Complaints Management Policy and Procedures: This document assists agencies to address the essential requirements of the Australian Standard for Complaints Handling when developing or reviewing current complaints management policy and procedures.

Links to the Complaints Management Policy and Procedures of other agencies: Some of the complaints management policy and procedures developed by agencies that participated in Phase 1 of the CMP will be accessible via our website. These documents provide working examples of agencies' complaints management policies and procedures that comply with the Australian Standard for Complaints Handling.

A communication strategy has been developed to inform agencies of Phase 2 of the Project, encourage their participation and make them aware of the resources we have available. As part of the communication strategy we will be sending the Phase 1 report to most State government and all local government agencies, publishing articles in agency internal newsletters and holding a series of forums in early 2006.

Update on Website Redevelopment

Our new website will go live shortly. The website has been completely redesigned and the content has been updated and rewritten to maximise readability. The aim of this redevelopment has been to increase the accessibility of our information to our target audiences and stakeholders.

Navigation

The navigation bars have changed to ensure our information can be found more easily. The information has now been categorised into corporate information, complaints information, public agency information and publications. The website also has a search function enabling users to find specific information anywhere on the site. Each page features a rotating set of Quick Links buttons which highlight key pages on the website, such as Good Decisions Training, Complaints Management tools and our multicultural translated brochures. Our online complaints form will feature as a Quick Link on each page.

Another new function on the site is our information pathways and media pages. Our information pathways page is designed to help our target audiences (comprising public agencies, complainants and students) easily access pages of relevance to them. Our media page has been designed to be a resource for journalists and media outlets and features background information on the Office and current and archived media releases.

Online Complaint Form

We have redesigned our online complaint form to enable us to better monitor the number and type of complaints that are lodged via our website. Before the website gives entry to the actual form, users are asked four questions to ensure that the complaint is within our jurisdiction. The website will provide specific contact information for agencies that deal with complaints out of our jurisdiction.

The user will also be asked if they have taken their complaint to the agency in question. If the complainant has not, then contact information for the agency will also be provided to them.

This new system will provide a more timely process for our complaints intake officers by helping to eliminate complaints that we cannot deal with. It will also assist complainants by explaining why we cannot help them.

We will be able to monitor the types of complaints, in or out of jurisdiction, that are received via the website. This will enable us to further develop the site and other relevant programs.

Feedback function

We will continue to monitor the number of hits to our site and types of information being accessed, in order to improve the functionality of the site. A feedback function is included and a "call to action" on the home page invites any comments about the website.

Significant Publications

Information sheets

Two Information Sheets were developed to explain, step by step, the processes that are taken to assess and investigate complaints.

The Assessment and Resolution Information Sheet outlines what happens to a complaint from the time it is first received. If a complaint requires further assessment, this information sheet is sent to the complainant with the acknowledgment letter.

The Investigation Information Sheet outlines our investigation process. If the complaint has been referred to one of our investigation teams, this information sheet is sent to the complainant with the acknowledgment letter.

Redevelopment of information for prisoners (Advice for Prisoners)

We are currently in the process of redeveloping our communications material for prisoners. To ensure clarity and readability, we have updated and redesigned the posters that are placed in the correctional centres announcing our visits. We are also redeveloping our brochures for prisoners that explain the steps for making a complaint to the Ombudsman.

Good Decisions Training Brochure

We have designed a double-sided information brochure to promote our Good Decisions Training Program. This brochure is aimed at State and local government decision-makers and contains a "fax back" form for those who require more information.

Corrections

We have continued our biannual visits to the 13 correctional centres in Queensland during 2004-2005 and in providing prisoners with access to our services via the Prisoner Phonenumber.

However, it is proposed that in the course of the strategic planning process for the next financial year, our corrections program, including our visits to correctional centres, will be reviewed. Our reasons for undertaking the review include:

- The increasing use by prisoners of the Prisoner Phonenumber to submit complaints to us (46% of all complaints received about the Department of Corrective Services (DCS) during 2004-2005 were made via the Phonenumber – an increase of 5% from the previous year). It is not necessary for prisoners to wait for a visit by our representatives to make a complaint.
- The creation of the position of the Chief Inspector within DCS whose role includes the supervision of the Official Visitor scheme. Discussions have commenced with the Chief Inspector concerning his role, proposed actions to improve the Official Visitor scheme and ways of developing a closer working relationship with Official Visitors to avoid duplication of investigative activity.

- DCS's actions to develop an effective, comprehensive complaints management system including the appointment of a Senior Adviser, Complaints Management. We will work with the Department on that project which will provide an opportunity to clarify the respective roles of my officers and Official Visitors.
- The resources involved in conducting our prison visits and in servicing the Phonelink and dealing with other prisoner complaints.

Pending the outcome of the review of the corrections program, the biannual visits to correctional centres will continue.

Appendix 1: Early intervention actions

The following actions constitute early intervention if taken within ten working days of receipt of the complaint by the Office:

Action involving complainant

- Discussing with the complainant significant issues relating to the complaint
- Contacting the complainant to obtain documentation needed to deal with the complaint
- Advising the complainant that the complaint is out of jurisdiction
- Advising the complainant that the Office has exercised its discretion not to investigate the complaint and providing reasons for that decision (for example, because the complaint is out of time, the complainant has or had a right of review, the complainant should first seek to resolve the complaint with the agency, or investigation is otherwise unnecessary or unjustifiable).

Early intervention does not include acknowledging receipt of a complaint or contacting the complainant to clarify a minor aspect of the complaint.

Action involving agency

- Requesting files, reports or other documents from the agency
- Discussing the substance of the complaint with the agency (this does not include simply notifying the agency that the complaint has been received)
- Advising the agency that we are referring the complaint to the agency to deal with

Other action

- Discussing the substance of the complaint with a potential witness other than the complainant or an officer of the agency
- Obtaining documents relevant to the complaint from a source other than the complainant or the agency
- Assessing a complaint at the Case Assessment Committee meetings¹ as warranting referral to an investigative team
- Conducting a substantial amount of research into issues raised by a complaint (this refers to research conducted by the Assessment and Resolution Team only).

¹ The Case Assessment Committee, comprising the Ombudsman, a Deputy Ombudsman and the Assistant Ombudsman, Assessment and Resolution Team, meets twice weekly to assess significant complaints and decide if they should be referred to either of the investigative teams.

APPENDIX B

Transcript of meeting with the Ombudsman

This is a transcript of private and confidential evidence taken before the committee and should not be copied or republished in any way without the express authority of the committee.

Any unauthorised publication of this Hansard may constitute a contempt of Parliament. If the transcript becomes the subject of any request under the Freedom of Information Act, the committee should be notified.



LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Members:

Dr L.A. Clark MP (Chair)
Mr P.A. Hoolihan MP
Mr R.O. Lee MP
Mr M.F. McArdle MP
Mr A.I. McNamara MP
Mr I.P. Rickuss MP
Miss F.S. Simpson MP

BI-ANNUAL MEETING WITH THE QUEENSLAND OMBUDSMAN

TRANSCRIPT OF PROCEEDINGS

(In camera)

TUESDAY, 29 NOVEMBER 2005

Brisbane

TUESDAY, 29 NOVEMBER 2005

Committee met at 1.07 pm

BEVAN, Mr David

GORDON, Mr Shaun

KING, Mr Frank

METCALFE, Mr Rodney

ROSEMANN, Ms Louise

YUKSEL, Ms Adeline

CHAIR: Can I formally welcome you to our second biannual meeting for the year. Thank you very much for bringing so many of the team across. Thank you very much for your comprehensive response to the questions that we sent over to you. We have had the opportunity to read those and there are some very interesting things there that we look forward to discussing with you in some more detail. As per our usual meetings, I invite you, David, to give us some comments that you would like to put on the record in terms of your response to the committee.

Mr Bevan: Thanks very much. Dr Clark, and good afternoon to members of the committee. I have a few brief opening remarks. As I mentioned in the overview to our response to the committee's questions on notice, the office finished the year with the number of open complaints at its lowest level for many years—probably more years than even Frank can remember, and he has been in the office a long time. Furthermore the number of complaints more than 12 months old has also reduced to just below the record low number achieved in the preceding financial year. I may have said this before to the committee, but my assessment is that the office is able to handle a case load of between 400 and 500 complaints at any one time in a reasonably timely way. The difficulty for the office is that complaint numbers can fluctuate quite significantly, especially in connection with the advertising we do for our regional visits program and also the use by prisoners of the prisoner phone link. That can be up and down as well. Further, because we are a small organisation complaint numbers can also increase when key officers are absent from the assessment and resolution team, such as Louise or Louise's 2IC.

In the major projects area, since our meeting in May we did finalise the workplace electrocution project. Again, as I mentioned in my overview, that is the largest investigation of maladministration the office has ever undertaken. In the course of the project we made 92 recommendations to the Department of Industrial Relations for improvement and 87 of these have already been implemented. The five that have not been implemented, in case you were going to ask, have been accepted in principle and are being considered by the Commissioner for Electrical Safety. They were referred by the director-general to the commissioner. The last information we received was that the commissioner expects to complete his work on those matters next year.

In May 2005 we were invited by then Commissioner Tony Morris QC to lodge a written submission to the Bundaberg Hospital Commission of Inquiry. We undertook research into health complaints systems in Australia and overseas and compiled an extensive submission. That included proposals for improving internal complaints management systems within Queensland Health as well as detailed proposals for a remodelled external health complaints system. Our submission was based on a case we were then investigating which highlighted the fragmentation and lack of coordination of the current system. Our submission included a section in response to an issues paper on whistleblowers which had also been issued by the commission.

When that commission was terminated we provided a copy of our submission to the new commissioner and we also provided a copy to the Queensland Health Systems Review being undertaken by Mr Peter Forster. As reported in our annual report, I am concerned that our submission was not given sufficient attention in that review, principally because of time constraints, and that some aspects of it were not properly understood. This issue is referred to in more detail in my response to question 5.

In our annual report we also highlighted the Daintree ferry case, in which I had formed the opinion that the conservation levy imposed by the Douglas Shire Council on users of the Daintree River ferry was illegal because the purpose of the levy was unrelated to the provision of the ferry service. The council sought a declaration in the Supreme Court that my opinion was wrong, but the court rejected the application and awarded costs to the Ombudsman. That is the first occasion on which the opinion of the Queensland Ombudsman has been challenged in the courts. I was pleased to have a win.

In the area of our administrative improvement initiatives, first of all the good decisions training program. That program, which I briefed the committee on at our last meeting, has taken us close to 12 months to develop. That included the training material, training our officers in presentation skills and then testing the program with several agencies. In the lead-up to 30 June we delivered six sessions free of charge to various agencies. We evaluated those sessions and made some consequential amendments to the training material. We have now commenced delivering the training on a cost-recovery basis to both state and local government agencies. By 12 December we will have delivered training to about 750 officers. We have received very positive feedback from participants in the training to date.

The aim of that training is, obviously, as the name suggests, to help officers in public agencies to improve their decision making and by so doing reduce the risk that their own decisions will be open to challenge, enhance the agency's reputation as an accountable and fair organisation and, ultimately, to improve the standard of services to the community. The program is a significant new venture for our office in our endeavour to find cost-effective ways of discharging our statutory role of helping agencies improve their decision making and administrative practices.

Mr RICKUSS: Are you finding that many councils are taking that up?

Mr Bevan: The largest client we have had to date has been Gold Coast City Council. I think we indicate in our response to the committee that we have run eight sessions and have perhaps eight to go. With 25 officers per session that is quite a big commitment for our office. They have also indicated they would like to make a further commitment for next year, as has Caboolture council. The agencies we have provided it to indicate that they want more of it. I suppose that is the very positive outcome. We do little surveys at the end of each session and all the feedback we are getting from that—or the great majority of it—is extremely positive, particularly in areas like 'would you recommend the training to other officers?' and officers answer in the affirmative and also that they would find it useful to use it in their daily work, in their daily decision making.

The next project in that administrative improvement area is our complaints management project. Again, we have made substantial progress there. As you are aware, we are assisting 11 public sector agencies to implement complaint management systems that comply with the recognised standards for complaints handling. We have prepared a comprehensive report on the project to date, and that will be available as a resource for other agencies because it contains material which we have developed during the course of the project. The report will be presented to the Speaker later on this week, on 1 December, for tabling in parliament.

There is an impetus for local governments to improve their own processes for handling complaints, and that has come in the form of some amendments earlier in the year to the Local Government Act. All councils are required to establish a general complaints process by 1 March next year. We are currently working with the Department of Local Government, Planning, Sport and Recreation to develop guidelines and also a model complaints procedure to help local councils comply with the amendments to the Act. One of our officers is actually seconded over there for that purpose for a couple of weeks at the moment.

There is no similar requirement in relation to state agencies. Therefore, in October I wrote to the Public Service Commissioner and asked him if he would consider issuing a directive under the Public Service Act requiring each department and Public Service unit to develop and implement a complaints management system which complies with the relevant standards. In making that request I was aware that in March 2004 the Premier of Western Australia, issued a circular to the same effect in that state. That circular indicated that the government had made a formal commitment to the principles of the relevant Australian standard and that the Premier required each agency to put in place a complaints system that conformed with the principles and to have a direct link on the front page of its web site to information assisting people to make a complaint about the agency. I am pleased to say that the commissioner has responded positively to my request. He has indicated his in-principle support 'subject to further consideration of the Australian complaints handling standard and consultation with agencies on any draft directive'.

As the committee knows, Mr Henry Smerdon is currently conducting a strategic review of the office. I am aware that he has met with the committee. He has held focus groups for my staff and also for staff who have left the office in the last five years. I am also aware that he has travelled interstate to hold discussions with some of my fellow ombudsmen. We are providing him with any assistance as he requests it.

There is one final matter, which is a correction to page 9 of our response. In answer to question 6 we talk in the last paragraph in our answer about the budget planning process being expected to commence in February 2006. The day after we sent this down to you the Department of Justice and Attorney-General notified us that they would like a short-form submission by 6 December. We will be speaking to them about that because that does pose some problems for us, particularly in the middle of the review, because we would expect to have to await the outcome of the review before we put forward any significant proposal for augmentation of our budget. They were all the matters I wished to raise with the committee. I am happy to respond to any questions.

CHAIR: Thank you very much for that overview. Congratulations on a very big year. As with previous meetings, we might just go through the questions so we have some structure. I will ask some questions and invite other members to do likewise. I will start off with the complaints statistics, which did

indicate some interesting results there with the complaints to state government agencies. We note that the reductions were as large as 30 per cent for some agencies. I wonder if you might like to talk to us about which agencies they were and if there are any ways you can relate that to the work you have been doing with the agencies or initiatives that they themselves have undertaken.

Mr Bevan: The agencies which were down by as much as 30 per cent were the Office of Fair Trading. Legal Aid Queensland was down 28 per cent. Brisbane City Council was one of the councils which was down significantly. It went against the trend, where there was a fall but only a small one across-the-board for councils. But for Brisbane City it fell by 31 per cent. That is the second year in a row in which its complaint numbers have fallen. I certainly cannot attribute that to our particular specific programs in that they are not, at this stage, participating in either of them.

CHAIR: The Office of Fair Trading. You had been working with their investigative officers, I recall.

Mr Bevan: We had. We did provide some training to those officers some little time ago. That came out of the Better Decisions project. The officers within the department had the carriage of that project. During the course of that they requested some training for officers. That was not necessarily our good decisions training program in that format. It was before we fully developed that. It focused more on the investigation side of it. Even though there is a market for this general training which we are providing on how to make better decisions, we are also aware that there is a market out there amongst the public sector for training on investigations processes, because agencies are taking greater responsibility, as I have commented before, for investigating their own misconduct. The CMC is pushing more of those matters back to departments in accordance with the principles set out in the Crime and Misconduct Act. That is not an area of training which we have gone into to any significant degree at this stage, mainly because it is not our core area of responsibility.

Other agencies where there has been a significant reduction include Caboolture Shire Council. We have done some work, but that is in recent months so we can't attribute that training to that drop there, but their complaints were down 27 per cent. And Industrial Relations were down 20 per cent. The Gold Coast was also down 18 per cent. As you have heard, we are doing a lot of training there. We would be interested to see what impact that training has on complaint numbers, particularly at Caboolture and on the Gold Coast, where by 30 June we can expect that quite a significant proportion of officers who are making decisions within those agencies will have been participants in the training.

CHAIR: It should be a good test given the size of that organisation and the number of people who will be receiving training.

Mr Bevan: Certainly Gold Coast has been involved in our complaints management project. We have been working with them quite closely on that project.

Mr King: I am directing the complaints management project. We have taken out the data. It is fairly preliminary at this stage, but when we compare the agencies in the project to the other what we call the top 20 agencies that are not in the project, over the last year and the last two years we have seen a reduction in the complaints against all the agencies but more so against the complaints management project agencies. So in absolute terms there has been a net decrease in all agencies in that top 20 but more so with the complaints management program agencies. That is a correlation, not necessarily a causation, but we are optimistic. They have not really introduced their policies as yet, but we have the consciousness going in those agencies now and I think it might be having an effect.

Miss SIMPSON: Is it possible that the work you are doing is permeating the other agencies because they are networked? Do you have some indication as to what the factors are generally that are improving?

Mr Bevan: We are aware that some agencies, even though they are not one of the 11 agencies participating in the complaints management project, have got wind of it, if you like, and they have really gone ahead and sought to develop their own systems which comply with the recognised standards. Some of them have sought some assistance from us on that and some advice or materials and we are happy to provide that. As I said, the materials which we have developed—it is really a tool kit for developing a compliant complaints management system—will be available on our new web site, which goes live very shortly. Also, most of those documents will be appendices in our complaints management report, which will be tabled in parliament.

CHAIR: You did quote from the Public Service Commissioner. You indicated that he did support the principle of issuing a directive. I was, I suppose, a little disappointed it was not more strong than that, actually. Do you have any indications of when you are likely to get a more definitive response back from the Public Service Commissioner? It just says 'subject to further consideration of the Australian complaints handling standard in consultation with agencies'. Have you got any sense of what is the problem?

Mr Bevan: As you know, I meet with a group called the Integrity Committee, which includes the Public Service Commissioner. I didn't have a response at that time. I explained to him that I was after a response, even an interim response, as I wanted to make some reference to it in our report. He had an officer who was to look into what would be involved in complying with my request, but that officer had left the agency, as I understand, so he was giving the task to another officer. So he provided that by way of an interim response.

CHAIR: You do not know when you are expecting a detailed response?

Mr Bevan: No, certainly I will be following up on it.

CHAIR: I have one other question on statistics. I notice that you say you intend to liaise with Treasury to alter our output measures and targets to more accurately reflect all services provided. Could you expand on that?

Mr Bevan: Again, I think it would be premature for us to do that until the reviewer reports. I am happy to talk about it. The difficulty is that those performance measures are purely quantitative and they do not take into account what we are doing in the area of administrative improvement for a start. Those sorts of activities are not easy matters to write performance measures about. It perhaps becomes more a performance story. But it is something which we need to look into further and we will do it in conjunction with whatever recommendations the reviewer makes.

Mr McNAMARA: I just throw in a quick congratulations. The statistics are terrific.

CHAIR: They are. Perhaps we should have said that at the outset. I am sure you are very encouraged by it.

Mr Bevan: Yes, we were. I hope you don't think I was the boy who cried wolf at our last meeting by forecasting all sorts of gloom and doom. I have to give credit to my officers. The big area where our complaints numbers fluctuate is in the assessment and resolution team. Louise was only appointed to that team on 6 June. It was very much a baptism by fire for Louise. The team worked very well together in terms of reducing those complaint numbers in that area. As I say, that is where you can make an impact in a fairly short time frame.

CHAIR: Turning to your submission to the Bundaberg Hospital Commission of Inquiry, it is, I think, an interesting deficiency you have identified there with a lack of coordination across agencies with regard to public interest disclosures. We are certainly very interested in monitoring that situation as it develops. I just wonder if you would perhaps like to talk to us a little bit more about the response of the Forster inquiry. We noticed in your annual report the reasons that Forster gave for not accepting the recommendation, but it does conclude with the fact that there is a recommendation in the Forster review that a separate and short review be conducted of the legislation and working arrangements existing between external complaint bodies, including your office. I just wonder how you might see that further developing and what role perhaps this committee might have in assisting you with that.

Mr Bevan: I don't have any other information about the outcome of that particular recommendation. It may be that matters will not progress in that regard until steps are taken to put in train the recommendations for a health commissioner. Perhaps that review may move forward in conjunction with that appointment. From our perspective, we are looking at the broader picture. Health complaints is just one aspect of it—a very important aspect and certainly very topical. Our concern was much broader in terms of the system within the state for dealing with whistleblowers not providing sufficient protection and encouragement. That was why, in accordance with the recommendation of the Parliamentary Crime and Misconduct Committee, we believed that a system which involved the CMC being responsible for monitoring public interest disclosures which involve official misconduct and our office being responsible for the public interest disclosures involving serious maladministration would be a good model for improving systems.

CHAIR: I notice that following the committee's consideration of that you refer to the committee that was established comprising representatives of the Office of Public Service Merit and Equity, Crime and Misconduct Commission, yourself, Department of Justice and Attorney-General, and Department of the Premier and Cabinet. Some of the main ideas being considered are to form an interagency committee for informal oversight of the administration of the whistleblowers act. Has that interagency committee been formed, as far as you know, or are all of these ideas—there were others there as well—still in the consideration stage? This is on page 7 of the report.

Mr Bevan: As I understand it they are just under consideration at this time. Once again, it may be the intention—I am not sure of this—to await the outcome of the commission of inquiry in the event that some recommendations are made about whistleblower matters in that report. I don't know whether they will be or not, but it may be why these matters are still at this stage and there has not been any progress to them to date.

CHAIR: We will certainly discuss those in more detail as the committee.

Miss SIMPSON: I am interested in this area. The Whistleblowers Protection Act actually has not been subject to a public review since it has been implemented.

Mr Bevan: I don't believe so. It is 10 years old last year. I will leave that matter in the hands of the committee. I can say that there are newer models of legislation in existence now—in Victoria, Tasmania and Western Australia.

Miss SIMPSON: I think that is something that is going to be of continuing interest to us. I flag that I am not sure about splitting the jurisdictions, but I guess we will see what comes out post Davies. If there is to be an overhaul or new templates for ease of administration in departments, it will be interesting.

CHAIR: Is there anything more you would like to communicate to the committee about that issue? We would be very receptive to any further correspondence from you on that.

Mr McARDLE: You mention at page 7 that the proposal by the Public Service Commissioner to form of coordinated body of those various organisations is not really what you want to see achieved. Do you see that that proposal is perhaps deficient in a number of ways as to your concept of what the Ombudsman should be undertaking in this role?

Mr Bevan: I think the committee is a good idea, but I see that as more an overarching thing as far as monitoring and ensuring appropriate action is taken across the full range of serious public interest disclosures. I am saying that the system which I am advocating is more effective. Just to reiterate, at the moment agencies have to report official misconduct to the Crime and Misconduct Commission. Therefore, if a public interest disclosure is made about a matter involving official misconduct that has to be reported to the commission but there is no similar requirement in relation to maladministration, even serious maladministration. So it can just be dealt with entirely within the agency itself. It does not need to be reported to anyone external to the agency. That is my concern for that body of public interest disclosures. I think the big plus would be having an organisation which is responsible for monitoring and ensuring appropriate action is taken on that body of public interest disclosures.

Mr McARDLE: Do you have any idea as to what powers that body would have in relation to ensuring disclosures were investigated properly?

Mr Bevan: I would see similar powers to the powers of the Crime and Misconduct Commission at the moment, where there is a requirement to report official misconduct. In this case it would be a requirement to report serious maladministration which was a public interest disclosure, in other words made by an officer within the public sector generally. Once that happens, our role would be to assess the matter, to satisfy ourselves that it is a public interest disclosure which is within our jurisdiction, and then to decide what should happen to it. In most cases we would be referring it back to the agencies to take the action and simply monitoring and reviewing the matter, just as the CMC does with official misconduct investigations. But in cases we may think it appropriate to actually take over the investigation and in other cases to review the outcome of the investigation. As I say, there is a model there in relation to official misconduct with the CMC, and I think there could just be parallel provisions in relation to serious maladministration.

Mr McARDLE: In regard to the workload that would create in the department, there would be significant overtime. Do you have any ideas of the staffing levels and resources you would need to cater for that?

Mr Bevan: No. I responded to that question at pages 6 to 7. Our problem at the moment is that there is no centralised record maintained of the number of public interest disclosures received across the public sector. Even though each agency is required to report in its annual report on the number it received, we believe that there is inconsistency in the reporting of public interest disclosures and that they would be significantly underreported. It would be a somewhat difficult exercise to find out how much extra work that would be for us and therefore what additional resources we would need to do it. I am sure it is an exercise we could undertake.

Mr McARDLE: Will you be giving those figures to the Attorney-General in your brief documentation prior to 6 December?

Mr Bevan: Again, the only issue we were intending to raise, because of the strategic review, was the issue of accommodation. As you are aware, our lease is up at the end of June next year so we are looking at the options available to us at this stage. If we stay put we need significant refurbishment. Some accommodation is very tired. If we move, obviously there is a cost of new fit-out et cetera.

CHAIR: On that point, I was just wondering whether it might be an opportune time for the committee to visit you at home, as it were. I certainly have not since I have been in this role. Fiona, I do not know whether the last committee—

Miss SIMPSON: I think there have been visits, but I have a feeling I was not at that one. We are talking about things that are still to be resolved with regard to the whistleblowers act. Say it would be possible for there to be a regime where the CMC dealt with official misconduct whistleblower provisions and, say, an office such as the Ombudsman dealt with the issues of maladministration and whistleblowers, if there was an overlap in complaints it would be possible for joint handling of those complaints?

Mr Bevan: Yes. Our existing processes already operate in those sorts of situations. Louise is in frequent contact with her equivalent in the complaints area over at the CMC. Also, quarterly meetings are held of relevant officers to talk about wider issues. It is quite common for us to contact the commission, and vice versa, about complaints we receive and work out who will be doing what.

Miss SIMPSON: So in theory, if there was a split jurisdiction on monitoring the whistleblowers act for these different responsibilities, it would be possible? It would work with the same cooperative arrangements you have had?

Mr Bevan: We believe so. It would be just one category of complaints which we already receive, basically.

Miss SIMPSON: Just to clarify in my own mind, currently there is no external agency for maladministration issues relating to whistleblowers to be independently monitored?

Mr Bevan: People can make public interest disclosures of maladministration to the Ombudsman's office, but generally they are made within the agency itself and there is no requirement for the agency to then pass the matter on to us.

Miss SIMPSON: And with the CMC, is their jurisdiction with whistleblowers in issues of official misconduct an automatic reference or is that only if people choose to lodge it with the CMC?

Mr Bevan: It is a requirement of the Act that principal officers of units of public administration refer suspected official misconduct to the commission.

CHAIR: It is a requirement.

Mr Bevan: Yes.

CHAIR: We were just talking about a visit to your office. I take it that—

Mr Bevan: I am more than happy to extend the invitation at the committee's convenience.

CHAIR: We will certainly discuss that later. On staff retention, I notice that you are not losing so many staff.

Mr Bevan: Not losing so many, yes.

CHAIR: It is good to see you have lost only another three staff—all for very good reasons, of course. Hopefully the strategic review will take account of that and your suggestion that maybe there needs to be a review of salary levels.

Mr Bevan: I have raised that with the reviewer.

CHAIR: We have talked about the complaints management project a little already. I have some questions about the web site. You said that it is to actually go live very shortly?

Mr Bevan: Yes.

Ms Yuksel: Any time now or tomorrow. We are hoping we will go live on Thursday, because a lot of the resources for the CMP project will be on the new web site. So we are hoping to go live by Thursday.

CHAIR: Just a couple of things I noticed. With the section that talks about giving people feedback, it shows that you have actually still got Dilka Whish-Wilson on your staff. But she is not, is she? She has gone over to the Electoral Commission. And emails to her at Ombudsman's will not get a reply, will they?

Mr Bevan: So that is the old web site you were looking at.

CHAIR: Yes. Does the new web site have anything different about the role of the parliamentary committee? I just notice that you don't really say very much in relation to that.

Mr Bevan: We can easily upload more information to it. I am not sure that I can comment on what is on the new site as yet. Perhaps Adeline can.

Ms Yuksel: I will give you a brief summary of the new web site. It has been completely redesigned and rewritten. There are a few new navigation bars to help people navigate more easily. We have also tried to pre-empt common users of site, for example public agency officers or students doing research or the community wanting to lodge a complaint. We have tried to group information together and pre-empt their use. It is all now badged under 'information pathways', which is a new page. That is one of the new features of the site.

The online complaint tool has also been updated, which means that we are now able to better track where the complaints are coming from—whether they are out of jurisdiction or within jurisdiction. There are a whole lot of other features. Louise and I have been working together quite closely on this. There is also a new media page which will show our history, our most recent media releases, a profile of David and the office and perhaps some of the new initiatives we are introducing to Queensland. That sort of new content basically has been rewritten and redeveloped. The look and feel is also very different.

Mr Bevan: Dr Clark, I will make sure I check what information is on there about the committee.

CHAIR: Under 'Statement of Affairs' we just get a mention under 'Other Bodies'. There is no actual recognition that you do actually report to parliament and that we do have meetings. There might be a link across perhaps to our committee and reports on our meetings.

Mr Bevan: We will undertake to take care of that.

Mr LEE: You mentioned that the West Australians have something on their government web sites for complaints. What form does that take? What does it actually say when you go to the department of transport's web site, for example? What does it actually say?

Mr Bevan: I see.

Mr LEE: I guess my question is: Is there a form of words that they use?

Mr Bevan: They would have, I suppose, not an invitation to make a complaint but information there for people who want to make a complaint which indicates the process that people go through and the process within the agency itself. I have not looked at the actual web sites of these agencies. Basically, they say on the front page of the web site that there is information to assist people to make a complaint about the agency.

If you look at some agencies' web sites in Queensland you will not find any information there about, if you do have a grievance, a complaint or a concern, how you take that forward. It is silent about it. That is why you have to be somewhat careful about complaint numbers. One of the hallmarks of a good complaints system is visibility. So if people can see more readily how to make a complaint, then you may actually get a surge in complaint numbers initially.

Miss SIMPSON: I have a question about a different issue. With the nature of contracting out of government services and trends in the way government services are organised, does that have an impact for you to be able to review some of the decisions that are made where services are provided outside of the actual stream of government? Is that an emerging issue or one not really on the radar?

Mr Bevan: Frank, can you respond to that in particular?

Mr King: Contracting out as an issue? Louise gets all the complaints these days. It is an issue amongst ombudsmen nationally. But Queensland has not got as much contracting out as other states so it really has not been a problem. We have a provision in our Act whereby we can treat the actions of a contractor as the actions of the agency with whom they are contracting for the purpose of our Act. It has never been tested. It would be interesting in some circumstances to get hold of documents held by private companies on the basis that they are working for the government. There are limits, too. If Leighton Holdings, for example, is building a new accommodation block for the government, are they contractors in the way that perhaps the private prison providers are? It is probably no different in concept, but in practice different considerations might apply. But I don't think we have had a great problem with contracting out to this point in time.

Mr Bevan: A good example of that is in the corrections area, where there are two private prisons. We conduct our visits to those prisons and investigate complaints and make recommendations to the centre management of those facilities, and that has not been a problem. I was just fishing around for the relevant section of the Act, which is section 10, which basically says that an administrative action of an agency includes administrative action taken for and in the performance of functions conferred on an agency by an entity that is not an agency. So that extends our jurisdiction to entities that are performing functions on behalf of an agency within our jurisdiction.

Miss SIMPSON: Potentially, that could even be, say, a security provider who is contracted by a government agency who takes a particular action—as one example down the food chain of administrative actions. But still, it is an area in which people might have quite an impact if the government employs somebody who is outside of the Public Service to provide a service such as that.

Mr Bevan: Yes. As Frank said, it has not been tested yet. We don't know how far it would extend. I suppose you need to come back to whether the function being performed was the function of an agency to start with. If it was and it is being performed on behalf of the agency, it seems to be caught by section 10.

Mr McNAMARA: Just in relation to the corrections area, do you pick up any differences in the data out of the private prisons as opposed to the purely government run? Is there anything that you have noticed in relation to the types of complaints or the frequency? Or do they complain at exactly the same rate?

Mr Bevan: Well, because no two prisons are alike you don't have necessarily similar complaint numbers across prisons. The differences we have noted do not seem to be to do with the fact that it is a public or private prison. It is more to do with the particular circumstances and the cohort of prisoners in those institutions.

Mr McNAMARA: I notice you are doing a review of the corrections area at the moment. Reading between the lines, it looks like you were fearing this it was costing a lot of time and money to continue doing that. Do you have some doubts about your capacity to continue doing the corrections work with the phone lines and the prison visits under current budget arrangements?

Mr Bevan: Yes. We think that, as a long-term proposition, two visits a year to each of the prisons may not be practicable for us in the not-too-distant future, remembering that we have not had a significant increase to our budget for many years. We think that, now that the prison phone link is in place and every centre can contact our office for two two-hour slots a week, we are giving very reasonable access to prisoners in that way as well. On the other side of things, we want to do more in terms of our review of processes and systems within prisons. We think that to do that we will probably still need to visit prisons fairly frequently. I make reference to the chief inspector of prisons, a new appointment within the Department of Corrective Services, who will be conducting extensive reviews of prisons. But as I understand the program that will not be every six months; it will be less frequently than that. So there is still a need for an independent agency to be able to go into the prison and have a look at the records and make sure that systems are operating properly.

Mr RICKUSS: Do you find that there are a lot of frivolous reports, and are the same sort of litigants wanting to report all the time?

Mr Bevan: We have some multiple complainants, if you like. It is not so much that they are frivolous, but a lot of the matters we think are matters which would be more appropriately handled by official visitors. That is an area where we want to have a greater liaison with the official visitors and to work out more effectively what our respective roles are in terms of handling complaints. A lot of the times the issues which prisoners are complaining about are not matters that the official visitor can deal with. The official visitor can

only deal with matters that are strictly related to that particular prison. If it relates to an agency or to something that happened at a previous prison the official visitor cannot deal with those matters. There are a range of areas where we will still need to provide that complaints service. As I say, we'd like to extend our activity in the review role and complement the role of the chief inspector.

CHAIR: David, I might just flag with you: we inherited this particular way of meeting with you from the last committee, but I think, as you can see from the conversation, there is really a lot more that we could perhaps go into some more detail with you on and perhaps an extended meeting time might actually do justice to the work that you carry out and give more of your officers an opportunity to talk with us as well. When we were in New South Wales we took the opportunity to meet with our equivalent committee. We are aware that they have a half-day public meeting there. It is more extensive. I just flag with you that we are giving some thought in regard to that. Do you have any response to that at all?

Mr Bevan: Certainly no concerns.

CHAIR: I know you wouldn't have any concerns.

Mr Bevan: It is all to the good of accountability.

CHAIR: We certainly have not formalised our view about that, but just to let you know we are discussing that so we can find a way of having a more detailed opportunity to discuss these matters with you. On that note, I thank you very much for attending once again and wish you all a relaxing Christmas and a well-deserved break.

Mr Bevan: Best wishes to the committee also. We will take forward the invitation to come and inspect our palatial chambers.

Miss SIMPSON: Thank you for all your work.

APPENDIX C

- Questions on notice to the Information Commissioner
- Information Commissioner's responses

MEETING WITH THE QUEENSLAND INFORMATION COMMISSIONER

29 NOVEMBER 2005

QUESTIONS ON NOTICE

PROCESS OF BIENNIAL MEETINGS

1. In order fulfil its responsibilities under the *Freedom of Information Act 1992* (Qld), at this stage, the committee proposes to establish a continual, open dialogue with the Information Commissioner. The committee would like your feedback about the anticipated process, which would involve the committee:
 - holding two general meetings with the Information Commissioner each year;
 - timing these biennial meetings so that one is held following the tabling of the Information Commissioner's annual report, and the other preceding the estimates process;
 - forwarding to the Information Commissioner, prior to each meeting, written questions on notice concerning the committee's special functions;
 - being provided with the Information Commissioner's written responses to those questions;
 - considering those written responses;
 - meeting with the Information Commissioner, and some senior officers of the Office of the Information Commissioner, to further discuss the questions and ask additional questions without notice; and
 - reporting to the Legislative Assembly on the matters discussed at the meeting.

COMPLAINT STATISTICS

2. Please provide the committee with the 2004-05 external review statistics including:
 - a) applications received and finalised;
 - b) the proportion of applications finalised within 12 months;
 - c) the proportion of applications at the end of the reporting period which were more than 12 months old;
 - d) the average time taken to deal with applications; and
 - e) the proportion of applications resolved informally.
 3. What proportion of all applications for external review in 2004-05 related to fees and charges, and what issues were raised by these applications?
 4. Please describe the measures in place to:
 - a) ensure that applications for external review are resolved in a timely and efficient way; and
 - b) reduce the number of applications for external review not resolved within 12 months.
 5. Please outline any reasons for an increase in formal decisions in the six months to the end of the 2004-05 year.
-

FOI INFORMATION AND AWARENESS

6. What training is provided for state and local government agencies about:
 - FOI responsibilities;
 - responding to FOI applications, including applications for internal review;
 - information to be provided to unsuccessful applicants regarding rights of external review?
7. Please describe the relationship between the FOI information and awareness activities of the Office of the Information Commissioner and those of the FOI unit in the Department of Justice and Attorney-General.
[See Annual Report at 17.]

24 November 2005

Dr Lesley Clark MP
Chair
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE Q 4000

Dear Dr Clark

Biannual meeting – 29 November 2005

Please find enclosed my response to the Questions on Notice from the Committee received on 8 November 2005.

Since my appointment on 24 February 2005, I have maintained a priority on improving the timeliness of resolution of external reviews of FOI decisions.

The timeliness in finalising external reviews is improving. A total of 119 reviews were finalised between 1 July and 31 October 2005. This is a 60 per cent increase on the number of reviews finalised in the equivalent four month period in 2004.

In 2004-05, 87 per cent of reviews were resolved informally. Seventy eight per cent of reviews were resolved within 6 months and 94 per cent were resolved within 12 months.

A key challenge for the Office is addressing the backlog of reviews that are more than 12 months old. Between 24 February and 30 June 2005, 16 reviews that were older than 12 months were finalised. These comprised one application received in 1993, two applications received in 2000, two applications received in 2002, five applications received in 2003, and six applications received in 2004.

A key factor in achieving timely resolution of external reviews is investment in professional development for Office staff. In July to October 2005, a total of \$14,232 (5.5% of the salaries expenditure for this period) was expended on professional development for Office staff, for both their informal resolution and formal decision writing roles.

During 2004-05, the Office conducted 23 training sessions for 14 agencies, involving a total of 275 staff from Brisbane and South East Queensland. Training for local governments is a priority, with training provided for a cluster of Sunshine Coast local governments in March/April 2005 and for a cluster of Central Queensland local governments and other agencies in July 2005.

The Office is continuing to provide a range of information and guidance material for FOI decision-makers, via the Office web site. This information is used in training sessions and is also a key resource provided to applicants and agencies in the informal resolution of reviews.

I look forward to meeting with the Committee on 29 November 2005.

Yours sincerely

[Original Signed]

Cathi Taylor
Information Commissioner

Legal Constitutional Administration Review Committee Meeting

Tuesday 29 November 2005

Responses to Questions on Notice

INDEX

Question on Notice Number 1	Page Number 1
Question on Notice Number 2	Page Number 1
Question on Notice Number 3	Page Number 2
Question on Notice Number 4	Page Number 3
Question on Notice Number 5	Page Number 5
Question on Notice Number 6	Page Number 5
Question on Notice Number 7	Page Number 6
vO/Ce Newsletter Volume 8	Attachment 1

Process of biannual meetings

Question on Notice Number 1

In order fulfil its responsibilities under the Freedom of Information Act 1992 (Qld), at this stage, the committee proposes to establish a continual, open dialogue with the Information Commissioner. The committee would like your feedback about the anticipated process, which would involve the committee:

- ☐ ***holding two general meetings with the Information Commissioner each year;***
- ☐ ***timing these biannual meetings so that one is held following the tabling of the Information Commissioner's annual report, and the other preceding the estimates process;***
- ☐ ***forwarding to the Information Commissioner, prior to each meeting, written questions on notice concerning the committee's special functions;***
- ☐ ***being provided with the Information Commissioner's written responses to those questions;***
- ☐ ***considering those written responses;***
- ☐ ***meeting with the Information Commissioner, and some senior officers of the Office of the Information Commissioner, to further discuss the questions and ask additional questions without notice; and***
- ☐ ***reporting to the Legislative Assembly on the matters discussed at the meeting.***

I would welcome the opportunity to meet biannually with the Committee at the times proposed, i.e. following the tabling of my annual report and preceding the estimates process.

I am happy with the proposed arrangements for these meetings wherein I would receive written questions on notice from the Committee prior to each meeting and I would provide written responses to those questions prior to the meeting with the Committee. The meeting would then be an opportunity to discuss the questions and responses provided prior to the meeting and additional questions from the Committee without notice at the meeting.

I recognise that the Committee would report to the Legislative Assembly on the matters discussed at the meeting.

External review statistics

Question on Notice Number 2

Please provide the committee with the 2004-05 external review statistics including:

- a) applications received and finalised;***
- b) the proportion of applications finalised within 12 months;***
- c) the proportion of applications at the end of the reporting period which were more than 12 months old;***
- d) the average time taken to deal with applications; and***
- e) the proportion of applications resolved informally.***

In the period 2004-05:

- a) 307 applications were received and 265 reviews were finalised. By comparison, in the period 2003-04, 287 applications were received and 256 reviews were finalised.
- b) 94 per cent of applications finalised in 2004-05 were finalised within 12 months.
- c) There were 133 current applications as at 30 June 2005. Of these, 25 applications (18.8 per cent) were more than 12 months old. Of these 25 applications, five were received in 2000, five were received in 2001, five were received in 2003 and ten were received between 1 January 2004 and 30 June 2004.
- d) The average time taken to finalise an application that was finalised in 2004-05 was 147 days. The 'average' is a measure that can be distorted when there are extreme figures at either end of the list. For instance, a review of an application received in 1993 and finalised in April 2005 took 4,404 days to finalise. A better indicator is the 'median'. The median time taken to finalise an application that was finalised in 2004-05 was 58 days.
- e) 87 per cent of applications resolved in 2004-05 were resolved informally. Informal resolution is preferable because it generally involves significantly reduced demands on the applicant and the agency and results in timely, mutually agreed outcomes of reviews.

Question on Notice Number 3

What proportion of all applications for external review in 2004-05 related to fees and charges, and what issues were raised by these applications?

Fifteen of the 307 applications received in 2004-05 (4.8 per cent) related to fees and charges. The main issues raised in these reviews were:

- whether the application related to documents concerning the personal affairs of the applicant. If one or more documents that fall within the terms of the applicant's access application do not relate to the applicant's personal affairs then the applicant is required to pay an application fee.
- whether fees or charges should be waived due to financial hardship. An application fee may not be waived under the FOI Act, however processing and copying charges may be waived if the agency or Minister considers the applicant is in financial hardship. Section 35A of the FOI Act provides that an applicant is in financial hardship only if the applicant holds a concession card or is a non-profit organisation in financial hardship as defined under the FOI Act.
- whether the charges had been assessed correctly by the agency. Assessment of charges payable requires an examination of each document to determine whether or not it can be characterised as concerning the personal affairs of the applicant.

The issue of what constitutes 'personal affairs' when determining fees and charges payable was discussed in the most recent edition of *vOICe*, the electronic newsletter of this Office – see volume 8, pp8-9 (a copy of *vOICe* is at Attachment One).

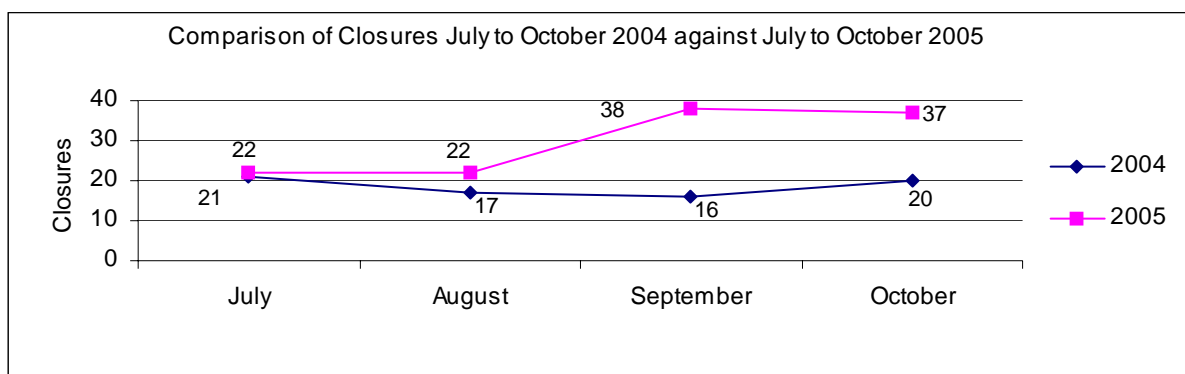
Question on Notice Number 4

Please describe the measures in place to:

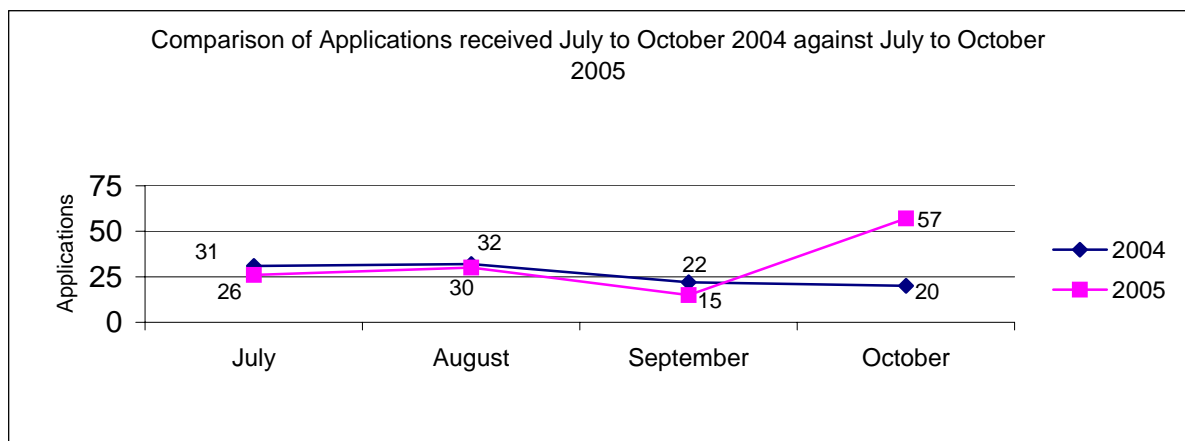
- a) ensure that applications for external review are resolved in a timely and efficient way; and
- b) reduce the number of applications for external review not resolved within 12 months.

a) Timely resolution of reviews

The timeliness in finalising external reviews is improving. A total of 119 reviews were finalised between 1 July and 31 October 2005. By comparison, in the period 1 July to 31 October 2004, a total of 74 reviews were finalised. This represents a 60 per cent increase in reviews finalised.



During this four month period, there was a 22 per cent increase in applications received compared with the same four month period in 2004. A total of 128 applications were received between 1 July and 31 October 2005 whereas 105 applications were received between 1 July and 31 October 2004.



The skill level and confidence of Office staff are key factors in achieving timely resolution of external reviews. During the first four months of the 2005-06 financial year, there was a significant investment in professional development for Office staff, for both their informal resolution and formal decision writing roles.

In July to October 2005 a total of \$14,232 (5.5% of the salaries expenditure for this period) has been expended across a range of programs as detailed below:

Training	Provider	Number of Attendees	Cost inc. GST
Decision making for Tribunal members	Monash University	4 Officers	\$9,260
Alternative Dispute Resolution Training	Department of Justice and Attorney General	2 Officers	\$3,010
Fees and Charges under the FOI Act	Department of Justice and Attorney General	10 Officers	Nil cost
Privacy Training	Department of Justice and Attorney General	1 Officer	\$30
Online Legal Research Training	Queensland Law Society	2 Officers	\$590
Online Legal Research Training	Department of Justice and Attorney General	2 Officers	Nil cost
Bachelor of Laws	Queensland University of Technology	1 Officer	SARAS payment \$1,342

The time commitment of staff to participation in professional development programs, including completing assignments in their own time, is considerable. In addition, experienced officers have devoted time to mentoring those officers who are participating in professional development programs. It is anticipated that this investment will bear dividends in terms of improved timeliness in finalising external reviews over the coming months.

Another key factor in ensuring timely resolution of reviews is effective case management of every application for review. This includes:

- having a performance planning and review regime in place for each staff member, giving clarity of roles, responsibilities, steps to be undertaken in reviews and expectations of the Information Commissioner regarding performance standards including timeframes
- review officers having regular meetings with the Information Commissioner regarding the status and next steps in each review an officer is conducting
- mentoring and modelling by very experienced staff for less experienced staff
- focussing on informal resolution in the first instance
- identifying when informal resolution methods are not leading to a resolution of the review and moving promptly into formal decision-making processes to achieve timely resolution of the review
- reviewing standard correspondence to provide enhanced clarity for parties regarding the way that the review will be conducted and what is expected of them
- identifying and addressing behaviours that result in intensive consumption of staff time, such as applicants sending in numerous, extensive emails that are not focussed on the specific points in issue in the review
- providing clear guidance to agencies regarding the Office's expectations in relation to 'sufficiency of search' issues
- continuing to refine and expand the range of Information Sheets and Practitioner Guidelines available to assist both applicants and agencies in understanding the provisions of the FOI Act.

b) Reviews older than 12 months

Reducing the number of reviews that are older than twelve months is based on two objectives:

- timely resolution of incoming review applications, using the methods outlined above, to ensure they do not become more than 12 months old.
- active progression and close monitoring of the reviews that are older than 12 months, with a view to resolving them as soon as possible.

There is an inherent challenge in attending to both of the above objectives, as time spent on the 'old' reviews is Officers' time away from timely informal resolution of new applications. Work on 'old' reviews is very time consuming as they invariably involve large numbers of documents, intransigent positions of the parties, and current agency representatives unfamiliar with the documents and context of the original agency decision.

Between 24 February and 30 June 2005, 16 reviews that were older than twelve months were finalised. These comprised one application received in 1993, two applications received in 2000, two applications received in 2002, five applications received in 2003, and six applications received in 2004.

There are 34 current applications that are older than twelve months. Four of these applications were received in 2000, three applications were received in 2001, three applications were received in 2003, and twenty four applications were received in 2004.

Question on Notice Number 5

Please outline any reasons for an increase in formal decision in the six months to the end of the 2004-05 year.

The term 'formal decision' is not mentioned in the FOI Act. Historically, the Office has used the term 'formal decision' to refer to decisions of the Information Commissioner that set out new principles for decision-making under the FOI Act or deal with applying the FOI Act to novel circumstances. Such decisions are published on the OIC website to provide guidance, particularly for FOI decision-makers.

Upon taking up the role of Information Commissioner I became aware of a number of reviews that involved contentious issues and were outstanding. I prioritised finalising those reviews while maintaining a commitment to also achieving early resolution of more recent applications for review.

FOI Information and Awareness

Question on Notice Number 6

What training is provided for state and local government agencies about:

- ☐ ***FOI responsibilities;***
- ☐ ***responding to FOI applications, including applications for internal review;***
- ☐ ***information to be provided to unsuccessful applicants regarding rights of external review?***

Prior to the establishment of the FOI and Privacy Unit in the Department of Justice and Attorney-General (the JAG Unit), this Office was frequently requested by agency FOI decision makers to provide them with training on a range of FOI related matters.

During 2004-05, the Office conducted 23 training sessions for 14 agencies, involving a total of 275 staff from Brisbane and South East Queensland. This training was tailored to the needs of each group. Topics covered included:

- the main provisions of the FOI Act
- agency officers' responsibilities in dealing with an FOI application
- the key steps in processing an FOI application
- issues for consideration in processing FOI applications, including 'sufficiency of searches' and assessment of 'personal affairs' matter
- the operation of the commonly invoked exemptions under the FOI Act and the public interest balancing test.

Past decisions of the Information Commissioner and Information Sheets and Practitioner Guidelines developed by this Office, which are available on the Office website, are key resources used in this training.

The training includes reference to the requirement under s.34(2)(i) of the FOI Act for agency decisions on FOI applications to include information for the applicant on their rights to seek review of the agency's decision and the timeframe within which an application for review must be made.

Agency representatives that are required to conduct an internal review of an initial FOI decision generally require the same training as agency decision makers as they are required to make a fresh decision on the facts of the particular matter.

A priority in 2004-05 was training for local governments. Training tailored to their most frequently encountered FOI issues was conducted for a cluster of local governments on the Sunshine Coast, with a cluster of local governments in Central Queensland receiving training in July 2005. In November 2005, training for agency decision makers was conducted jointly by the JAG Unit and this Office.

Question on Notice Number 7

Please describe the relationship between the FOI information and awareness activities of the Office of the Information Commissioner and those of the FOI unit in the Department of Justice and Attorney-General. (See Annual Report at 17.)

The JAG Unit is now geared to providing information and training for applicants and agencies on matters relevant to dealing with an initial FOI application, such as fees and charges, and timeframes for processing applications.

The JAG Unit has produced a flyer providing 'plain English' information about Freedom of Information in Queensland. Copies of this flyer have been sent to state government agencies, local governments, libraries and electorate offices across Queensland. A copy of this flyer is available on the Office website.

The JAG Unit is currently finalising a comprehensive FOI website that will provide a range of information for applicants and agencies. Once available, the Office website will include a link to this website and the JAG website will include links to the Office website.

The Office has a representative on the JAG training and educational committee, and provides input to draft publications and resources and training proposals.

The JAG information products and training programs include references to the resources available on the Office website: past decisions of the Information Commissioner organised under an index of sections of the FOI Act, Information Sheets and Practitioner Guidelines.

Agencies seeking basic FOI training are referred to the JAG Unit. As a complement to the training conducted by the JAG Unit, this Office is presenting sessions within the JAG training programs on the more complex considerations in relation to the exemption provisions under the FOI Act. This complementary approach is proving a very effective use of the time and expertise of staff of this Office and of the JAG Unit.

APPENDIX D

Transcript of meeting with the Information
Commissioner

This is a transcript of private and confidential evidence taken before the committee and should not be copied or republished in any way without the express authority of the committee.

Any unauthorised publication of this Hansard may constitute a contempt of Parliament. If the transcript becomes the subject of any request under the Freedom of Information Act, the committee should be notified.



LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Members:

Dr L.A. Clark MP (Chair)
Mr P.A. Hoolihan MP
Mr R.O. Lee MP
Mr M.F. McArdle MP
Mr A.I. McNamara MP
Mr I.P. Rickuss MP
Miss F.S. Simpson MP

BI-ANNUAL MEETING WITH THE INFORMATION COMMISSIONER

TRANSCRIPT OF PROCEEDINGS

(In camera)

TUESDAY, 29 NOVEMBER 2005

Brisbane

TUESDAY, 29 NOVEMBER 2005

TAYLOR, Ms Cathi

CHAIR: This is our first opportunity to meet with you as a full committee in this regard. Thank you very much for your response to our questions. That was very comprehensive. What we usually do with the format for these kinds of meetings is actually give you the opportunity to basically address the committee first, highlighting particular things that you want to highlight. Then we might delve into your responses to our questions in a bit more detail. We invite you to address the committee.

Ms Taylor: Thank you very much for the opportunity to meet with you. As you will see from my response to the questions on notice, I have prioritised timeliness as the key area for me to focus on in the first instance. There are a number of areas that have come forward in I know the committee's deliberations in the past—or reviews, surveys of applicants and agencies that interact with our office—that raise key issues such as timeliness. Another is clarity of the written communication that we make—so the decisions that we write, the information products. Those sorts of areas have been picked up, I know, in the terms of reference for the strategic review.

In the first instance, I wanted to really focus hard on timeliness. I am happy to say that there has been an increase in timeliness, particularly in the first four months of this financial year. I have given you that data because it is not covered in the annual report of 2004-05. So we have seen a 60 per cent increase in the reviews finalised on the equivalent four-month period in 2004. That happened in a time when there was a 22 per cent increase in applications received.

It seems that there is going to be a continued increase in applications, from what I can see not just here in Queensland; it is a trend across Australia. Certainly I have talked with Justice Morris, who is the president of VCAT, about these issues. I think he is right in identifying an increase in population, an increase in the education level of the population and a dramatic increase in the capacity of information communication technologies. There are vastly more documents generated—copies of documents, distribution of documents. So all of those things add to the challenge of getting through these reviews.

The other challenge of course is that there is a backlog, that was there when I came, of quite old cases. As I talked about in my response to the questions, that is quite a challenge because by their nature they tend to be very time consuming to go back. By then the parties are often in quite intransigent positions. People in the agencies who dealt with the matter originally have moved on. Nobody has any corporate memory. When you start looking at a sufficiency of search question—there might need to be more searches—going back and trying to find things is quite onerous. I have only nine people in the office working on cases, so if some of them are working on those that is coming away from the speedy, informal resolution of the ones coming in. So it is quite a challenge to pursue both objectives, which is what we are doing.

We are pretty much using the same methodologies that have been in the office for some time in terms of the initial focus on informal resolution. You will see that 87 per cent of the cases resolved were resolved through informal resolution, which is ideal, because it is usually much faster and more likely to have mutually agreed outcomes for all parties. However, one of the things I have identified is that there has been a pattern where we have tried the informal resolution approach, because it does work so often, but then when it is not working that is when it sort of starts to sit. So what we are now looking at is closely monitoring all of those cases so that once we can identify that the informal resolution is not going to be able to do the job we quickly move to a more formal resolution mode. One of the ways of being able to do that is that I am having the experienced people in the office mentoring the lower-level, newer people. It is that judgment that it is not something that is easy to make. There is no particular checklist; it is really a judgment call, from experience. They are investing quite a bit of effort in assisting those newer, lower-level people that are coming in.

Also, as I mentioned in my response, I have invested quite a lot in professional development for the staff, both in their formal decision writing and in their informal resolution, combined with that mentoring. I am seeing that that is really paying dividends already. I am hopeful that that will continue.

One of the questions that you asked me was the average number of days to resolve a case. I have given you that figure. It was 147, I think. But I did take the liberty of also giving you the median. Again, this is something that Justice Morris, who for the last three years has been president of VCAT, has been driving: timely throughput of cases. He is very interested in this area and very successful. His strong view is that the median is the one performance measure that you really manage on every case. That is the one that gives you the best indicator. As I pointed out, the average can have distortions if there is an extreme number, such as the 4,404 days to resolve a case. That can skew the average and not give you a picture of what happens most of the time.

As I said, I am aware that the strategic review's terms of reference pick up things like case management methodologies that achieve the best timeliness and accessibility of the language in our decisions and other materials. So that is something I am looking forward to learning through the review process and making improvements through our next round of strategic planning following the strategic review.

I do think we need to address those language questions. We recently provided a decision to a person who was from a non-English speaking background but who was communicating in English. We sent the decision to him and he sent it back to us in an envelope marked 'return to sender' saying that it was no good. Yet the decision was completely in his favour. It is that sort of thing that I am keen to also look at.

CHAIR: This is the first time we have actually had information about how many are how old. I must admit, I was just amazed that there could be even five cases that were five years old, let alone one year old.

Mr HOOLIHAN: There is one that is 12 years old.

CHAIR: How does that happen?

Ms Taylor: I can't speak for before I was in the office but, as I said, I think one of the things that happens is that there is an initial burst into informal resolution—I don't know what happened in 1993, but certainly ones that are just three or four years old—and then if that does not succeed they seem to have just sat then in a hiatus.

CHAIR: Do these applications have any common themes about them in terms of the issues they pick up or the people?

Ms Taylor: No.

Miss SIMPSON: Were they amended at all?

Ms Taylor: There are concessions made, as with most reviews. The agency may say, 'Actually, now that we look at it again we could give you these things.' Some of them might not be through FOI—they might be outside FOI—but they assist the applicant. People make a freedom of information application as a means to some other end. So it may be that that end can be assisted through other means. Certainly that is why the timeliness is so critical, because it is usually a means to some other end and that end has a time aspect.

Miss SIMPSON: Just so that I have a bit of an idea of the processes in place that maintain the life of a file—in other words that keep the file open—if someone corresponds back with the office about a matter that you may have already corresponded with them about, does that mean that file would still be open as such?

Ms Taylor: No. Either a file is closed because the applicant says, 'I am willing to withdraw now. I have got however much out of this process,' which often is quite a lot and they might at some point withdraw, or they receive a decision one way or another. So there is a definite closure. Once a file is closed, particularly with a decision, that is it. If someone writes to us later and starts to correspond with us about something that was in that review, we say, 'That was that review. If you are going to make another FOI application, that will be another process.' It is not something that can be just enlivened by another correspondence. It means it was never closed, either because there was no decision or no agreement from the applicant to allow it to be closed.

Miss SIMPSON: I was wondering if there had been a change in the way—going back years ago, I don't know—people closed or opened new grievances on particular issues. I think we at this table are all familiar with dealing with a certain category of plaintiff who may start off with a very legitimate grievance but the issue will never be resolved to their satisfaction. That is, I suppose, where I am coming from with that question.

Ms Taylor: I could not say that applies to all of these at all.

CHAIR: I guess we look forward to you continuing to clear the backlog. Congratulations on the progress you have made to date. I notice, though, that you said you are expecting an increase in applications just because of the change in society. But the graph that you gave us that compared 2004 and 2005, in fact there is not a trend there. In fact, it was very similar in July, August and September of 2004 and 2005 and it is only in October that you have actually got a significant difference. I just wonder if that was basically a bit of a blip and maybe there is not actually a trend to increasing numbers.

Ms Taylor: I don't think there is a trend that dramatic from one month to the other. I am not quite sure why in September it actually dropped a little. It may be that the change to the time frame for internal review decisions from 14 days to 28 has just created a one-off blip, but I am not quite sure whether the timing matches that. So I am not expecting growth of that order, month on month. I would very much hope not.

CHAIR: I just wondered if it was an abnormality and it is more likely to go back to what it was prior to that.

Miss SIMPSON: Can I follow up question on notice No. 3, where we asked about number of external reviews relating to fees, charges and what issues were raised about these applications. You have

replied that 15 of the 307 applications were related to fees and a number of issues related to that. Under the current act, is there a legal ability to in fact review the amount of time that it takes to search for documentation and the fees that attach to that amount of search?

Ms Taylor: No.

Miss SIMPSON: I think there is in the Commonwealth. This is probably something that came out of the last FOI review.

Mr HOOLIHAN: We have fees after two hours.

Miss SIMPSON: I think in the federal act you are able to seek a review of the amount of the fees, not just whether there should be a fee charged or waived.

Ms Taylor: We can review that estimate.

Mr HOOLIHAN: The level of it?

Ms Taylor: The amount is fixed in legislation. In the amendments, as you would have seen, there is a preliminary assessment and then there is a final assessment. The final assessment cannot be more than the preliminary assessment. There are those sorts of steps built in. It is early days how that is actually going to work.

Miss SIMPSON: One of the criticisms going back with the fee structure was that if there was poor administration and poor filing in the systems within an office an applicant could effectively be penalised by the time it takes to find something that might be in interesting places.

Ms Taylor: I cannot make decisions about the administration as such, but certainly things like processing charges—whether something is personal affairs or non-personal affairs—can be subject to review.

CHAIR: Of those 15, do you have a breakdown of, for example, how many would be waived due to financial hardship versus some other reasons?

Ms Taylor: I don't have that with me.

CHAIR: I was interested in whether the charges had been assessed correctly by the agencies and how often agencies make mistakes in terms of their assessment.

Ms Taylor: That is more a question of personal affairs and non-personal affairs. It is pretty straightforward whether they have a concession card or not.

Miss SIMPSON: Just a comment. It is interesting that some agencies are still referring people to FOI after they have denied them access under their own access regimes. One agency I know of referred a constituent to go after the information under FOI, even though they probably were unlikely to get it under FOI.

Ms Taylor: And was there an access arrangement that they could have used?

Miss SIMPSON: It was actually a health department issue, where it was the relative of a deceased person and whether they were able to access certain information. It was something like that. That is just a passing comment. Sometimes I think people flick people to FOI as a means of avoidance and also not saying that, even if they went to FOI, they may still not be allowed, under the provisions of that act, to get information. I just think that is poor. They either say it is or isn't available, rather than muck people around.

Ms Taylor: Certainly that is a recurring question, with access to the medical records of a relative. I think it would be far preferable to have an admin access scheme where all of those policy issues were worked out—not just on an idiosyncratic basis of one person but deciding what are the policy issues and telling people up front, 'These are the sorts of things that are allowed to be accessed. These aren't and these are the reasons.' Certainly that is something that I have been advocating to CEOs. I addressed a CEO breakfast in August and I talked to them about the benefits of them looking at having access schemes.

Miss SIMPSON: And then be very careful when they are flicking people to another agency, that it is not just sending people away for the sake of getting rid of them when that agency may also not be able to resolve the complaints.

Mr McNAMARA: In answer to question 4 you mentioned that the factors for the timely resolution of reviews included a number of things including providing clear guidance to agencies regarding the office's expectations in relation to sufficiency of search issues. Could you tell me a little bit more about what you are thinking, what your requirements are proposed to be?

Ms Taylor: Sufficiency of search is actually much more commonly raised than, say, issues of fees and charges at external review. I think that is a great shame, that it has got all that way through to external review on a question that the applicant did not have confidence or believe that the agency had searched sufficiently. It can be an extremely time-consuming activity, and often for not much benefit. A key issue is that the agencies frequently have searched appropriately but they have not communicated in their reasons to the applicant in a way that convinces them that they have. It is a case of, 'Yes, of course we have. Trust us,' instead of taking the time to give them a considered, detailed response: 'We searched here, there and for these reasons. We went this way and that way and this is what we have come up with. On that basis we

are confident there are no other documents applying to your application.' That is another issue I have raised with the CEOs and also through the FOI coordinators, because I think giving sufficient, well-documented reasons would be one way to look at that.

If it comes to us on review on the question of sufficiency of search, often sufficiency of search is one element of a review. There may be questions about access to documents and, as well, to the ones that have been identified through the initial application and internal review process, and then they also question whether that is all the documents. As I said, it is an extremely time-consuming process and some agencies are regularly asked for the same sorts of things. I think there is quite a bit of systemic work that can be done, where they are guided to conduct more thorough searches but particularly to document how they have searched in order that the applicant is more accepting that that is the case.

CHAIR: You indicate that you have had 23 training sessions for 14 agencies, which is great. But that was just staff from Brisbane and south-east Queensland. Were you planning to do some work in regional Queensland?

Ms Taylor: This is something that we are working through with the JAG unit. I have talked about that.

CHAIR: It sounds like you have a good relationship there, with them doing the basic training and you doing the higher levels.

Ms Taylor: And also with them doing the administrative arrangements. With a staff as small as my office, I do not want review officers negotiating venues in some location and that sort of thing. So even on that level it is efficient. I am aware that the JAG unit have a plan to travel to different parts of Queensland to do training. That is something we are talking with them about—whether one person from my office goes with them and conducts the more advanced sessions on the exemption provisions within those training sessions. Two of the people from the office went up to the Sunshine Coast in the middle of the year, and then in July two of the staff—the Assistant Information Commissioner for Information and Awareness and one of the newer people that works to her—went to Rockhampton and they gave training to a cluster of local council people, the university and some of the health service districts, all combined there. So certainly it is something we can do and we are just working out a schedule in conjunction with JAG.

CHAIR: Thanks very much.

Committee adjourned at 2.23 pm

APPENDIX E

Letter from the committee to the Premier dated
14 December 2005



Legal, Constitutional and Administrative Review Committee

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Parliament House
George Street
Brisbane Qld 4000

Ph: 61 7 3406 7307
Fax: 61 7 3406 7070

email: lcarc@parliament.qld.gov.au
www.parliament.qld.gov.au

Your Ref:

Our Ref: Gen 20.3

14 December 2005

Hon P Beattie MP
Premier and Treasurer
PO Box 15185
BRISBANE CITY EAST QLD 4002

Dear Premier

Ombudsman and Public Interest Disclosures of Serious Maladministration

On 29 November 2005, the Legal, Constitutional and Administrative Review Committee met with the Queensland Ombudsman. The committee's report no. 52 on that meeting will be tabled later in December and a copy will be forwarded to you at that time.

In the interim, the committee wishes to convey to you its support for a proposal that the Ombudsman be given an oversight role in relation to public interest disclosures (PIDs) involving serious maladministration made under the *Whistleblowers Protection Act 1994* (Qld).

As discussed in the Ombudsman's annual report (at pages 24-25), the proposal was first raised in a submission of the Ombudsman to the Bundaberg Hospital Commission of Inquiry. A copy of that submission was subsequently provided to the Queensland Health Systems Review and the Queensland Public Hospitals Commission of Inquiry.

The committee discussed the proposal with the Ombudsman at the meeting on 29 November 2005.

Subsequent to that meeting, the Hon Geoffrey Davies AO handed down his report, *Queensland Public Hospitals Commission of Inquiry*. The committee notes that paragraph 6.510 of that report recommends a central oversight by the Ombudsman of PIDs involving serious maladministration along the lines of that proposed by the Ombudsman.

In report no. 52, the committee reports on its discussion with the Ombudsman of his proposal and the need, should the proposal be adopted, for appropriate additional budgetary allocation to be made to the Office of the Ombudsman. A copy of this letter will be tabled with the report.

If you wish to discuss this matter further, please do not hesitate to contact myself or the committee's A/Research Director, Ms Julie Copley, on 3406 7244.

Yours sincerely

[Original Signed]

Dr Lesley Clark MP
Chair