

Reference:

18 September 2001

The Hon P Beattie MP
Premier and Minister for Trade
P O Box 185
BRISBANE ALBERT STREET QLD 4002

Dear Premier

DISCUSSION DRAFT OMBUDSMAN BILL 2001

Thank you for your letter dated 31 August 2001 regarding the discussion draft Ombudsman Bill (the bill). As you suggested, we received a briefing from Mr Tony Keyes and Ms Catherine Niven in relation to the key aspects of the bill. We found this briefing most helpful and appreciate Mr Keyes' and Ms Niven's time.

In considering the draft bill we have essentially focussed on implementation of previous issues concerning the Ombudsman's legislation raised with, or by, this committee. In this regard, we draw the following matters to your attention.

LCARC's jurisdiction and functions

At the outset, we note the functions given to LCARC pursuant to clause 87. We support the inclusion of this provision, and consider it to be appropriate in its current form. However, we suggest some modification to certain other functions given to LCARC throughout the bill.

- Clause 57(1)(b) requires that LCARC be consulted about the process of selection for appointment, and the appointment, of a person as Ombudsman. In contrast, under clause 65(3)(d) removal of the Ombudsman requires, amongst other things, agreement to be obtained from a majority of members of LCARC, *other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly*. We suggest that agreement of a multi-party majority of LCARC, similar to that required for removal of an Ombudsman, be included for appointment (and reappointment) of an Ombudsman.

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- Suspension of the Ombudsman when the Legislative Assembly is in session requires, amongst other things, agreement from a multi-party majority of members of LCARC: clause 66(3)(d). In contrast, suspension of the Ombudsman when Parliament is not in session requires no such agreement: see clause 67. Firstly, we query whether these provisions are intended to apply when Parliament is 'in session' or actually sitting. Secondly, we consider that LCARC should be consulted regarding the suspension of an Ombudsman whether or not Parliament is in session or sitting. However, we recognise that alternative provision might be necessary where Parliament, and hence LCARC, is dissolved during an election period.
- Clause 82 of the bill requires the Ombudsman's annual report to be presented to the Speaker. In contrast, pursuant to s 101(2) of the *Freedom of Information Act 1992*, the Information Commissioner's annual report must be presented to LCARC and the Speaker. We recommend that the Ombudsman Bill should similarly require the Ombudsman to present his or her annual report to the Speaker and LCARC, particularly given that one of LCARC's functions is to examine the Ombudsman's annual reports.
- Pursuant to s 101(3) of the *Freedom of Information Act 1992*, LCARC may require the Information Commissioner to prepare and submit to the committee a report on a particular aspect of the performance of the commissioner's functions. We recommend that an equivalent provision be included in the Ombudsman Bill. This would complement the committee's functions under clause 87(1)(a) of the bill.
- We note that part 9 of the bill sets out the general functions of LCARC. However, part 9 does not refer to committee's functions *vis a vis* the Ombudsman which are contained in other parts of the Act. The Act might be clearer in this regard if part 9 referred to *all* functions of LCARC, including those contained in other provisions.
- Clause 87 provides that the committee must not investigate particular things. Section 10(2) of the *Parliamentary Committees Act 1995* has a similar effect (albeit not confined to the Ombudsman) but is drafted in different terms. We suggest that clause 87 be redrafted to provide that LCARC's functions under clause 87 are restricted by s 10(2) of the *Parliamentary Committees Act 1995*.

Other issues

We make the following observations regarding other aspects of the bill.

- The Ombudsman has previously interpreted his current jurisdiction to cover situations where agencies outsource their functions to private enterprise: ss 12(3) and 13(9) of the *Parliamentary Commissioner Act 1974*. We trust that in redrafting these provisions into clause 9 of the bill the Ombudsman's jurisdiction in this regard has not been restricted.

We also make the general observation that the issue of the application of the Ombudsman Bill to contractors and Government Owned Corporations raises the broader issue of the application of administrative law in an environment where government is increasingly corporatising, privatising, and outsourcing its functions. This issue has also been highlighted to us in the context of our review of the *Freedom of Information Act 1992*. We believe that there is scope for government to give further consideration to this broader issue.

- The bill expressly provides for the appointment of one or more Deputy Ombudsmen: clause 74(1). In contrast, the amendments to the *Freedom of Information Act* which the bill seeks to make does not provide for the appointment of a Deputy Information Commissioner.

- We note that clause 70 of the bill provides that the Ombudsman is taken to resign on becoming a candidate for election to a State or Commonwealth Parliament or to local government. Clause 67 of the former LCARC's final draft Parliament Bill (contained in LCARC report no 24) provides that the Ombudsman and *Deputy Ombudsman* must resign office immediately on being nominated as a candidate for election to the Legislative Assembly. If this clause of the Parliament Bill is to be adopted, then these provisions should be consistent.
- The bill proposes a new clause 70C of the *Freedom of Information Act* enabling an officer of the Ombudsman to perform duties as an equivalent officer of the Information Commissioner but not vice versa.

Thank you for the opportunity to comment on the discussion draft bill. We look forward to the introduction of the Ombudsman Bill in the Legislative Assembly.

Yours sincerely



Karen Struthers MP
Chair