



Speech by

Mr M. HORAN

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OMBUDSMAN BILL

Mr HORAN (Toowoomba South—NPA) (Leader of the Opposition) (2.33 p.m.): In speaking to this bill, I firstly want to say what an important role the Ombudsman plays in the way we operate here in Queensland. I think I speak on behalf of many members of parliament when I say how useful the Ombudsman has been to many of us in the running of our electorate offices and, in particular, in resolving a number of issues. I know that I have encountered instances when a constituent's problem or issue has been seen to be almost unresolvable, but because we are able to recommend to them that they take the matter to the Ombudsman, in a number of cases we have been able to ensure that there is a reasonable response and that the constituent is well satisfied.

I have said this before in this place. I think there are three very important facets of modern, open and accountable government in this state and they are the Ombudsman, freedom of information and a watchdog—the Criminal Justice Commission. The passage of recent legislation in this state has meant that that particular entity has become the CMC—the Crime and Misconduct Commission—and not only is it responsible for being a watchdog, as was the previous CJC, but also it has responsibility for investigating major crime and paedophilia. We opposed that bill because we felt that it would be better to have a separate watchdog and a separate major crime and paedophilia investigator.

Returning to the current Ombudsman Bill, I would like to thank the staff of the Premier's Department who provided me with a briefing on this. In talking about the Ombudsman Bill, I would like to go back a little bit to the actual role of the Ombudsman. The Ombudsman is there to investigate administrative actions by government agencies, and we will see defined in the bill what an actual agency is. Generally speaking, an agency is a government department, a local council and also some particular public entities that are espoused in the legislation.

The Ombudsman's investigations commence on the receipt of a complaint from an individual—I think that is where we mostly see it in our own electorate offices—or they can come from the Ombudsman himself or by reference from the parliament. In the time that I have been in this House I do not know whether I have actually seen anything referred from this parliament to the Ombudsman. That is obviously one avenue for reference when there is concern about an administrative action. The referral is made if the administrative action was unlawful, unjust or wrong. The Ombudsman may report and make recommendations to the agency's principal officer. Basically, the power of the Ombudsman is in drafting these public reports and making recommendations. It is also an important part of the way in which the Ombudsman works: he can make recommendations in a proactive way so that, where there are systemic problems or particular problems with the way that systems operate, they can be resolved.

The recommendations from the Ombudsman can include ways in which to alter or change the effects of any particular action, how it could be rectified or mitigated, and whether there should be a law or change to a practice. The Ombudsman generally gives reasons or further reasons for the action and takes other appropriate steps. If a particular department or council does not give any effect to the Ombudsman or to the recommendations of the Ombudsman, the Ombudsman is in a position in which he can table a report in parliament through the Speaker.

This legislation is before us because of a pre-election commitment by the government that it would modernise the legislation. One of the things that stands out in this legislation is the simplification

of the name to 'Ombudsman', which is what we all call that position. It also follows on from a number of reviews that took place throughout the nineties with regard to the operations of the Ombudsman. This led to the Wiltshire report, which happened during the time of the Borbidge coalition government. That was a strategic review. There was a 1999 review of the Wiltshire report by the Legal, Constitutional and Administrative Review Committee and a strategic management review was also undertaken by the Consultancy Bureau.

I understand that most of the recommendations of the reviews were of a managerial nature. Generally, the findings of the reviews were as follows: it was found that the Ombudsman's Office could be more proactive in improving the quality of decision making and administrative practices; and it could be more informal and timely, less formal and legalistic in investigating complaints. At this stage I would like to say that, looking at the statistics in the recent report by the Queensland Information Commissioner, or the Ombudsman, it does seem that we should give some credit to the Ombudsman's Office for the way in which it has operated. I am referring to the annual report to parliament on the operations of the Office of the Information Commissioner. It is in its ninth year of operation and it was added to the role of the Ombudsman post-Fitzgerald. The report records that the year under review again saw a significant increase in work output; the finalisation of 396 external review applications during the year, which was the highest output ever; and further inroads were made into the number of unfinalised cases, which were reduced to 162, the lowest number for the past eight years. That is in relation to the role of the Information Commissioner.

The recommendations following the review were a name change to that of Ombudsman, a 10-year cap on the appointment of a person to the position of Ombudsman, and establishing the functions of LCARC in relation to the Ombudsman. This bill also clarifies a number of jurisdictional issues in that non-operational and non-disciplinary administrative actions in the Queensland Police Service will be within the Ombudsman's jurisdiction. Of course, operational and disciplinary matters now come within the newly formed Crime and Misconduct Commission, under which there is a new system of handling misconduct and official misconduct. The principles are set out in the Crime and Misconduct Bill as to how the different forms of official misconduct and misconduct are handled by the Queensland Police Service and the CMC.

Getting back to the bill before the House, the exemption of trustees under the Trusts Act 1973 has been removed and, out of respect for the independence of the judiciary, courts and registry, actions will be out of the Ombudsman's jurisdiction. I understand that this legislation makes it quite clear as to how that will be put into effect. In relation to the stand-alone powers, it replaces the Ombudsman's existing Commissions of Inquiry Act 1950 powers with stand-alone powers. These powers are tailored to the needs of the office and observe fundamental legislative principles. Those powers include requirements for a person to give documents or information or create a document, requirements for a person to attend before the Ombudsman to give documents or information or to answer questions and enter and inspect agency premises.

This legislation is also designed to make the Ombudsman more accessible, particularly to people who have a disability, people who are illiterate and people who do not and cannot speak English. It provides for that within the clauses of the bill. As I said earlier, the legislation updates and replaces the Parliamentary Commissioner Act 1974 and, in doing so, changes the name from Parliamentary Commissioner to Ombudsman. The intention of this bill is not to make substantive policy changes but to make the legislation more simple, more modern and so forth. It contains transitional provisions. I understand that the Ombudsman was consulted throughout the preparation of the bill as part as the consultation process.

I now want to go through some of those broad outlines in more detail. As I said, the Ombudsman's Office was established under the Parliamentary Commissioner Act 1974. His real function is to investigate and make recommendations about maladministration that has occurred in government agencies. The legislation sets out the various organisations covered by the Ombudsman at the commencement of the bill. They are defined as departments, local governments and public authorities. At the committee stage of the debate, I will go through that in more detail.

The Ombudsman holds a unique position. During the estimates hearings we debate the budget. The Ombudsman is an officer of the parliament and is therefore independent of the cabinet or the executive government. That allows the Ombudsman to operate in a relatively flexible and informal way. Combined with free service and accessibility, the services offered by the Ombudsman make it a very attractive alternative to people who need assistance with a particular problem. Even though it is free, there is a cost. It is one of the costs modern government has, together with the costs of running the corruption watchdog, the CJC, and freedom of information.

Just last week in this parliament we debated the issue of freedom of information and the fact that charges would be introduced for the gathering of information. We opposed that. However, this legislation quite clearly shows how good a service such as this is because it is free. I do not think this service has ever been abused. It is a service that helps people reach finality with particular problems

and issues. Sometimes I have been able to bring a constituent to the Ombudsman to sit down and talk the issue through if it is difficult to resolve or if it is an issue where the answer is neither black nor white. This process helps people to come to an understanding that the matter has been fully looked at. There may be recommendations made by the Ombudsman to the particular government department or agency involved which helps those people overcome the issue and get on with their lives.

The Ombudsman's Office has had an ever-increasing workload since it was put in place in 1974, particularly during the 1990s when there were a number of complaints about the long delays and the lack of funding. The backlog has been reduced by about 40 per cent over 1999-2000, but even those figures indicate the huge workload that exists for the Ombudsman. Often we do not give due consideration to the fact that many of the investigations that the Ombudsman has to undertake are extremely difficult, because many of the complaints or problems referred to the Ombudsman are at the end of the line and are probably the most difficult of complaints. As a result, it is not just the sheer number of complaints the office has to work through but the time involved and the wisdom of Solomon that is sometimes needed in determining those issues.

I have previously mentioned the three reports which have contributed in some way to the development of this new bill—that is, the strategic review of the Queensland Ombudsman known as the Wiltshire report tabled in this place on 6 May 1998, the LCARC report tabled in July 1999 and, finally, the June 2000 report relating to the strategic management review of the Office of the Queensland Ombudsman and the Office of the Information Commissioner.

As I said, this bill will give recognition to many existing practices of the Ombudsman's Office and implement recommendations such as the need to be proactive and preventive to identify systemic faults; closer working relations between the Ombudsman and LCARC, and that is something that needs to be put in place in a practical way; more focus on early intervention and informal resolution, and that is an existing practice but one recommendation from the reports is to work at informal resolution to get timely and satisfactory results to problems as much as possible through that system; more focus on demand management by helping agencies to resolve complaints through an internal dispute resolution mechanism, and that means trying to resolve it before it gets to the stage where it has to go to the Ombudsman; and improving the public's access, particularly those people who have a disability, who do not understand English or have difficulty speaking English or people who are illiterate.

I think it is worth saying that the Ombudsman disagreed that his office was not sufficiently proactive and preventive. In a submission to LCARC he stated that the office is always looking to examine the administrative practices and policies of agencies to see whether they are defective or give rise to maladministration and, if so, whether changes may prevent similar complaints occurring.

In the annual report of 1999-2000 the Ombudsman advised that the number of systemic complaints had been small and that where they had occurred they were resolved. It also set out that the office had a strategy of feedback reports and breach codes to try to deal with systemic problems. I think we would all like to see in the annual report that these sorts of systemic problems have been dealt with and have not recurred. If there were a way of showing that, it would be a good way of knowing that the Ombudsman's Office is able to, in a proactive way, reduce the percentage of error occurring in some departments that do not have good systems to provide early resolution of problems. In that way we can eliminate those problems and move towards greater efficiency of operation for departments or councils.

I spoke about the different ways in which complaints can be made to the Ombudsman's Office. In the main, complaints are made by individual citizens. There are provisions relating to this in the bill. The requirements are set out a little more clearly in this bill than in the existing legislation and there are provisions relating to making the office more accessible by individuals making complaints. The existing legislation states that complaints must be made in writing. It has been discovered that many complainants encountered by the Ombudsman's Office during visits to prisons and in public interview sessions do not always have the necessary writing skills. The office often waives the requirement for complaints to be in written form or assists complainants to form their problems into the written complaint necessary for it to undertake a formal investigation. The Wiltshire report supported that practice as a practical way of overcoming a legislative requirement that might be unfair to those who are most vulnerable to maladministration by agencies.

One of the very important aspects of this legislation relates to who comes within the Ombudsman's jurisdiction. As I said, generally speaking the office's jurisdiction covers government departments, public authorities and local authorities. There are exclusions, such as parliaments and the judicial functions of the courts, some tribunals and royal commissions. The Ombudsman cannot question the merits of a decision made by a minister or by cabinet, the rationale being that such is dealt with in the context of ministerial responsibility.

I think it is a shame that there has been no attempt to address the issue of government owned corporations in this bill. I know that corporations come under federal law and that there are matters of commerciality because they are dealing in a commercial environment, but many of the day-to-day

matters of government relate to government owned corporations. Over the years, governments have hived off parts of what used to be their responsibility to government owned corporations. For example, Queensland Rail was once a government department but is now a government owned corporation with the minister as the shareholder. Q-Build and the various electricity corporations are other examples of that.

More and more, as these functions are hived off and come under the control of boards and ministers take less and less responsibility, the corporation is put to one side and under the shield of the board. The minister, despite being a shareholding minister, takes less responsibility. I think these organisations should come under the jurisdiction of the Ombudsman. This bill represented an opportunity to consider that, to enable genuine review by the Ombudsman of administrative actions. If the Ombudsman is to offer quality service to the public—the public sees these government owned corporations as a government function—the public should be able to make inquiries or complaints about these corporations to the Ombudsman.

It does seem that Queensland has gone further than most other jurisdictions in preventing the Ombudsman from investigating the actions of government owned corporations. Essentially, the Ombudsman has no jurisdiction at all over GOCs established under executive power and no jurisdiction over the commercial activities or policy decisions of GOCs established under legislation.

Section 728 of the Local Government Act prevents the Ombudsman from investigating decisions about the commercial policies of corporatised local government bodies, LGOCs, or their commercially competitive activities. Examples of LGOCs are Brisbane Water and Brisbane Transport. Also, there is no jurisdiction over LGOCs prescribed by regulation. The Parliamentary Library briefing note I have says that the issue has been of concern to ombudsmen around Australia, including the Queensland Ombudsman, as it leaves citizens without any administrative redress where the body is excluded completely or it can argue that the action complained about is part of its commercially competitive activities.

Citizens dealing with GOCs or LGOCs may be in a worse position than those dealing with many private bodies, where in a number of cases private industry ombudsmen have been established. I think private industry has recognised that having an ombudsman can give a lot of satisfaction to customers if they have a particular complaint. They know that there is someone they can go to who will follow through with their complaint in an endeavour to provide some satisfaction or to fix up a particular process that has resulted in a complaint.

I refer to the matter of jurisdiction over judicial offices and courts. The existing legislation provides that the Ombudsman has no jurisdiction to investigate any administrative action taken by a master in equity or a registrar of a court. The intention was likely to be to ensure that, in line with the concept of separation of powers, the Ombudsman had no power over judicial offices or the functions of a court office or registry as they relate to the courts' judicial functions. However, the exclusion is not limited to judicial functions but extends to administrative action. Thus, the Ombudsman cannot investigate an administrative action taken within court registries, such as loss of files, wrong advice about a hearing date or a long delay in dealing with a matter. Court administrators also appear to be excluded in other jurisdictions to a greater or lesser extent. There is a clause in this bill that resolves this anomaly. It provides that it is only when acting judicially or when performing a function related to a court's judicial functions that a court, a judicial officer, a registry or other office and their staff are not within the definition of 'public authority' and thereby not within the Ombudsman's jurisdiction.

Administrative action taken by police officers will be within the ambit of the Ombudsman's powers under this bill. There is an exclusion so that there is no doubt that the Ombudsman is not to undertake any investigation into operational activities or disciplinary matters. That was discussed last week during debate on the Crime and Misconduct Bill.

I refer to internal dispute resolution by agencies. The main reason for the Ombudsman refusing to investigate is that the complainant may not have pursued the matter with the relevant agency. In such cases the Ombudsman often refers the matter to the senior management of an agency and rectification generally follows. I think that makes sense. These matters should be followed through first with the agency, before going to what we might call the last resort of the Ombudsman.

The Wiltshire report contained recommendations that agencies establish, with the help of the Ombudsman, internal complaint-handling procedures for complaints in the first instance and those referred to them by the Ombudsman. In its review, LCARC endorsed that proposal, and the Ombudsman agrees that his office needs to direct more resources to this demand and management type of role, provided it does not detract from his ability to investigate individual and systemic complaints. Both the Ombudsman and LCARC have suggested that all new legislation creating rights of review should include a requirement that agencies inform people of their internal and external review rights, including their right to complain to the Ombudsman.

We will be supporting this particular bill, although we may ask some questions about other matters at the committee stage. But generally speaking, I think that this bill is sound. It simply sets out to make clearer the legislation that surrounds the role of the Ombudsman. As I said, in recent years the Ombudsman has been given the additional responsibility of the Information Commissioner. One can see the independence and the value of the Information Commissioner when one looks at the ninth annual report, which was tabled in this parliament recently.

On a number of occasions when debating the freedom of information legislation last week, we discussed the serious concerns that were expressed by the Information Commissioner about the way in which governments had not addressed the issue of proper FOI and about the abuse of that system by taking documents before the cabinet just to give them blanket exemption. He did criticise both sides of politics, but he said that amendments are required to provide for better freedom of information. We have certainly flagged that. The National Party believes very strongly that freedom of information is a very important part of modern, open and accountable government. If we do not have that, then we are simply not up to standard. We discussed that at great length during the debate on the freedom of information bill.

It was interesting to read the comments by the Information Commissioner about the applications made by the opposition this year regarding the construction of the pedestrian footbridge; that a senior officer in the Department of the Premier and Cabinet appears to have given instructions to junior staff to coordinate the collection and delivery by the cabinet secretariat of every document relating to the South Bank pedestrian footbridge from all agencies that had any involvement with it.

We all have great faith in the Ombudsman. I wish the new Ombudsman, Mr Bevan, every success in the future. I also pay a compliment to and congratulate Fred Albietz who, in his term as Ombudsman, really engendered great confidence in this state that people could go to the Ombudsman's Office and receive a resolution of matters. But whereas we are debating this particular bill and expressing confidence in the system, we are also looking at some minor changes and modernising of existing legislation so that the Ombudsman's Office can work more effectively and more proactively.

I ask members to compare that with the freedom of information legislation. We know that there have been deliberate attempts to put every possible hurdle in front of the opposition or organisations that want access to freedom of information. And by adding those charges to take it out of the reach of people who have limited funds, it is a shame to see that blot on our system of government in Queensland when we do have a good ombudsman system. We have the Crime and Misconduct Commission, which we believe worked better as the stand-alone CJC in looking at misconduct. But today we are debating the Ombudsman Bill.

Fortunately, the Ombudsman is one of the cornerstones of open and accountable government which we agree is working well. We note that the services are free and open and that there is great respect and confidence in the Ombudsman and the Ombudsman's staff. On behalf of the opposition, I hope that this legislation, which we will be supporting, will provide that clarity and assistance to the Ombudsman's Office to enable it to undertake the often very difficult task that it undertakes and thank it for the assistance that it gives members of parliament in helping to resolve many issues on behalf of their constituents.