

Report No 14, July 1999

**Review of the *Report of the Strategic Review of the Queensland Ombudsman*  
(Parliamentary Commissioner for Administrative Investigations)**

**LEGISLATIVE ASSEMBLY OF QUEENSLAND**

**LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW  
COMMITTEE**

***Review of the Report of the Strategic Review  
of the Queensland Ombudsman***

**(Parliamentary Commissioner for Administrative Investigations)**

**July 1999**

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## LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

<b>REPORTS</b>		<b>DATE TABLED</b>
1.	Annual report 1995-96	8 August 1996
2.	Report on matters pertaining to the Electoral Commission of Queensland	8 August 1996
3.	Review of the Referendums Bill 1996	14 November 1996
4.	Truth in political advertising	3 December 1996
5.	Report on the Electoral Amendment Bill 1996	20 March 1997
6.	Report on the study tour relating to the preservation and enhancement of individuals' rights and freedoms and to privacy (31 March 1997—14 April 1997)	1 October 1997
7.	Annual report 1996-97	30 October 1997
8.	The Criminal Law (Sex Offenders Reporting) Bill 1997	25 February 1998
9.	Privacy in Queensland	9 April 1998
10.	Consolidation of the Queensland Constitution - Interim report	19 May 1998
11.	Annual report 1997-98	26 August 1998
12.	The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?	18 November 1998
13.	Consolidation of the Queensland Constitution: Final Report	28 April 1999
<b>ISSUES PAPERS</b>		<b>DATE TABLED</b>
1.	Truth in political advertising	11 July 1996
2.	Privacy in Queensland	4 June 1997
3.	The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights?	1 October 1997
<b>INFORMATION PAPERS</b>		<b>DATE TABLED</b>
1.	Upper Houses	27 November 1997

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The committee's contact details are:

Legal, Constitutional and Administrative Review Committee  
Parliament House  
George Street, Brisbane, Qld, 4000.  
Tel: (07) 3406 7307  
Fax: (07) 3406 7070  
E-mail: [lcarc@parliament.qld.gov.au](mailto:lcarc@parliament.qld.gov.au)

# LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

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SENIOR RESEARCH OFFICER:	Mr David Thannhauser
EXECUTIVE ASSISTANT:	Ms Tania Jackman

\* Dr Prenzler was appointed to the committee on 11 November 1998 having replaced Mr Charles Rappolt whose resignation from Parliament was received by the Speaker of the Legislative Assembly on 4 November 1998.

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## CHAIR'S FOREWORD

The role of Queensland's Parliamentary Commissioner for Administrative Investigations (commonly known as the Ombudsman) is to investigate citizens' complaints and grievances regarding administrative decisions and actions in Queensland's state and local government sectors. As the Ombudsman plays a vital role in ensuring the accountability and effective administration of government, the Ombudsman is an 'officer of Parliament'. Thus, it is to the Parliament not the Executive that the Ombudsman reports and is accountable.

In essence, the Ombudsman is intended to provide an independent, impartial, just, informal, speedy, cheap and effective avenue of administrative review.

In 1997, Professor Kenneth Wiltshire AO was appointed to conduct a strategic review of the Office of the Queensland Ombudsman. As the requirement to conduct strategic reviews was only introduced in 1995, this was the first such review of the Ombudsman since that Office's establishment in 1974.

In his May 1998 report on the strategic review, Professor Wiltshire concluded that the Ombudsman remains a fundamental element of our system of government and that the basic purpose of the Office, to ensure sound public administration, remains unchanged. However, the reviewer also found that certain matters regarding the Office and Queensland's administrative review system in general could be enhanced. The reviewer essentially proposes that there is considerable scope for the Ombudsman to become more proactive and preventative in the oversight of administrative action in Queensland and that Parliament, through the Legal, Constitutional and Administrative Review Committee (LCARC), should have a greater involvement in certain aspects of the Ombudsman's Office.

Given our statutory responsibilities in relation to the Ombudsman specifically and administrative review reform generally, we decided to conduct a review of Professor Wiltshire's report. Our review has enabled Parliament to have some input into a review of one of its officers, the consequences of which, it is hoped, will provide a better service to the public of Queensland via higher standards of government administration.

In reviewing the strategic review report, our report essentially canvasses three broad areas.

Firstly, we agree with the reviewer that a number of specific measures should be undertaken to enhance administrative review in Queensland. In this regard, we endorse the reviewer's recommendations relating to increasing community and government agency awareness about the Ombudsman's role and powers (and limits on those powers), and enhancing systems of internal review of administrative decisions. We also urge the government to rationalise the administrative appeal mechanisms in Queensland with a view to streamlining and diminishing the complexity and cost of the administrative appeals machinery.

Secondly, the reviewer makes a number of recommendations concerning the operation and management of the Ombudsman's Office. Of course, the committee is desirous that the Ombudsman's Office is operating to maximum efficiency and effectiveness, especially given the current backlog of complaints. The Office received a substantial boost in funding in the 1998-99 budget which has seen the Office's staffing increase by over 50%. However, the strategic review while touching on the Office's performance did not extend to a full management review *per se*. In



these circumstances, we have recommended that the Premier, as the minister responsible for the *Parliamentary Commissioner Act*, commission an external management review of the Office.

Finally, we agree with the reviewer's overall sentiment that Parliament's ties with the Ombudsman should be strengthened via the LCARC. From our review it has become apparent that the statutory provisions regarding the relationship between the committee and the Ombudsman are uncertain and need to be clarified. Given the importance of ensuring the Ombudsman's independence from the Executive and accountability to Parliament, we believe that our recommendation in this regard should be implemented as a matter of priority.

We believe that the strategic review process has been an effective and worthwhile process highlighting a number of areas in which constructive reform can be considered and made. We trust that the Parliament finds our input into this review to be of merit.

On behalf of the committee, I would like to thank the former and current Premiers, the Hon Rob Borbidge MLA and the Hon Peter Beattie MLA respectively, the Queensland Ombudsman, Mr Fred Albietz, the strategic reviewer, Professor Kenneth Wiltshire and the New Zealand Chief Ombudsman, Sir Brian Elwood, for their assistance during the committee's inquiry. I also thank those who made submissions to the committee for their valuable input, and the committee's staff, Ms Kerryn Newton (Research Director), Mr David Thannhauser (Principal Research Officer), and Ms Tania Jackman (Executive Assistant) for their assistance throughout this review.

Finally, I thank my fellow committee members for their continuing hard work and dedication in ensuring that the committee fulfils its responsibilities.

Gary Fenlon MLA  
Chair

July 1999

## 1. INTRODUCTION

The Legal, Constitutional and Administrative Review Committee ('LCARC'<sup>1</sup> or 'the committee') is established by the *Parliamentary Committees Act 1995* (Qld). The LCARC's main role is to 'deal with' issues within its areas of responsibility.<sup>2</sup> The *Parliamentary Committees Act* provides that the LCARC's areas of responsibility are: administrative review reform; constitutional reform; electoral reform; and legal reform.<sup>3</sup> The LCARC is also required to deal with an issue referred to it by the Assembly or under another Act, whether or not the issue is within its areas of responsibility.<sup>4</sup>

The committee's area of responsibility in relation to administrative review reform is further defined by the *Parliamentary Committees Act* to include considering legislation or provisions of legislation about matters including review of administrative decisions.<sup>5</sup>

In addition to its 'reform' responsibilities, the LCARC has certain specific statutory functions in relation to Queensland's Parliamentary Commissioner for Administrative Investigations ('the Ombudsman').

Pursuant to the *Parliamentary Commissioner Act 1974* (Qld), the Ombudsman's role is to investigate complaints or grievances involving administrative decisions and actions of public sector agencies and to recommend remedial action where appropriate. As the Ombudsman helps to ensure the effective administration of government, the Ombudsman reports to Parliament, not to the Executive. To ensure the Ombudsman's independence, the Ombudsman's appointment and removal involves a parliamentary process. For these reasons, the Ombudsman is often described as an 'officer of Parliament'.<sup>6</sup> However, the Premier is responsible for the administration of the *Parliamentary Commissioner Act*.

The *Parliamentary Commissioner Act* requires the LCARC to be 'consulted':

- by the Premier about the process of selection for appointment and the actual appointment of the Ombudsman;<sup>7</sup>
- about, and 'agree' to, any motion to be moved by the Premier in the Legislative Assembly for the Governor to remove or suspend the Ombudsman from office;<sup>8</sup>
- by the Treasurer in developing the proposed budget of the Ombudsman for each financial year;<sup>9</sup> and
- by the Premier about the appointment of a person to conduct a strategic review of the Ombudsman and the terms of reference for that review.<sup>10</sup>

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<sup>1</sup> Whilst the strategic review report refers to the committee by the abbreviation PLCAR, the committee's commonly used acronym is LCARC and this is the abbreviation used throughout this report.

<sup>2</sup> *Parliamentary Committees Act*, s 8(1).

<sup>3</sup> These areas of responsibility are set out in the *Parliamentary Committees Act*, s 9 and expanded upon in ss 10-13 of that Act.

<sup>4</sup> *Parliamentary Committees Act*, s 8(2).

<sup>5</sup> *Parliamentary Committees Act 1995*, s 10(1). However, s 10(2) stipulates that the committee does not have the power to investigate or review particular complaints or decisions of officers such as the Ombudsman.

<sup>6</sup> The *Parliamentary Commissioner Act*, s 5(1) actually states that the Ombudsman shall be appointed as 'an officer of Parliament'. However, the Ombudsman's investigations are not 'parliamentary investigations', do not attract parliamentary privilege and are subject to judicial review.

<sup>7</sup> *Parliamentary Commissioner Act*, ss 5(6)(b).

<sup>8</sup> *Parliamentary Commissioner Act*, ss 6(3) and (6). Agreement to a motion to remove or suspend the Ombudsman must be obtained from a majority of members of the committee other than a majority consisting solely of the members of the political party or parties in government in the Assembly.

<sup>9</sup> *Parliamentary Commissioner Act*, s 31(3).

<sup>10</sup> *Parliamentary Commissioner Act*, s 32(5).

The LCARC is therefore a conduit through which the Queensland Ombudsman accounts to Parliament. By the same token, the LCARC is also in a position to provide parliamentary support to the Ombudsman.

It is relevant to note that the parliamentary Public Accounts Committee (PAC) has a similar role, and performs similar functions, in relation to the Auditor-General, another ‘officer of Parliament’. Reference to this parallel relationship is made in various parts of this report.

## **1.1 THE REQUIREMENT TO CONDUCT STRATEGIC REVIEWS**

Under s 32 of the *Parliamentary Commissioner Act*, a strategic review of the Ombudsman is to be conducted at least every five years. The Governor in Council is required to appoint an ‘appropriately qualified person’ to undertake the review, and decide the terms of reference for the review. As noted above, before a person is appointed to conduct a review, the Premier must consult with the LCARC and the Ombudsman about: (a) the appointment of the person; and (b) the terms of reference for the review.

In conducting the review, the reviewer has the powers that an authorised auditor has under the *Financial Administration and Audit Act 1977* (Qld) [the ‘FAA Act’] for an audit of an entity. Further, the FAA Act and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

On completing the review, the reviewer is required to give a report on the review to the Premier and the Ombudsman. (A special procedure must be followed if the reviewer proposes to include ‘a matter of significance’ in the report.) The Premier is required to table the report in the Legislative Assembly within 3 sitting days after receiving the report.

However, while s 32 sets out these requirements for the conduct of regular strategic reviews, the Act neither defines the term ‘strategic review’ nor provides guidance as to what might be involved in such a review. Moreover, the statutory requirement to conduct such a review in relation to an Ombudsman is unique in Australia.<sup>11</sup>

The committee discusses the concept of strategic reviews in some detail in chapter 2 of this report.

## **1.2 THE INAUGURAL STRATEGIC REVIEW OF THE OMBUDSMAN**

In June 1997, the then Premier, the Hon Rob Borbidge MLA, advised the former LCARC that a strategic review of the Ombudsman would be conducted early in the 1997/98 financial year. In accordance with s 32 of the *Parliamentary Commissioner Act*, the Premier provided the committee with draft terms of reference for the review for the committee’s comment.

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<sup>11</sup> However, there have been a number of reviews of Australian Ombudsmen. In 1991, the Senate Standing Committee on Finance and Public Administration conducted a review of the Office of the Commonwealth Ombudsman, *Review of the Office of the Commonwealth Ombudsman*, AGPS, Canberra, December 1991. In 1993, the NSW Joint Committee on the Office of the Ombudsman engaged external consultants to conduct a management review of the NSW Ombudsman’s Office, *Inquiry into the adequacy of the funds and resources available to the Ombudsman*, September 1993. The South Australian Ombudsman has recently called for a review of his office similar to the strategic review of the Queensland Ombudsman. South Australian Ombudsman, *26<sup>th</sup> Annual Report 1997/98*, 30 June 1998, p 10.

After considering the terms, the committee sought some amendments in relation to its involvement in the review.<sup>12</sup> In accordance with the former committee's request, the terms of reference were amended to require that:

- the committee be provided with a copy of the interim reports and the final report of the reviewer before tabling; and
- the reviewer liaise with the LCARC throughout the review process.

A copy of the (final) terms of reference for the strategic review appear as Appendix A to this report.

The Premier subsequently consulted with, and gained approval from, the committee regarding the appointment of Professor Kenneth Wiltshire to conduct the review.

Professor Wiltshire conducted the strategic review over the Christmas 1997 period. In accordance with the amended terms of reference, Professor Wiltshire met with the former committee on two occasions during his review to discuss matters relating to the review. The former LCARC was also provided with Professor Wiltshire's two progress (interim) reports and given the opportunity to peruse Professor Wiltshire's final draft report relating to the strategic review. The former committee requested some *factual* amendments with respect to the final draft report, noting that other issues (some of which directly concerned the committee) should be raised in its own separate review of the final report.

Professor Wiltshire's final report on his strategic review was tabled in Parliament in May 1998.<sup>13</sup> The 48<sup>th</sup> Parliament dissolved for the 1998 State election prior to the former committee resolving to conduct a review of that report.

### **1.3 THIS COMMITTEE'S REVIEW OF THE STRATEGIC REVIEW REPORT**

At its first meeting on 6 August 1998, the LCARC of the 49<sup>th</sup> Parliament considered Professor Wiltshire's *Report of the Strategic Review of the Queensland Ombudsman*. In particular, the committee noted:

- a number of the review recommendations directly concerned the committee and the committee's relationship with the Ombudsman (see review recommendations 1, 2, 3, 4, 12, 15, and 16);
- the review as a whole focused on one of the most important avenues of administrative review in this State, namely, the Queensland Ombudsman. Therefore, considering the review fell within—and indeed was a key part of—the committee's administrative review reform responsibility; and
- in order for the committee to meaningfully fulfil its statutory role in relation to the development of the Ombudsman's budget, the committee needs to be informed about matters such as factors influencing demand for the Ombudsman's services and the effectiveness and efficiency of the Ombudsman's Office. Considering the issues raised in the strategic review report would, to some extent, inform the committee of these matters.

Therefore, given the committee's responsibilities in relation to the Ombudsman and administrative review reform generally, the committee resolved at that meeting that it would review Professor

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<sup>12</sup> In seeking these amendments, the committee was mindful of the initial recommendation regarding strategic reviews. The development of the strategic review requirement is discussed more fully in chapter 2.

<sup>13</sup> *Report of the Strategic Review of the Queensland Ombudsman* ('Review report'), Government Printer, Brisbane, May 1998.

Wiltshire's report. Specifically, the committee resolved to undertake a review of the May 1998 *Report of the Strategic Review of the Queensland Ombudsman* as performed in accordance with s 32 of the *Parliamentary Commissioner Act* to:

- evaluate the recommendations made therein;
- comment on other findings of the review where appropriate; and
- recommend any desirable changes to s 32 or to the strategic review process.

The committee called for public submissions to its review by advertising in *The Courier-Mail* on 12 August 1998 and directly writing to interested parties requesting their comments on the recommendations made in the report. A copy of the executive summary and summary of the review recommendations was provided to potential submitters. Submissions closed on 18 September 1998.

The committee received a substantial number of submissions in response. A list of the names of those who made non-confidential submissions which the committee has authorised for publication and tabled appears as Appendix B.

As part of its review, the committee also met (and corresponded) with the Queensland Ombudsman, Mr Fred Albietz, and the reviewer, Professor Wiltshire, on a number of occasions to discuss issues arising out of the review report.

In addition, in June 1999 the committee undertook a study tour to New Zealand primarily in relation to its current review of the *Freedom of Information Act 1992* (Qld). While in New Zealand the committee took the opportunity to canvass with the New Zealand Chief Ombudsman and others issues relevant to the strategic review.

## **1.4 FORMAT OF THIS REPORT**

In chapter 2 of this report the committee discusses the concept of a strategic review and the terms of reference of the current review. In chapter 3 the committee makes some general observations regarding the review and discusses some significant matters which have occurred since the tabling of the review report. Much of the information in chapter 3 is pertinent to the committee's discussion in the remainder of the report.

Chapters 4 to 9 canvass the body of the review report. To make this report easily understood alongside the review report, the committee has generally sought to address the review recommendations *in seriatim* under appropriate headings. These headings are reflected in the titles of chapters 4 to 9 of this report, namely:

Chapter 4 - The Ombudsman's interface with Parliament

Chapter 5 - Specific measures to enhance administrative review in Queensland

Chapter 6 - 'Own motion' investigations and performance indicators

Chapter 7 - Management structures and systems

Chapter 8 - Office resources

Chapter 9 - The Queensland 'public administration appeal maze'.

In chapter 10 the committee comments on other matters arising out of the strategic review. The committee comments on the strategic review process in its concluding chapter 11.

## 2. WHAT IS A STRATEGIC REVIEW?

As noted in chapter 1, the term strategic review is not defined in the *Parliamentary Commissioner Act*. The lack of a definition of this term has caused some confusion as to the proper scope or nature of the review. Therefore, the committee has sought to gain an appreciation of the legislative intention behind the strategic review requirement. The committee, at the end of the following discussion, concludes that the term ‘strategic review’ requires broad statutory definition.

### 2.1 THE ORIGIN OF SECTION 32

The s 32 requirement to conduct strategic reviews stems from the 1991 report of the former Electoral and Administrative Review Commission (EARC), *Report on review of public sector auditing in Queensland*.<sup>14</sup> In that report, EARC examined aspects of both internal and external audits in Queensland’s public sector. Among other matters, EARC recommended that the Auditor-General be enabled to conduct ‘performance audits’ into the activities of public sector entities to determine whether those activities were being carried out effectively, economically and efficiently and in compliance with all applicable laws.<sup>15</sup>

EARC also noted that although some external scrutiny procedures would apply to the then proposed Queensland Audit Office (QAO)—through the tabling of its rules, the annual budget review process by the parliamentary Public Accounts Committee (PAC) and the presentation of an annual report—the QAO itself would not be subject to external performance audit.<sup>16</sup>

Consequently, EARC recommended that the *Financial Administration and Audit Act* (FAA Act) be amended to provide that a performance audit of the QAO by an external auditor be commenced within one year after the commencement of the section and thereafter at least once every five years. EARC also made additional recommendations as to the conduct of this performance audit. The underlying premise of EARC’s recommendations was that this performance audit would be conducted on behalf of the PAC.<sup>17</sup>

EARC’s report was subsequently reviewed by the parliamentary committee charged with overseeing EARC, the Parliamentary Committee for Electoral and Administrative Review (PCEAR). The PCEAR largely endorsed EARC’s recommendations.<sup>18</sup>

As a result of recommendations made in these reports, the FAA Act was substantially amended in 1993. While EARC’s recommendation that the Auditor-General conduct performance audits of public sector entities was not accepted by the government of the day<sup>19</sup>, three processes giving the Parliament, via the PAC, a greater role to oversee the QAO were effected by these statutory amendments. Firstly, the PAC was to be ‘consulted’ in relation to the appointment and, if

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<sup>14</sup> Electoral and Administrative Review Commission (EARC), *Report on review of public sector auditing in Queensland*, Government Printer, Brisbane, September 1991.

<sup>15</sup> *Ibid*, p 105.

<sup>16</sup> *Ibid*, p 181.

<sup>17</sup> *Ibid*, pp 181-182.

<sup>18</sup> Parliamentary Committee for Electoral and Administrative Review, *Public Sector Auditing*, Government Printer, Brisbane, December 1991.

<sup>19</sup> Instead, a ‘performance management system’ audit model was subsequently introduced. This model recognises that it is primarily management’s responsibility to report to Parliament about performance. See the report of the Public Accounts Committee, *Review of the Report of the Strategic Review of the Queensland Audit Office*, Report no 44, Government Printer, Brisbane, April 1998, pp 4-5.

necessary, the removal and suspension of the Auditor-General.<sup>20</sup> Secondly, a provision was inserted requiring the Treasurer to consult with the PAC in developing the proposed budget of the QAO.<sup>21</sup> Thirdly, s 72 of the FAA Act required the conduct of ‘strategic reviews’ of the QAO.<sup>22</sup>

In 1995, the Parliament passed the *Parliamentary Committees Act* which, in amending the *Parliamentary Commissioner Act*, gave the LCARC a similar responsibility to oversee (and support) the Queensland Ombudsman. The reason for the adoption of these provisions was explained by the then Premier, the Hon Wayne Goss MLA, in the Second Reading Speech for the then Parliamentary Committees Bill as follows:

*Two years ago, the Government introduced new laws to give the Parliament, through the Public Accounts Committee, greater powers to oversee the work of the Auditor-General. The Public Accounts Committee was given a role in the selection of the Auditor-General, in developing the Auditor-General’s annual budget, and in overseeing periodic strategic reviews of the Audit Office. However, while the Parliament now has a mechanism to review and support the work of its Auditor-General, it has no similar mechanism to review and, where appropriate, support the Ombudsman. The Bill deals with this anomaly by giving the LCARC the same powers in relation to the Ombudsman that the PAC has with respect to the Auditor-General.*<sup>23</sup> [Emphasis added.]

Notably, the term ‘strategic review’ is used in both the FAA Act and the *Parliamentary Commissioner Act* instead of EARC’s term ‘performance audit’. However, both provisions regarding strategic reviews are based on EARC’s proposed section regarding the conduct of performance audits of the QAO. The reason for this change in terminology is unclear.<sup>24</sup>

The explanatory notes to the Bill which introduced the amendments to the FAA Act in 1993, noted that the then Public Sector Management Commission would have no authority to undertake a management review of the QAO, except where invited to do so by the Auditor-General.<sup>25</sup> The reason being that: ‘It is not considered appropriate that an agency of Executive Government should have the capacity to review the Audit Office, except at the invitation of the Auditor-General’.

However, the explanatory notes went on to state that ‘as an alternative to review by the [then] Public Sector Management Commission, the Bill provides for the Premier to appoint an appropriately qualified person to undertake a strategic review of the Audit Office at least once every five years’.<sup>26</sup> On this basis, it might be assumed that strategic reviews, performance audits and management reviews are essentially the same.

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<sup>20</sup> See the *Financial Administration and Audit Act*, sections 50 and 57 which set out identical processes to those which apply to the appointment, removal and suspension of the Queensland Ombudsman.

<sup>21</sup> See the *Financial Administration and Audit Act*, s 68 which sets out an identical process to that which applies to the formulation of the Queensland Ombudsman’s budget.

<sup>22</sup> See the *Financial Administration and Audit Act*, s 72 which sets out an identical process to that which applies to the conduct of strategic reviews of the Queensland Ombudsman’s Office. The inaugural strategic review of the QAO was conducted in 1997. The report on that review was tabled in Parliament in July 1997. The PAC subsequently undertook a review of that report and reported to the Parliament in April 1998. Public Accounts Committee, *Review of the report of the strategic review of the Queensland Audit Office*, op cit.

<sup>23</sup> Parliamentary Committees Bill 1995, *Queensland Parliamentary Debates*, Second Reading Speech, Hon. W K Goss MLA, 7 September 1995, p 63.

<sup>24</sup> Although this might be explained by the fact that the government did not accept EARC’s recommendation that the Auditor-General conduct performance audits of public sector entities.

<sup>25</sup> See now the *Public Service Act 1996* (Qld), s 29 which provides that the Premier may authorise a person to conduct a ‘management review’ (or review of functions or activities) of a public sector unit. The *Financial Administration and Audit Act*, s 71 provides that a management review may be conducted under the *Public Service Act* in relation to the QAO only at the Auditor-General’s request.

<sup>26</sup> Explanatory notes to the Audit Legislation Amendment Bill 1992 (later Act no 9 of 1993).

Yet, the use of the word 'strategic' also denotes some element of assessing the future direction and outcomes of the Office. 'Strategic plans' for public sector agencies are required to provide for matters including:

- identifying the agency's purpose and role;
- identifying the future position the agency wants to achieve by the end of the time frame covered by the plan;
- identifying and analysing the impact of key issues on the agency's operations;
- identifying the goals the agency must achieve to attain the future position it wants to achieve;
- deciding the strategies to achieve each goal;
- deciding how to implement each strategy; and
- setting performance indicators for reviewing the progress towards achieving each goal.<sup>27</sup>

Clearly, an office's ability to fulfil its planned 'strategic direction' is dependent on the office's economy, efficiency and effectiveness. For this reason, the committee sees an assessment of 'performance' as an integral part of a wider strategic review of an office.

## **2.2 THE TERMS OF REFERENCE OF THE CURRENT REVIEW AND THE NEED TO CLARIFY S 32**

The terms of reference for the current review demanded the reviewer undertake some assessment of management practices within the Office of the Ombudsman. For example, objective 5—to provide advice and recommendations on the performance measures and performance reporting that should be applied in determining and monitoring the efficiency and effectiveness of the Office; and objective 6—to provide advice and recommendations on other management issues during the review including demand management techniques, organisational culture, workplace and management practices.

In fact, the Ombudsman, in his submission to the committee, noted that the review seemed to touch more on management issues than strategic issues as a result of the terms of reference. The Ombudsman noted that a difficulty the reviewer faced in conducting the strategic review was that objectives 2-6 of the terms of reference closely resembled objectives 1-5 of the terms of reference for the *management* review of the New South Wales Ombudsman conducted in 1993.<sup>28</sup>

Yet, the reviewer did not conduct a full management review of the Ombudsman's Office. The reviewer stressed in his report that this was a strategic review and 'not a management or operational/procedural review' and that a 'great many points which were raised with the Reviewer, especially by the staff and former staff, fell outside the scope of the Review but were noted'.<sup>29</sup> Although, the reviewer also noted that some management issues impacted significantly on the strategic direction of the Office and therefore fell within the terms of reference of the review.<sup>30</sup>

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<sup>27</sup> See the *Financial Management Standard 1997*, standard 18(1).

<sup>28</sup> Queensland Ombudsman submission dated 18 September 1998, pp 2-3. The Ombudsman also noted in his submission that there were other matters of a wider, strategic nature not addressed by the review. The Ombudsman provided the committee with a supplementary submission dated 23 March 1999 stating what he considered those matters to be. This is discussed further in chapter 10.

<sup>29</sup> Review report, op cit, p 5.

<sup>30</sup> Ibid, p 67.



The committee discusses the reviewer's recommendations which concern 'management' in chapter 7 of this report. However, from the discussion already it is evident that there is a need to clarify the scope of a strategic review as that term appears in s 32 of the *Parliamentary Commissioner Act*.

The committee has already noted its belief that an assessment of 'performance' is an integral part of a wider strategic review of an office. In addition, it seems that the appropriate way in which a review of the Ombudsman's Office is undertaken is under s 32 of the *Parliamentary Commissioner Act*.<sup>31</sup> That way, the LCARC (and the Ombudsman) must be consulted about the appointment of a person to conduct the review and about the terms of reference for the review.

This ensures the independence of the Ombudsman as an officer of Parliament. However, it also leads the committee to conclude that a strategic review should, by definition, clearly encompass both a review of the strategic direction of the Office and the performance of the Office. As already noted, this was apparently the legislative intention behind the introduction of the initial strategic review requirement.

### **2.3 COMMITTEE RECOMMENDATION 1**

**The committee recommends that the Premier, as the minister responsible for the *Parliamentary Commissioner Act 1974 (Qld)*, amend that Act to broadly define the term 'strategic review'. In particular, the committee recommends that a strategic review should include, but not be limited to, a review of:**

- **the purpose and role of the Office of the Ombudsman and provide advice and recommendations on the strategic direction of the Office; and**
- **the performance of the Office, including management and administrative processes and procedures, to ensure that its activities and objectives are being carried out economically, efficiently and effectively.**

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<sup>31</sup> Under s 29 of the *Public Service Act 1996 (Qld)* the Premier may authorise a person to conduct a 'management review' (or review of functions or activities) of a public sector unit. However, the *Public Service Act* does not apply to the Ombudsman or the Ombudsman's officers. *Parliamentary Commissioner Act*, ss 7(5), 8(4) and 10(2).

### **3. GENERAL OBSERVATIONS**

The thrust of the strategic review report is that there is still a need for an Ombudsman as an accessible avenue of review to citizens aggrieved by, or concerned about, the exercise of administrative discretion and that a number of the Office's features are laudatory. However, the review also concludes that certain matters regarding the Ombudsman's Office need to be addressed or enhanced including:

- delay, undue formality in complaint handling and the rising backlog in complaints which has been unsatisfactorily addressed by temporary funding; and
- the efficiency, effectiveness and resourcing of the Ombudsman's Office.

In order to address these problems, the reviewer essentially proposes:

- the Ombudsman adopt a more pro-active, systematic and preventative approach and promote a greater understanding of the Office's role in the government and the community; and
- greater involvement of Parliament through the LCARC in: the strategic direction of the Ombudsman's Office; the budget estimates for the Ombudsman's Office; and the Ombudsman's reporting regime.

In addition, the reviewer notes that there needs to be a wider review of the 'public administration maze' in Queensland.

#### **3.1 A MORE PROACTIVE, SYSTEMIC AND PREVENTATIVE OMBUDSMAN**

As noted above, a key conclusion of the review for the future strategic direction of the Queensland Ombudsman is that the Ombudsman needs to become more proactive, systemic and preventative. Given that a number of the review recommendations flow from this central conclusion, the committee observes at the outset that the Ombudsman and the reviewer differ in their conception of a 'proactive, systemic and preventative' Ombudsman.

In his report, the reviewer examines the recent direction taken in other Ombudsman's offices, in response to contemporary mores and milieux, and concludes that the Ombudsman needs to take a proactive, rather than reactive, approach to 'identify the systemic faults in the system of governance which give rise to citizens' complaints and to rectify those faults'.<sup>32</sup> The reviewer notes that the Queensland Ombudsman has started to adopt this approach in 'an incremental and embryonic manner' but that the Ombudsman now needs to pursue these objectives in 'an holistic way'.<sup>33</sup>

The reviewer also recognises that achieving this goal would require some deviation from the traditional notion of the Ombudsman and that the Ombudsman would need to employ strategies which are systemic in nature rather than individual-case orientated. To this end, the reviewer sees the Ombudsman as more a consultant and adviser to departments and agencies.<sup>34</sup> Further, the reviewer envisages the Ombudsman undertaking more research, conducting more 'own motion' investigations and focusing on 'early intervention' in complaint handling.<sup>35</sup>

On the other hand, the Ombudsman stresses to the committee that the Queensland Ombudsman has, in fact, been and will continue to be 'proactive, systemic and preventative' in fulfilling the external

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<sup>32</sup> Review report, op cit, p 16.

<sup>33</sup> Ibid, p 32.

<sup>34</sup> Ibid, pp 16 and 32.

<sup>35</sup> See review recommendations 13 and 18.

review responsibilities of the Office. In his initial submission to the committee the Ombudsman stated:

*...the Queensland Ombudsman has three particular goals specified in the Strategic and Operational Plan of the Office and these are -*

- 1. Administrative Justice for Queenslanders;*
- 2. Improvement in Public Administration in Queensland; and*
- 3. Access to and Awareness of the Ombudsman's Services.*

*I stress that the Queensland Ombudsman, at least since 1991, has adopted a "proactive, systemic and preventative" strategy in endeavouring to achieve the first and second goals. Whenever a particular complaint is investigated the relevant legislation, administrative policies and practices are also examined with a view to detecting whether these are defective or give rise to maladministration and whether administrative changes should be sought to prevent similar complaints occurring. In reporting annually to Parliament reference has been made to this strategy. For example the 1990/91 Ombudsman's Annual Report mentioned the achievement of three legislative changes and 10 administrative changes during that year whereas the 1991/92 report and 1992/93 report mentioned the achievement of 16 and 25 administrative changes respectively and so on.<sup>36</sup>*

The Ombudsman also points out that he has developed a number of strategies designed to detect systemic or generic complaints and 'nip them in the bud'. These strategies include:

- 'breach codes' which attempt to categorise complaints with some specificity so as to detect underlying administrative misbehaviour. This information is then passed on to agencies for their information and with suggestions as to improvement; and
- 'report cards' which the Ombudsman issues to agencies and which provide a basis for discussion of any systemic issues which might be detected.<sup>37</sup>

The Ombudsman disagrees with what he sees as the major underlying theme and assumption of the review that discernible trends in public administration are revealed by the Ombudsman's investigations and that significant systemic issues as identified by complaints are occurring frequently.<sup>38</sup> The Ombudsman advises the committee that, whilst this might be so in some jurisdictions (particularly the Commonwealth), this is generally not the case in Queensland. The Ombudsman further states that, from his experience, there would be at most 20 to 25 administrative systemic changes on average identified and rectified per annum. The Ombudsman describes as a 'gross exaggeration' the comment at page 44 of the report that 'there are clear systemic faults lying behind a good many of the individual cases they [Ombudsman staff] investigate'.<sup>39</sup>

The committee is not in a position to make an assessment of the extent to which trends or systemic issues in public administration in Queensland might become apparent to the Ombudsman as a result of the Ombudsman's investigations. Nevertheless, the committee does agree that it is important that the Ombudsman be proactive in identifying faults underlying complaints that come to the Office and, where those faults are indicative of a systemic fault in the system of governance, the Ombudsman pursue and rectify those faults. The committee might add that the Ombudsman is evidently mindful of this aim. The Ombudsman assures the committee that even after his Office resolves an issue, the Office perseveres until it identifies and rectifies the causative deficiency or administrative practice.

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<sup>36</sup> Queensland Ombudsman submission dated 18 September 1998, p 2.

<sup>37</sup> Ibid, pp 6-7.

<sup>38</sup> Ibid, p 3.

<sup>39</sup> Ibid, p 7 and p 12.

Throughout this report the committee responds—to the extent it sees possible—to the reviewer’s specific recommendations which relate to this proactive, systemic and preventative approach.

### **3.2 THE OMBUDSMAN’S 1998/99 BUDGET**

Since the handing down of the review report, the Ombudsman’s 1998/99 budget has been approved by Parliament. The Ombudsman’s budget for 1998/99, which comes under a combined program with the Office of the Information Commissioner, is \$5.183M. This represents an increase of \$1.86M (55.9%) over the 1997/98 budget allocation of \$3.323M.

According to the Premier’s ministerial portfolio statement, the Ombudsman received, as part of the 1998/99 budget:

- a \$0.344 permanent increase to base funding for additional permanent investigators ‘to address higher level public demand for services provided by this Office’ (partially offset by \$0.211M provided under temporary funding arrangements in 1997/98); and
- ‘special allocation’ funding of \$1.631M to ‘overcome excessive delays and the serious backlog in the conduct of investigations’ including a one-off amount of \$0.547M for additional accommodation and computer infrastructure and \$0.08M for a structural/classification review.

As a result of this additional funding, the Ombudsman has recently secured additional office space and additional staff. As at 30 June 1998, the Office comprised 24 permanent and 6 temporary staff. As at 30 June 1999, the Office comprised 37 permanent and 11 temporary staff. Therefore, of these 18 new staff, 13 are permanent and 5 temporary.

The committee comments on this increased funding, the manner in which it is to be employed and its resultant, non-financial consequences throughout this report.

### **3.3 CHANGES TO THE OFFICE STRUCTURE AS A RESULT OF THE 1998/99 BUDGET**

Since 1991, the Ombudsman’s Office has been divided into two major divisions—the State Government Division and the Local Government Division. Each of these divisions is headed by a Deputy Ombudsman. These divisions are supported by a Corporate and Research Division. (The Office’s organisational structure appears as Appendix B of the review report.)

As a result of the 1998/99 additional funding (and hence staffing), the Ombudsman advises the committee that the Office has been slightly restructured so that:

- the State Government Division now comprises three teams with team leaders at the AO8 level being supervised/mentored by a Deputy Ombudsman but with greater delegations of responsibility; and
- the Local Government Division comprises two teams with team leaders at the AO8 level being supervised/mentored by a Deputy Ombudsman but with greater delegations of responsibility.

The committee notes that this new team structure impacts on a number of review recommendations, particularly review recommendation 23. This is discussed further in chapter 7.

### **3.4 THE COMMITTEE'S OVERALL RESPONSE TO THE REVIEW**

The committee is particularly desirous that the current backlog of complaints in the Ombudsman's Office is cleared and does not recur. Reaching this goal is dependent not only on adequate resources for the Ombudsman's Office, but also on intra-office efficiency achieved via the employment of appropriate strategies and systems. (Such strategies and systems are discussed further in chapters 6 and 7.) Also integral to achieving this goal is the employment of strategies within the wider public sector aimed at reducing the Office's overall workload. (Such strategies are discussed further in chapter 5.) Addressing both of these pre-requisites is particularly important given that the Ombudsman's Office currently reports unprecedented demand for its services.<sup>40</sup>

Although there has already been positive change made in the Ombudsman's Office since the tabling of the review report, there are a number of aspects of the Ombudsman's Office which the committee feels, if modified, would enhance administrative review in Queensland. The committee's specific concerns are discussed under the relevant recommendation headings which follow. However, two general observations underpin many of the committee's concerns.

Firstly, the committee envisages that the Ombudsman's role should be one of an intermediary/problem solver. Where possible, the Ombudsman should seek to resolve complaints using informal complaint resolution techniques and avoid a judicial/adversarial approach (as the strategic review report suggests currently exists).

The committee appreciates that the Ombudsman's task is a difficult one and that a number of factors push the Ombudsman towards an adversarial and legalistic approach. Disputes over the handling of matters by government can and do lead to adversarial responses and to agencies and their clients taking entrenched positions. However, the Ombudsman is in a unique situation as an objective third person to provide simple solutions which the parties themselves have either failed to recognise or are, as yet, unpersuaded to adopt. The committee believes that the value of the Ombudsman as an intermediary should not be underestimated and that the Ombudsman should take advantage of this position wherever possible.<sup>41</sup>

Secondly, the committee agrees with the reviewer's general suggestion that the LCARC should have a stronger relationship with the Ombudsman. The committee should take an active and on-going interest in the functioning and strategic direction of the Office. A strengthened bi-lateral relationship will not only support the Ombudsman in his role in ensuring the healthy administration of government in this State, but will also assist the Parliament in ensuring the Ombudsman's accountability.

The committee has already raised with the Ombudsman its proposal for a stronger relationship and gained the Ombudsman's cooperation in this regard. (The committee comments further on the Ombudsman's interface with Parliament in chapter 4.)

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<sup>40</sup> In his 1997/98 annual report, the Queensland Ombudsman noted that in the year more complaints were lodged with the Office than ever before. Queensland Ombudsman, *1997/98 24<sup>th</sup> Annual Report to Parliament*, Government Printer, Brisbane, 1998.

<sup>41</sup> The Commonwealth Ombudsman is acutely aware of the advantage of the Ombudsman as an intermediary. See the Commonwealth Ombudsman's *Annual Report 1997-98*, Canberra, 1998, p 28.

## 4. THE OMBUDSMAN'S INTERFACE WITH PARLIAMENT

Chapter 1 of this report explains the LCARC's responsibilities in relation to the Queensland Ombudsman. These responsibilities enhance the independence of the Ombudsman (as an officer of Parliament) from the Executive which the Ombudsman effectively scrutinises.

The review report stresses the need for the Ombudsman to have a strong link to Parliament if the true nature and role of the Ombudsman is to be maintained. In this regard the reviewer describes the LCARC as the 'lynchpin of an increased involvement by the Queensland Parliament in the future strategic direction of the Ombudsman'.<sup>42</sup> Review recommendations 1 to 4 are designed to bring about a closer relationship between the Queensland Ombudsman and the Queensland Parliament via the LCARC. The reviewer intends through these recommendations to both provide support for the Ombudsman from the 'parliamentary family' and to foster the Ombudsman's accountability to Parliament.

In various of his annual reports, the Ombudsman has been publicly supportive of the relationship between the committee and the Ombudsman's Office, acknowledging the committee's role in developing the Office's budget and ensuring the Office's independence. In his submission to this review, the Ombudsman stressed the importance of maintaining the Ombudsman's independence from government.<sup>43</sup>

### 4.1 OMBUDSMEN PARLIAMENTARY COMMITTEES

The reviewer notes that by international and even national standards the involvement of the Queensland Parliament with its Ombudsman is 'extremely low',<sup>44</sup> particularly regarding the Ombudsman's budget and the debate of the Ombudsman's annual reports. In the course of considering the LCARC's current and future relationship with the Queensland Ombudsman, the committee has studied the relationship of Ombudsmen with their respective Parliaments in other Westminster-based jurisdictions. In particular, the committee has studied the following jurisdictions.

Britain. The Select Committee on Public Administration is responsible for, among other matters, examining reports of the Parliamentary Commissioner for Administration and Parliamentary Ombudsman for Northern Ireland which are tabled in Parliament and matters 'in connection therewith'.<sup>45</sup> In this regard, the committee meets with the Ombudsmen and tables a report on its examination of the Ombudsmen's reports (together with a transcript of its Ombudsmen meetings).<sup>46</sup>

New Zealand. In New Zealand funding for the Office of the Ombudsmen is provided directly through Parliament via the Officers of Parliament Committee.<sup>47</sup> Whilst in New Zealand the committee met with the Speaker of the New Zealand House of Representatives in his capacity of chair of the Officers of Parliament Committee. Mr Speaker informed the committee that the

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<sup>42</sup> Review report, op cit, p 26.

<sup>43</sup> Queensland Ombudsman submission dated 18 September 1998, p 3.

<sup>44</sup> Review report, op cit, p 22.

<sup>45</sup> Since shortly after the UK Ombudsman's Office was established, a Select Committee of the House of Commons has existed as the parliamentary focus for review of the Ombudsman's work, and discussion of the issues it raises. From 1967 until 1997 this role was performed by the Select Committee on the Parliamentary Commissioner for Administration. Since 1997, the Select Committee on Public Administration has performed this role.

<sup>46</sup> See, for example, Select Committee on Public Administration, *Report of the Parliamentary Ombudsman for 1997-98; First report from the Select Committee on Public Administration*, HMSO, March 1999.

<sup>47</sup> See Standing Order 194 of the *Standing Orders of the House of Representatives (NZ)*.

Officers of Parliament Committee closely scrutinises the Ombudsmen's performance in coming to a view on the efficiency of the Ombudsmen's Office and, consequently, the appropriate level of funding for the Office in any given year.

The committee also met with the New Zealand Chief Ombudsman who stressed that, if an Ombudsman is to be seen to be independent and free from ministerial control, then their office's budget must be determined by Parliament.

The Australian Commonwealth. The Senate Finance and Public Administration Legislation Committee is responsible for overseeing the performance of the Office of the Commonwealth Ombudsman and thus maintains the relationship between that Ombudsman and the Commonwealth Parliament. As part of its jurisdiction, the Senate Committee is empowered to inquire into and report upon the Commonwealth Ombudsman's annual reports (essentially to see if the report is satisfactory and to draw to the Senate's attention any significant matters relating to the operation and performance of the Office). From time to time the committee meets with the Commonwealth Ombudsman and staff in this context.

In 1991, the Senate Committee conducted a review of the Office of the Commonwealth Ombudsman. As part of that review the committee considered and rejected suggestions that the Commonwealth Ombudsman's budget be controlled by Parliament.<sup>48</sup> However, it is apparent from the committee's reports that, in scrutinising the Commonwealth Ombudsman's annual reports, the committee considers and comments upon the adequacy of the Ombudsman's resources.<sup>49</sup>

Other Australian states. Apart from Queensland and New South Wales, no Australian State or Territory, currently has a parliamentary committee charged with a formal role in relation to their State Ombudsman, although the issue is under consideration in some States.<sup>50</sup> (In South Australia there was provision, at one stage, for a joint parliamentary committee to have a role in relation to the Ombudsman's appointment and to consider matters relating to the general operation of the *Ombudsman Act 1972* (SA). Whilst that provision has been removed, the parliamentary Statutory Officers Committee now has the responsibility to inquire into and report on a suitable person for appointment to a vacancy in the Ombudsman's Office, and the parliamentary Legislative Review Committee apparently has an informal role in relation to the Ombudsman.)

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<sup>48</sup> *Review of the Office of the Commonwealth Ombudsman*, AGPS, Canberra, December 1991, pp 101-109. For the government's response to that report, see *Senate Parliamentary Debates*, 15 December 1992, pp 5005-5012.

<sup>49</sup> Senate Finance and Public Administration Legislation Committee, *Report on annual reports tabled 1 July 1997-31 October 1997*, Senate Printing Unit, Canberra, March 1998, pp 12-14 and *Report on 1997-98 annual reports: Report one*, Senate Printing Unit, Canberra, March 1999, pp 20-22. The Ombudsman Amendment Bill 1996 (Cth) (a private member's bill) attempted to improve parliamentary responsiveness to the Ombudsman's reports, establish a joint parliamentary committee on the Ombudsman and involve this new committee in determining the appropriations for the Commonwealth Ombudsman. The Senate Committee, in considering the bill, rejected the need for an additional Ombudsman committee (noting there were various options to improve parliamentary cooperation with, and responsiveness to, the Commonwealth Ombudsman within the existing committee system) and the proposed budget process. Senate Finance and Public Administration Legislation Committee, *Consideration of Legislation Referred to the Committee—Ombudsman Amendment Bill 1996*, Senate Printing Unit, Canberra, February 1997.

<sup>50</sup> The Western Australia Commission on Government recommended in April 1996 that the then proposed Legislative Council Public Administration Committee participate in the selection of the State Ombudsman and determine the budget for the Office annually with 'due consideration of any advice from the Treasurer'. The recommendations remain outstanding. Western Australia, *Commission on Government: Report no 3*, Perth, April 1996, pp 132-133. In Tasmania, a parliamentary inquiry (by the Joint Select Committee on Working Arrangements of the Parliament) is currently canvassing issues including whether a separate appropriation act for, among others, the State Ombudsman's Office is desirable. The Tasmanian Ombudsman in his submission to that committee supported both a separate appropriation by Parliament to the Ombudsmen's Office and the establishment of a separate Ombudsman parliamentary committee.

In 1990, on the suggestion of the New South Wales Premier and with the support of the then NSW Ombudsman, the *Ombudsman Act 1974* (NSW) was amended to establish the Joint Committee on the Office of the Ombudsman ('the Joint Committee').<sup>51</sup> (The committee now also has functions in relation to the Police Integrity Commission pursuant to the *Police Integrity Commission Act 1996* (NSW).)

The Joint Committee's 'monitor and review' function is considerably broader than the LCARC's function in relation to the Queensland Ombudsman. The *Ombudsman Act 1974* (NSW) provides that the Joint Committee's functions include:

- to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions;
- to report to Parliament, with such comments as the committee thinks fit, on any matter pertaining to the Ombudsman;
- to examine and report on annual and other reports of the Ombudsman presented to Parliament;
- to report to Parliament any change that the committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman; and
- to inquire into and report on any question connected with the committee's functions referred to it by Parliament.

Like the LCARC, the Joint Committee is specifically precluded from: investigating a matter relating to particular conduct; reconsidering a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; and reconsidering the findings, recommendations or other decisions of the Ombudsman.<sup>52</sup> However, the Joint Committee has a power of veto over the appointment of the Ombudsman.<sup>53</sup> In contrast, the LCARC merely has to be 'consulted' in relation to the appointment of the Queensland Ombudsman.

The Joint Committee has no statutory role in relation to developing the budget for the NSW Ombudsman's Office, although it is evident from the Joint Committee's reports that the Joint Committee does discuss the NSW Ombudsman's level of funding and resources with the Ombudsman periodically at their joint meetings.<sup>54</sup> In 1993, the Joint Committee instigated an external management review of the NSW Ombudsman's Office in order to assess the adequacy of funds and resources available to the Ombudsman to effectively perform his functions and examine the Ombudsman's case for an increase in funding for his Office.<sup>55</sup>

## 4.2 SCRUTINY OF THE OMBUDSMAN'S REPORTS

### 4.2.1 Review recommendation 1

*Recommendation 1 - The LCARC should engage in a more substantial scrutiny of Annual Reports and any other reports of the Ombudsman each year, particularly regarding the quality of public administration in the State and any major systemic issues which are raised. Such scrutiny and the*

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<sup>51</sup> See the New South Wales Ombudsman's, *Special Report to Parliament - Pursuant to Section 31 of the Ombudsman Act: The independence and accountability of the Ombudsman*, New South Wales, 6 September 1990.

<sup>52</sup> *Ombudsman Act 1974* (NSW), s 31B(2).

<sup>53</sup> *Ombudsman Act 1974* (NSW), s 31BA.

<sup>54</sup> See, for example, Committee on the Office of the Ombudsman and the Police Integrity Commission, *Fourth General Meeting with the NSW Ombudsman*, December 1996, pp 7-10; and *Fifth General Meeting with the NSW Ombudsman*, June 1997, pp 8-15.

<sup>55</sup> Joint Committee on the Office of the Ombudsman, *Inquiry into the adequacy of the funds and resources available to the Ombudsman*, September 1993.



results of discussions on these matters with the Ombudsman should form a significant component of a report of the LCARC to Parliament.

#### 4.2.2 Committee analysis and comment

Given the committee's responsibility in relation to administrative review reform, the committee reads with interest the Ombudsman's annual and other reports. The committee increasingly also convenes meetings with the Ombudsman on a regular basis at which it has the opportunity to discuss with the Ombudsman issues whether arising out of the Ombudsman's annual and other reports or otherwise. The committee has made it clear to the Ombudsman that the committee has an 'open door' should the Ombudsman wish to discuss any issue. The Ombudsman has also stated that, as an officer of Parliament, he welcomes the involvement, and where appropriate the support, of the committee especially in considering the Ombudsman's reports to Parliament.<sup>56</sup>

The committee has noted above that a number of Ombudsmen parliamentary committees examine their Ombudsman's reports (and report on that examination), and meet with their Ombudsman from time to time in this context.

The NSW Joint Committee, in accordance with its 'monitor and review' role, is quite structured in holding meetings with the NSW Ombudsman. The Joint Committee aims to hold two general meetings with the NSW Ombudsman each year. One of these coincides with the tabling of the Ombudsman's annual report. The committee asks the Ombudsman written questions on notice on a variety of issues before the meeting and then meets with the Ombudsman and asks follow-up questions without notice. The committee reports on these proceedings.

The committee agrees that the LCARC should scrutinise the Ombudsman's reports, particularly annual reports. As part of this scrutiny the committee proposes to implement a procedure whereby, after the tabling of the Ombudsman's annual report each year, the committee meets with the Ombudsman to ask further questions regarding issues raised in the annual report. However, the committee does not believe that the LCARC should be mandated to report to Parliament on its scrutiny of the Ombudsman's annual or other reports. In some cases, issues which arise from the Ombudsman's reports simply may not warrant a separate report. In other cases, it may be preferable for the committee to raise its concerns, and seek to have them answered or addressed, in a more discrete forum. Nevertheless, the committee might, in its discretion, choose to report on such matters from time to time.

#### 4.2.3 Committee recommendation 2

**In relation to review recommendation 1 (reproduced above in section 4.2.1), the committee proposes to examine each annual and other report made by the Ombudsman and presented to Parliament and, if the committee sees fit, to report to Parliament on any matter appearing in, or arising out of, those reports.**

#### 4.2.4 Review recommendation 2

*Recommendation 2 - The Ombudsman, in reports to Parliament, should convey material of a more strategic nature to the LCARC including trends in public administrative practices, systemic issues for accountability arising from these trends, the extent to which developments in the public sector are impinging upon the intended directions of the corporate plan of the office, explanations of significant changes in the performance of the Office as revealed in a new range of performance*

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<sup>56</sup> Queensland Ombudsman submission dated 18 September 1998, p 3.

*indicators, the range of proactive measures which have been initiated to meet the changing administrative behaviour in the public sector, and the impact of these trends and patterns on the resourcing of the Office of the Ombudsman.*

#### **4.2.5 Committee analysis and comment**

The committee has already noted in chapter 3 that the Ombudsman and the reviewer disagree as to the extent to which systemic issues are identifiable by the Queensland Ombudsman's investigations. Nevertheless, the committee agrees that, as far as possible, the Ombudsman should canvass in his/her reports to Parliament matters of a strategic nature such as identified in review recommendation 2.<sup>57</sup>

It is apparent from the Ombudsman's past annual reports that the Ombudsman is cognisant of the importance of identifying and rectifying systemic issues and does attend to them already. The committee encourages the Ombudsman to continue to proactively pursue, remedy and report upon issues of a strategic nature. In accordance with other committee recommendations in this report, the committee intends to discuss strategic issues with the Ombudsman on a regular basis.

#### **4.2.6 Committee recommendation 3**

**In relation to review recommendation 2 (reproduced above in section 4.2.4), the committee encourages the Ombudsman to continue to:**

- (a) identify, investigate and rectify administrative deficiencies where they become apparent to the Ombudsman from both individual complaints and other sources; and**
- (b) include in the Ombudsman's reports to Parliament a wide range of material of a strategic nature.**

#### **4.2.7 Review recommendation 3**

*Recommendation 3 - The Ombudsman should, at the beginning of each new Parliament, engage the LCARC in a discussion about the corporate plan of the Office and the projected future directions it is taking. Provision should also be made for structured input from the LCARC to the design of each new corporate plan and its associated performance indicators and evaluation mechanism.*

#### **4.2.8 Committee analysis and comment**

The committee takes an interest in the Ombudsman Office's strategic and operational plans and future directions of the Office, and has touched upon issues relating to these plans in past meetings with the Ombudsman. The committee believes that such discussions should continue, not only at the beginning of each Parliament but at such other times as the committee and the Ombudsman consider appropriate.

However, the committee has concerns as to the practicality, desirability and appropriateness of the suggestion that it be involved in the design of each new corporate (or strategic) plan and the Office's associated performance indicators and evaluation mechanisms.<sup>58</sup> These concerns are shared by the Ombudsman. The requirement to prepare a strategic plan rests with the Ombudsman and is more properly a matter for the Ombudsman and his staff.

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<sup>57</sup> The committee discusses the issue of new performance indicators for the Office in chapters 6 and 7 of this report.

<sup>58</sup> The committee discusses the Office's performance indicators in chapters 6 and 7 of this report.

#### 4.2.9 Committee recommendation 4

The committee agrees with review recommendation 3 (reproduced above in section 4.2.7) to the extent that the Ombudsman should, at the beginning of each new Parliament, and at such other times as the committee and Ombudsman consider appropriate, meet with the committee to discuss the Office's corporate (or strategic) plan and the projected future direction that the Office is taking. However, the committee does not recommend that provision be made for structured input from the LCARC into the design of each of the Office's corporate (or strategic) plans.

The issue of the Office's performance indicators and evaluation mechanisms is discussed in chapters 6 and 7.

### 4.3 THE OMBUDSMAN'S BUDGET PROCESS

#### 4.3.1 Review recommendation 4

*Recommendation 4 - The following process is recommended for handling the estimates of the Office of the Ombudsman -*

- *The Ombudsman submit the estimates of the Office to the LCARC for each financial year.*
- *The LCARC review with the Ombudsman the performance of the Office for the current year and the resource requirements for the year in prospect.*
- *The LCARC to retain its powers to call upon Treasury for advice and analysis, to assist the Committee where necessary in its assessment of the performance of the Office, or to seek clarification of viewpoints and to provide a forum for an exchange of such viewpoints between the Ombudsman and the Treasury.*
- *The LCARC, on behalf of the Parliament, to recommend to the government, specifically the Cabinet Budget Committee, the level of resources to be made available to the Office of the Ombudsman for the year in prospect by means of endorsing or amending the estimates supplied to the Committee by the Ombudsman, and taking into account the Committee's reflections on the circumstances of public administration in Queensland, as reflected in the Ombudsman's reports.*
- *The Cabinet Budget Committee to take account of the LCARC recommendations in its personal deliberations with the Ombudsman in the normal manner each year, as part of the review of budget estimates.*

#### 4.3.2 Committee analysis and comment

Section 31 of the *Parliamentary Commissioner Act* requires the Ombudsman to prepare for each financial year, estimates of the proposed receipts and expenditure relating to the Ombudsman's Office and to provide these estimates to the Treasurer. The Treasurer is required to 'consult' with the committee in developing the proposed budget for the Ombudsman's Office each financial year.

In practice, this consultation has been initiated by the committee and usually involves the Treasurer supplying the committee with a copy of the Ombudsman's (new initiatives) budget submission with an invitation to meet and discuss any further issue regarding the Ombudsman's budget. This consultation has always occurred after discussions between the Cabinet Budget Review Committee and the Ombudsman and, in the last two years, has occurred after the Ombudsman's proposed budget has been settled.

Review recommendation 4 seeks to overcome the reviewer's perceived problems with this current process, namely, that the voice of Parliament (via the LCARC) is not formally conveyed to the Cabinet Budget Review Committee and that there is no formal forum for the Ombudsman to respond to Treasury comments on the estimates of the Office.<sup>59</sup>

In the recent strategic review of the QAO the resourcing of the QAO was discussed in detail. That review expressed concern that Treasury, being an auditee, was also responsible for commenting on the Auditor-General's estimates. The reviewer notes that a similar situation exists, albeit with diminished impact, in relation to the Ombudsman who investigates any complaints of maladministration in Treasury.<sup>60</sup>

Consequently, the QAO strategic review recommended a more formal consultative process for the PAC in developing the proposed budget of the QAO. The reviewer proposes a very similar process in relation to developing the Ombudsman's budget and notes that it is sensible (although not critical) for the two offices of Parliament—the Ombudsman and Auditor-General—to have reasonably similar procedures in place regarding the role of Parliament in their resourcing.<sup>61</sup>

However, in its review of the strategic review of the QAO, the PAC rejected the suggestion that it should have a greater involvement in formulating the QAO's budget on the basis that: such a role is not practical; the resources of the QAO cannot be considered in isolation from the rest of the public sector; and the committee would need to consult sources other than Treasury to obtain appropriate independent advice in order to avoid any criticism 'in regards to the perception of objective assessment'.<sup>62</sup> The QAO also submitted to the committee that 'the current legislative provisions of the Ombudsman, managed correctly, allow for appropriate consultation between the Ombudsman, Treasury and the Parliamentary Committee' and that it made sense that the two offices of Parliament have reasonably identical procedures in place regarding their resourcing.<sup>63</sup>

Queensland Treasury made the following comment:

*While Treasury acknowledges the need for the Ombudsman's Office to be, and to be perceived to be, independent from Executive Government, our view is that this should not, and need not, override the need to ensure that Government is provided with expert advice to assist it in allocating increasingly scarce resources to meet conflicting priorities. The present system permits a coordinated approach to the framing of the State Budget.*

*If the Office of the Ombudsman is able to set its own budget appropriation through [LCARC] its funding priorities would be determined in isolation from the main priorities of Government. It is the view of Treasury that the present appropriation process in no way undermines the independence of the Office of the Ombudsman or of comparable entities such as the QAO and the CJC.*<sup>64</sup>

The Ombudsman in his submission states that he takes a 'more realistic view' and recognises that 'at the end of the day, whichever jurisdiction is looked at, funding is going to be decided by some external body, usually the executive branch of government'. Without having a strong position on the issue, the Ombudsman stresses that the important matter from his perspective is that the Ombudsman continues to have personal deliberations with the authority responsible for budgetary

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<sup>59</sup> Review report, op cit, p 28.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid, p 29.

<sup>62</sup> Public Accounts Committee, *Review of the report of the strategic review of the Queensland Audit Office*, op cit, p 17.

<sup>63</sup> Queensland Audit Office submission dated 15 September 1998, p 2.

<sup>64</sup> Queensland Treasury submission dated 5 October 1998.

allocations (the Cabinet Budget Review Committee).<sup>65</sup> In this regard, review recommendation 4 seeks to increase the LCARC's role in the Ombudsman's budget process without denying the Ombudsman the opportunity to have his own dialogue with the Cabinet Budget Review Committee.

The committee appreciates that the reviewer is generally advocating a strengthened relationship between Parliament (through the LCARC) and the Ombudsman. The committee agrees with this sentiment. The Ombudsman is, in effect, assisting the Parliament in performing one of its functions, that is, scrutinising the Executive. As such, it is important that the Ombudsman is, and is perceived to be, independent of the Executive. The manner in which the Ombudsman is resourced is important to this issue of independence. (Hence, the parliamentary determination of the Office of the Ombudsmen's budget in New Zealand.)

However, the committee shares some of the PAC's concerns regarding the practicality of the entire budget process proposed in review recommendation 4. In particular, the committee is concerned that it would need to consult sources other than Treasury to independently inform itself as to the Ombudsman's budgetary needs. The committee also queries whether the Ombudsman's resources can be considered in isolation from the rest of the public sector as this process might allow.

This being said, the committee believes that it is entirely appropriate for the Parliament via the LCARC to have a meaningful role in relation to the formulation of the Ombudsman's budget and that, in this regard, there is scope for there to be more consultation between the Treasurer and the LCARC than currently occurs. However, the committee believes that this can be achieved within the current legislative framework. For example, the process would be enhanced if the LCARC was consulted *before* the Ombudsman's meeting with the Cabinet Budget Review Committee and the offer of a meeting between the committee and the Treasurer made at that stage.

The committee is currently corresponding with the Treasurer as to how the current consultation process might be improved.

#### **4.3.3 Committee recommendation 5**

**The committee does not endorse the revised process for the handling of the estimates of the Office of the Ombudsman as set out in review recommendation 4 (reproduced above in section 4.3.1).**

**However, the committee believes that the LCARC should have a meaningful role in relation to determining the funding for the Ombudsman's Office in accordance with the consultation requirement in s 31 of the *Parliamentary Commissioner Act 1974 (Qld)*.**

**The committee will continue its discussions with the Treasurer as to how, within the current legislative framework, the current Ombudsman's budget consultation process might be improved.**

#### **4.3.4 Does the LCARC need a greater statutory role in relation to the Ombudsman?**

As already noted, the LCARC's existing role in relation to the Ombudsman arises from:

- its general responsibility regarding administrative review reform which includes, but is not limited to, legislation dealing with the review of administrative decisions (such as the *Parliamentary Commissioner Act*); and

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<sup>65</sup> Queensland Ombudsman submission dated 18 September 1998, p 5.

- its specific responsibilities in relation to the Ombudsman's appointment, removal and suspension, budget and the conduct of strategic reviews of the Ombudsman's Office.

As is evident from the discussion already in this report, the committee is keen to develop a stronger constructive relationship with the Ombudsman. From one perspective, this will provide more substantive avenues through which the committee can readily identify issues regarding Queensland's public administration which might require the committee to take action in relation to its wider administrative review reform responsibility.

Importantly, a stronger relationship between the committee and the Ombudsman will also ensure that the committee is a more active conduit through which the Ombudsman accounts to Parliament and, where necessary, is an avenue through which parliamentary support is provided to the Ombudsman. It is evidently the broad legislative intention that the LCARC perform such a dual role. As already noted, the then Premier in introducing the legislation establishing the relationship between the LCARC and the Ombudsman, described the provisions as providing the Parliament with a mechanism to 'review and support' the Ombudsman. Clearly, this is as it should be.

As the Ombudsman's legislation states, the Ombudsman is an 'officer of Parliament'. This is because the Ombudsman reviews the Executive. To ensure that the Ombudsman is free from and independent of Executive control, the Ombudsman is responsible or accountable to Parliament and Parliament only. As the then Premier noted in introducing the Parliamentary Commissioner Bill in 1974:

*[The Ombudsman] report is to Parliament and his final recourse is to bring a matter to Parliament. He is in the same position as the Auditor-General: he is not subject to the Government of the day so that he has the necessary freedom to carry out his functions. He cannot be arbitrarily removed if his investigations or findings run counter to the Executive's views.*<sup>66</sup>

The Parliament has designated the LCARC as a conduit through which the Ombudsman's accountability to Parliament occurs. However, the committee is concerned that the Ombudsman's separation from the Executive and accountability to the Parliament is not clearly enough defined in the current statutory provisions. The committee believes that this uncertainty is unsatisfactory and should be remedied.

A clear statutory statement defining the 'review and support' relationship between the Ombudsman and the LCARC will ensure that the Ombudsman is, and is perceived to be, an officer of Parliament and as such is accountable to Parliament and not the Executive. It will also ensure that the LCARC's functions in relation to the Ombudsman are on-going and not something to be pursued by successive committees at their will, and reduce the prospect of any disagreement as to the extent of the committee's jurisdiction in relation to the Ombudsman.

The committee believes that the provisions outlining the jurisdiction of the NSW Joint Committee on the Ombudsman provide a good precedent for describing what the LCARC's role should be *vis a vis* the Queensland Ombudsman.

This being said, the committee agrees with the reviewer that, quite correctly, the LCARC's role does not, and should not, extend to the LCARC being an avenue of appeal from the Ombudsman or

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<sup>66</sup> Parliamentary Commissioner Bill 1974, *Queensland Parliamentary Debates*, Initiation in Committee of the Bill, The Hon J Bjelke-Petersen, 22 March 1974, pp 3158-59.

to having any jurisdiction to review the Ombudsman's decisions.<sup>67</sup> The Ombudsman is, in effect, already an appeal mechanism from another body, and there must be some point of finality in appeal processes. Ultimately, judicial review is available. Further, the committee believes that a provision preventing the committee from reviewing specific cases is essential to ensure the integrity of the Ombudsman's investigations.<sup>68</sup> (However, the LCARC does take an interest in individual cases in the context of assessing the Ombudsman's overall operations and identifying systemic issues arising in public administration.)

#### 4.3.5 Committee recommendation 6

**The committee recommends that the Premier, as the minister responsible for the *Parliamentary Commissioner Act 1974 (Qld)*, amend that Act to provide that the LCARC's functions include:**

- **to monitor and review the exercise by the Ombudsman of the Ombudsman's functions under that Act or any other Act;**
- **to report to the Parliament, with such comments as it thinks fit, on any matter pertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the committee, the attention of Parliament should be directed;**
- **to examine each annual and other report made by the Ombudsman, and presented to Parliament, under that Act or any other Act and, if the committee sees fit, to report to the Parliament on any matter appearing in, or arising out of, those reports; and**
- **to report to the Parliament any change that the committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman.**

**Further, the committee recommends that these functions may be exercised in respect of matters occurring before or after the commencement of the section.**

**However, the committee also recommends that the *Parliamentary Commissioner Act* specify that the committee is not authorised to:**

- **investigate particular conduct brought before the Ombudsman by way of complaint;**
- **reconsider or review a decision to investigate, conciliate or review, not to investigate, conciliate or review or to discontinue investigation, conciliation or review of a particular complaint or decision; or**
- **reconsider or review reports, findings, recommendations or decisions in relation to a particular investigation, complaint or decision or in relation to particular conduct the subject of a report under section 24(6) of that Act.**

**The committee notes that this might require some consequential amendment to s 10(2) of the *Parliamentary Committees Act 1995 (Qld)*.**

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<sup>67</sup> Review report, op cit, p 25. Although, one submission to the committee did advocate that there should an avenue of appeal from the Ombudsman's decisions.

<sup>68</sup> As already noted, the NSW Joint Committee is similarly prevented from reviewing Ombudsman cases. This is based on similar reasoning as outlined above. See the Ombudsman (Amendment) Bill 1990, NSW *Parliamentary Debates*, Second Reading Speech, Mr Dowd MLA, 13 November 1990, p 9483.

## 5. SPECIFIC MEASURES TO ENHANCE ADMINISTRATIVE REVIEW IN QUEENSLAND

The review recommendations in this chapter concern specific measures aimed at enhancing the system of administrative review in Queensland, a matter in which the committee is most interested given its responsibilities in relation to administrative review reform. The Queensland Ombudsman is one of the most important avenues of administrative review in this State. However, the effectiveness of the Ombudsman as an avenue of administrative review is dependent on a number of factors, not all of which are within the Ombudsman's control. Administrative review to be effective must be co-ordinated, streamlined and, most importantly, accessible by those for whom it is created, the citizens of Queensland.

### 5.1 THE OMBUDSMAN AND CABINET

#### 5.1.1 Review recommendation 5

*Recommendation 5* - All departments and agencies should be reminded of the Cabinet Handbook ruling to consult the Office of the Ombudsman on all policies and legislation relating to citizens' grievances and other relevant matters, in giving their advice to Cabinet, along with the Ombudsman's advice.

#### 5.1.2 Committee analysis and comment

During the course of his inquiries, the reviewer found that it was 'obvious' that departments and agencies were not adhering to the *Cabinet handbook* directive to consult with the Ombudsman 'on policies or legislation which potentially restrict the right of the citizen to bring a grievance to the Ombudsman and any matter which may affect that Office or involve significant issues of public administration'.<sup>69</sup> The reviewer stressed the importance of government being aware of the implications for the jurisdiction and resourcing of the Office of the Ombudsman when considering decisions about (the review of) public administration.

The Ombudsman supports review recommendation 5. The Ombudsman submitted that: 'It is apparent that some agencies are unaware of the directive or are misunderstanding and not applying it'. While there were only a few public submissions on point, most submissions that addressed recommendation 5 supported it. One agency stated that agencies have not been following the *Cabinet handbook* directive. Another stated that, if the requirement was to be fulfilled in all cases, 'it may become a resource issue'.

The committee considers that the *Cabinet handbook* directive is a sensible one and is not unduly onerous in terms of departmental resources. As a matter of course, the Office of the Ombudsman should be consulted when decisions are made that potentially affect its jurisdiction and impact on its resources. Government's consideration of public administration issues can only benefit from doing so.<sup>70</sup>

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<sup>69</sup> Review report, op cit, p 31. The committee notes that the same directive appears in the recently published 1999 Queensland *Cabinet handbook*, para 6.2, p 49.

<sup>70</sup> Also refer to this committee's endorsement of the second part of recommendation 29, discussed in section 9.2 of this report.



### 5.1.3 Committee recommendation 7

The committee endorses recommendation 5 (reproduced above in section 5.1.1) and recommends that the Premier, as the minister responsible for administrative reform, ensure that departments and agencies are aware of and educated in relation to the *Cabinet handbook* requirement.

## 5.2 TOWARDS A PROACTIVE/SYSTEMIC/PREVENTATIVE OMBUDSMAN

### 5.2.1 Review recommendation 6

*Recommendation 6* - There should be a concerted drive to make the community and government agencies more aware of the role, including powers, and limitation on powers, of the Queensland Ombudsman. This should ideally include:

- (a) *New brochures more appealing in presentation and written in simpler language.*
- (b) *An Ombudsman home page on the Internet.*
- (c) *Information Kits for State and local government departments and agencies outlining the procedures and criteria used by the Ombudsman; an ideal internal review mechanism for agencies for their own complaints; a model internal investigatory process on receipt of contact about a complaint from the Ombudsman; components of a client services charter which would meet the requirements of the Ombudsman.*
- (d) *A short quarterly newsletter, from the Ombudsman's Office directed primarily at state departments and agencies and local governments providing regular information about systemic issues occurring in the public sector, new legislative or procedural arrangements introduced by government affecting the operations of the Ombudsman, and other items related to administrative review which have relevance for the Ombudsman and government administrators in general.*
- (e) *An informative annual report which, each year, reiterated the role and powers of the Ombudsman, and highlighted any systemic trends in the public sector giving rise to complaints to the Ombudsman.*
- (f) *More lectures and papers given by staff of the Office to professional groups and seminars dealing with public sector issues, to make them more aware of the Ombudsman's role and powers.*

### 5.2.2 Committee analysis and comment

One of the review's findings preceding recommendation 6 is that there has been 'some diminution in the status of the Ombudsman and certainly a lack of awareness of the Office in many quarters and a good deal of confusion about the powers, and lack of powers, possessed by the Ombudsman'. The reviewer also reported that some of the chief executive officers of State Government departments and agencies are unclear about the role of the Ombudsman.<sup>71</sup> The Ombudsman disagreed:

*As regards the status, powers and image of the Ombudsman, I have not seen the research that allegedly found some 'diminution in the status of the Ombudsman'. ... What I can say is that any diminished status or image has had no noticeable effect on complaint lodgment and work performance and output ....<sup>72</sup>*

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<sup>71</sup> Review report, op cit, p 33.

<sup>72</sup> Queensland Ombudsman submission dated 18 September 1998, p 8.

The Ombudsman also submitted that it is ‘hard to believe’ chief executive officers and agencies are unaware of the role of the Ombudsman because:

*All new cases investigated are put to them in writing pursuant to Section 18(1) of the Parliamentary Commissioner Act 1974. All formal reports and recommendations issued pursuant to Section 24 of the Act are sent directly to them. They invariably sign reports and responses to my Office.*<sup>73</sup>

Regardless of whether or not there has actually been a decline in the status of the Office of Ombudsman, the committee supports the rationale for review recommendation 6; namely, that it is important for both the general community and all public sector officers to know, quite specifically, the Ombudsman’s role and what the Ombudsman can and cannot do. Naturally, the Ombudsman recognises and endorses this principle: ‘It is of fundamental importance that the services of an Ombudsman be known and be accessible to as many citizens as possible. A right of external administrative review is of no value to a person who is not aware of that right’.<sup>74</sup>

The Ombudsman submitted that, generally, ‘the suggested measures contained in the recommendation have merit’. (The Ombudsman added that since the strategic review was completed a new, additional brochure on the Ombudsman’s role has been published and distributed and that planning has commenced for an Internet home page.) However, the Ombudsman also cautioned that the suggestions do have resource implications and some can only be pursued when additional resources and appropriate staff are available.<sup>75</sup>

The committee recognises the recent and on-going initiatives by the Office to promote itself. In addition, the Office’s *Strategic and Operational Plan* for 1999-2002 states that various strategies will be devised to enhance the Office’s profile which may include the employment of a part-time media officer, enhancement of the country trip program, media training for senior officers and sponsoring a public administrative prize at tertiary level. The plan also states that Internet and external e-mail access for the Office is currently being put in place.<sup>76</sup> In light of this report, the efficacy of these proposals may warrant further consideration.

The committee encourages the Ombudsman to devise and implement strategies to promote itself and raise community and agency understanding about what the Ombudsman can *and cannot* do as a matter of priority. Educating the public specifically about the parameters of the Ombudsman’s role is especially important in high volume areas where there are various complaints bodies.<sup>77</sup>

The committee recognises the resource implications of the reviewer’s suggested measures. Some are considerable, some not so. However, the committee notes the substantial increase in the Office’s budget for 1998/99 and believes that resources should be immediately directed by the Office towards developing some of the measures contained in review recommendation 6.

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<sup>73</sup> Ibid, p 6.

<sup>74</sup> The Ombudsman referred the committee to a survey conducted in 1992/93 which indicated that 46% of Queenslanders aged 16 or over were aware of the Queensland Ombudsman. In response, the Ombudsman developed a number of strategies to design increase the levels of awareness of, and accessibility to, the Queensland Ombudsman, including: a new widely-distributed brochure about the role of the Ombudsman translated into 5 languages; an extended regional visitation program to include visits to Aboriginal and Islander communities; and regular publication of Ombudsman case summaries in regional newspapers: Ibid, pp 5-6

<sup>75</sup> Ibid, p 6.

<sup>76</sup> Queensland Ombudsman, *Strategic and Operational Plan 1999-2002*, p 18 and p 20.

<sup>77</sup> Corrections is one such area. Both the Prisoners’ Legal Services (submission dated 25 September 1998) and the Queensland Corrective Services Commission (submission dated 9 October 1998) supported the dissemination of information clarifying the role of the Ombudsman to—for example—prisoners, prisoners’ families and stakeholder agencies.

The committee's support for the implementation of the measures contained in review recommendation 6—and of like measures—was bolstered by the public submissions it received. Recommendation 6 was the most widely commented on review recommendation. Most submissions that came to a position on recommendation 6 supported the recommendation and a large number stressed that the Ombudsman should also educate people about the limitations on the Ombudsman's powers. This, some noted, would reduce the workload of the Ombudsman's Office as members of the public become more aware of when the Ombudsman could and could not help them.

Therefore, the committee endorses the rationale supporting review recommendation 6, that further education and awareness raising will not only facilitate the Ombudsman fulfilling his role as an avenue of administrative review, but will improve the operation of the overall State administrative review system. Appropriate and effective public education about administration and the review of administrative action means individuals aggrieved by government decisions can better choose appropriate avenues to seek redress of their complaints. Appropriate and effective education means less complaints arising from their administrative processes and individual decisions in the first place. The result should be less, not more, work for the Ombudsman, which will enable faster throughput in that Office and reduced costs for State administration generally.

### *The specific proposals*

Some departments submitted that information kits, a quarterly newsletter and more lectures would fit in well with their existing in-house administrative law awareness-raising and training programs. However, other agencies indicated that they were neither presently well-informed nor well-equipped in relation to the complex area of administrative review. Some of those agencies lamented the lack of available external support to develop processes addressing administrative review. The suggestions in subparagraph (c) of recommendation 6 relating to information kits were particularly supported by those agencies.

The committee would suggest that the information kits, as described in the review, would provide agencies with the foundation on which to develop best practice administrative review processes. Regular Ombudsman newsletters and Ombudsman Internet information could then update agencies on current public administration issues and developments in the Ombudsman's Office.

The committee found the submission from the Anti-Discrimination Commission Queensland (ADCQ) particularly illuminating in relation to the specific proposals listed in recommendation 6. The ADCQ suggested that it shares elements of commonality with the Office of the Ombudsman and that it has 'implemented a number of the strategies outlined in R.6 with considerable success and can therefore testify to their effectiveness'.<sup>78</sup> (Although, the committee does note that the ADCQ has a distinct statutory role with regard to education.)

The ADCQ, since its establishment in December 1996, has produced a series of 11 brochures, two posters and a video targeting a range of audiences in both metropolitan and regional Queensland. The ADCQ has found that its website 'significantly enhances its education capacity by making information available throughout all parts of Queensland' and 'also reduces cost of postage and use of paper brochures as many inquires can be referred to the website.' The ADCQ regularly conducts training for respondent groups, produces an informative four-monthly newsletter and conducts many training and education sessions which it finds are effective in raising the profile and public understanding of its Act.

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<sup>78</sup> Anti-Discrimination Commission Queensland submission dated 21 September 1998, p 1 and pp 3-4.

During its recent study tour of New Zealand, the committee was impressed with the pro-active measures employed by the New Zealand Ombudsmen to educate agencies and promote good administration, such as dissemination of the Ombudsmen's *Practice Guidelines*, selected Ombudsmen jurisprudence and the Office's *Quarterly Review* newsletter.

#### Other measures

Other constructive comments were also made in submissions. One department suggested that recommendation 6 focussed too much on educating government agencies and not enough on increasing the awareness of the Ombudsman in the general community. One member of the public suggested that the Ombudsman move to an (albeit costly) 'shop-front' operation, and also that the Ombudsman 'could take a much higher media profile'.

The Deputy Premier, Minister for State Development and Minister for Trade suggested that 'recommendation 6 of the report could be considerably expanded to advise Queenslanders' not only about the Ombudsman's role, but also the other avenues that are available to them'. The committee considers the Deputy Premier's suggestion meritorious. In chapter 9 of this report, the committee recommends that steps be taken to rationalise and streamline the myriad of appeals avenues that currently comprise the complex and unwieldy system of administrative review in this State. The wide distribution by government of information about the alternative avenues of redress available for people aggrieved by administrative decisions would do much to demystify the administrative review system in the public's mind.

The Queensland School Curriculum Council took an even wider view. The council submitted that there is potential to raise awareness of the Ombudsman in Queensland schoolchildren by focussing on the role and contributions of the Ombudsman in curriculum materials (source books) to be developed to support the Studies of Society and Environment syllabus. The committee endorses the suggestion and believes that the information provided in curriculum materials should go further; it should include information about administrative review rights and avenues generally.<sup>79</sup>

The committee suggests that the State Government consider implementing these last two suggestions.

#### A community relations/education officer

The committee also endorses a submission from the Children's Commissioner that community relations is a distinct field of expertise requiring the retention of specialist staff. The committee suggests that the Ombudsman consider employing a separate community relations/education officer to be instrumental in, and coordinate, the Office's implementation of measures contained in recommendation 6 and like strategies aimed at improving public awareness of, and education about, the Ombudsman. Both the reviewer and the Ombudsman agreed with the committee's suggestion that a separate community relations/education officer was a good idea and worthy of pursuit.

In a meeting with the committee, the Ombudsman noted that, until now, resources had been directed towards reducing backlogs and case loads but recognised that, with the current budget there is scope for such an officer. The committee suggests that because the rationale for such an officer is to ultimately reduce complaints to the Office; the creation of such a position should, in effect, 'pay for itself'.

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<sup>79</sup> This committee, in its report on *The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?* stressed the importance of all young Queenslanders receiving education about their rights and responsibilities and the working of democratic institutions in Queensland. LCARC, report no 12, November 1998, section 5.1.3.

### 5.2.3 Committee recommendation 8

The committee endorses review recommendation 6 (reproduced above in section 5.2.1).

In addition, the committee recommends that:

- the Ombudsman create a separate and dedicated community relations/education officer position to be responsible for the Office's renewed efforts at enhancing community and agency awareness of the Ombudsman's role and powers (and limits on those powers);
- the Premier, in conjunction with the Ombudsman, establish measures to widely disseminate information on the various avenues of administrative review available to the public; and
- the Minister for Education ensure that appropriate information about administrative review, including the role of the Ombudsman, is included in school curricula.

### 5.2.4 Review recommendations 7 and 9

*Recommendation 7 - The Office of the Ombudsman should work more closely with State departments and agencies, and local governments, more in the nature of consultant and adviser.*

*Recommendation 9 - The Office of the Ombudsman should be invited by government units to participate as an observer and adviser on reference groups established to design new policy initiatives, with a view to making them client oriented and minimising the potential for administrative indiscretion and maladministration.*

### 5.2.5 Committee analysis and comment

The closer consultant/adviser relationship of the Ombudsman with State Government departments and agencies reflected in review recommendations 7 and 9 is part of the invigorated proactive and preventative approach envisioned by the review. The committee has already noted its support for a proactive and preventative role for the Ombudsman. However, the committee has some concerns with the particulars of review recommendations 7 and 9.

In relation to review recommendation 7, the committee believes that the Ombudsman should work more closely with State Government departments and agencies, and local governments. However, the committee's support of this recommendation is subject to its comments below in relation to review recommendation 9.

In relation to review recommendation 9, the committee believes that government units should do all that is possible to make themselves client orientated and minimise the potential for administrative indiscretion and maladministration. The Ombudsman should continue to have input into how government units can optimally make themselves so. However, the committee believes that this should not necessarily extend to the Ombudsman playing an advisory role while sitting in agency reference groups deliberating on new policy initiatives.

As discussed in chapter 3, the Ombudsman and strategic reviewer have different perspectives on the proper approach of an Ombudsman, particularly with regard to what the reviewer calls the 'preventative' approach. These different perspectives might be described as—on the one hand—seeing the Ombudsman in an oversight role, one step removed from public administration, independent and manifestly impartial; and—on the other hand—'as part of this system of governance—independent, yes, but part of the team and acting in this kind of consultative, advisory role, giving constant feedback, helping departments to improve'.<sup>80</sup>

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<sup>80</sup> Professor Wiltshire, meeting with the committee, 9 December 1998.

In his written submission to the committee, the Ombudsman stated:

*Apart from the availability of resources and the time which would be needed to work as a consultant and adviser to potentially scores of public sector agencies, I sound a note of caution. Often an Ombudsman is called upon to investigate the legality or fairness of an agency policy or practice. A complainant would be justified in claiming that the Ombudsman in reviewing the policy or practice would not be impartial if in fact the Ombudsman had been an adviser to the agency in relation to the policy or practice.*<sup>81</sup>

Public submissions were mixed as to the appropriateness of review recommendations 7 and 9. Most agreed that there should be a better working relationship between the Ombudsman and State departments and agencies, and local governments. However, submissions differed as to their views on the appropriateness of the Ombudsman working ‘too’ closely with public administration in the formulation of policy. The concerns expressed by some submissions were that the Ombudsman’s resources could be stretched, and that the Ombudsman’s independence could be threatened through a future complainant alleging bias on the Ombudsman’s behalf when reviewing a policy or practice that he had advised on during its formulation.

In a meeting with the committee the reviewer clarified that, in relation to these recommendations, he saw the Ombudsman as having the capacity to act as an observer, adviser and expert but with no responsibility and definitely no formal involvement in such decisions. In this way, the reviewer stated, the Ombudsman could help departments to design their complaint handling and grievance procedures in a way that would reduce complaints and address the causes of maladministration without the Ombudsman being part of that actual procedure.

The committee notes the Ombudsman’s concerns that the perception of impartiality surrounding his Office could be undermined should a complainant seek his review of an administrative decision that had been made pursuant to a process that he had earlier advised the agency in relation to. However, the committee notes that the Ombudsman has advised that he already does assist government by providing views on new procedures and legislation that have ramifications for administrative review.

It would therefore seem that the Ombudsman already potentially faces the situation where he might be called upon to review decisions made pursuant to programs or systems that he had earlier advised on. Presumably, the Ombudsman does, or can, do things to reduce the potential for members of the public to consider him compromised in such a situation. For example, the Ombudsman could ensure that Office staff who advise an agency at planning stage are not the same staffers who might be called upon subsequently to review those systems.

The committee agrees with the Ombudsman’s concern about the Ombudsman being ‘part of an advisory group that determines policy’ in a formal, deliberative role. It is difficult for the committee to precisely discern at what stage the provision of advice to an agency by the Ombudsman crosses over from being appropriate to being potentially problematic in light of any subsequent review role. However, presumably the fact that the Ombudsman already acts as adviser in some circumstances indicates that the Ombudsman is able to recognise where difficulties in advising agencies might arise and act accordingly.

### **5.2.6 Committee recommendation 9**

**In relation to review recommendations 7 and 9 (reproduced above in section 5.2.4), the committee recommends that the Office of the Ombudsman should work more closely with**

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<sup>81</sup> Queensland Ombudsman submission dated 18 September 1998, p 8.

**State Government departments and agencies, and local governments. However, the committee believes that the Ombudsman's appropriate role is to give advice, as requested, to State and local government on legislative and policy initiatives in relation to public administration. This relationship should not extend to the Ombudsman having any formal involvement in the decisions of advisory groups determining administrative policy.**

### **5.2.7 Review recommendation 8**

*Recommendation 8 - State and local governments should establish formal contact officers for Ombudsman complaints, such officers to form a network whereby the Ombudsman can move to establish joint training seminars, advice on systemic issues and causes arising from complaints, client service charters, changes to policy, legislation and practice. The Ombudsman's Office should be on line to all of these contact officers.*

### **5.2.8 Committee analysis and comment**

The review proposes that each government agency appoint a formally designated contact officer for Ombudsman complaints to whom the chief executive officer (CEO) would refer complaints. The reviewer notes that similar formal networking arrangements already exist within Queensland Government, for example, Cabinet Legislation and Liaison Officers, and Freedom of Information Coordinators.<sup>82</sup> Submissions to the committee which addressed this recommendation also generally agreed with the suggestion, although some (particularly local governments) expressed concerns about its resource implications.

The Ombudsman submitted that, for the reviewer's proposal to be effective, contact officers need to be at very senior levels. In his experience 'it is more efficient and effective to contact managers directly rather than less senior contact officers which would only introduce another element of delay'.<sup>83</sup>

However, the committee appreciates that, by making a single person in each agency responsible for coordinating all matters that the agency has before the Ombudsman, files could be handled efficiently and the chances of a matter lying dormant for extended periods would be diminished. This role would link in well with the establishment of more structured complaints handling systems in departments<sup>84</sup> and with the Ombudsman's Office generally employing strategies to increase government agency awareness about the role and powers of the Ombudsman.<sup>85</sup>

On balance, the committee endorses review recommendation 8. Such an Ombudsman contact officer could:

- encourage an awareness of, and show a commitment to, good administration in the agency;
- build up expertise in dealing with queries about administration and administrative review which should, in turn, lead to greater efficiency for the agency and provide its clients with better service;
- provide an on-going, formal link between the agency and the Ombudsman; and
- provide agencies' clients that have complaints about administrative practices with an identifiable point of contact.

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<sup>82</sup> Review report, op cit, pp 35-37.

<sup>83</sup> Queensland Ombudsman submission dated 18 September 1998, p 9.

<sup>84</sup> Refer to review recommendation 10 discussed later in this chapter.

<sup>85</sup> Refer to review recommendation 6 discussed earlier in this chapter.

An officer need not be appointed solely for these functions, and could undertake them in addition to functions they already perform.

These officers could be on-line with the Ombudsman's Office to facilitate the dissemination of information.<sup>86</sup> Where the Ombudsman's resources allow<sup>87</sup>, the Ombudsman could establish joint training seminars for the contact officers network in which the Ombudsman provides advice on systemic issues and causes arising from complaints, client service charters, changes to policy, legislation and practice. The contact officers would then be able to take this information back to their agency and disseminate it appropriately.

### **5.2.9 Committee recommendation 10**

**The committee endorses review recommendation 8 (reproduced above in section 5.2.7).**

### **5.2.10 Review recommendation 10**

*Recommendation 10 - In conjunction with the Ombudsman, units of government should establish internal complaint handling procedures consistent with the Ombudsman's mandate to handle complaints of their own volition in the first instance, and also complaints referred by the Ombudsman. Such a complaint handling procedure should have a recording and tracking system and a regular flagging or bring-up mechanism for evaluation of the effectiveness and timeliness of complaint handling. All state and local government agencies should show all Ombudsman cases in their annual reports.*

### **5.2.11 Committee analysis and comment**

In other areas of the review, there is much emphasis on the Ombudsman to more fully adopt a preventive approach. Review recommendation 10 encourages *government* to also be preventative. Recommendation 10 would require units of government (with the Ombudsman's assistance) to be proactive by putting in place internal complaints handling mechanisms for their own complaint handling—and to handle complaints made to the Ombudsman and subsequently referred by the Ombudsman to the unit of government—in the first instance.

The committee, like the Ombudsman and a number of submitters, fully supports the proposal. The committee believes that, in addition, agencies should notify their clients of the availability of internal review when agencies advise clients of their decisions.<sup>88</sup>

The committee notes that both the reviewer and the Ombudsman believe that effective internal complaints handling will translate into less workload for the Ombudsman's Office. This is particularly important given the unprecedented demand for the Office's services. The overall number of persons seeking external review of administrative decisions and actions will be less when the government entities themselves satisfy more complainants through internal review of their grievances. The Commonwealth Ombudsman's experience supports this conclusion.

In March 1999, the Senate Finance and Public Administration Committee made the following observation in reporting on the Commonwealth Ombudsman's 1997-98 performance information:

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<sup>86</sup> See review report, op cit, p 35. The recent funding to upgrade the Ombudsman's Office's IT facilities is noted in chapter 8 of this report.

<sup>87</sup> The committee comments on the use of recent funding increase regarding awareness and education strategies in earlier in this chapter in relation to review recommendation 6.

<sup>88</sup> Notification of appeal rights is discussed further in section 9.3 of this report.



*From the time of its 1991 review of the Ombudsman's Office, the committee has taken an interest in how the Office assesses its effectiveness, particularly given that overall workload and so many facets of the Ombudsman's work are dependent on input from third parties and are largely beyond the control of the Office.*

*For the first time since 1993-94, when numbers were affected by jurisdictional changes, there was a reduction in the number of complaints received by the Office. The number of approaches to the Office fell by 13 per cent, while the number of complaints received under the Ombudsman Act fell by 8 per cent. The Ombudsman characterises this as a 'modest slackening off in demand' and one that has coincided with the introduction of client service charters by service delivery agencies and the establishment of more formalised internal complaints handling mechanisms.<sup>89</sup>*

In this regard, the committee notes that, in a September 1998 address, the Commonwealth Ombudsman favourably viewed agencies implementing customer service charters linking those charters to the agencies internal grievance and review mechanisms.<sup>90</sup>

In addition, agencies stand to benefit from internal complaints handling systems in terms of client focus. The Commonwealth Ombudsman, Ron McLeod, in the same September 1998 address noted:

*You might say this [establishing effective internal complaint handling systems] is an essential step to help stem the tide of complaints to the [Ombudsman's] office, but it is also most important that agencies are duly responsive to complaints they directly receive, especially those complaints concerning the agencies' service delivery.<sup>91</sup>*

To some degree, internal review of complaints tells the agency where it might be going wrong, rather than the Ombudsman—via an indirect process—having to tell the agency. Internal review provides the opportunity for the agency to inform itself of any systemic causes of administrative problems.

The reviewer informed the committee that some government departments already have very effective complaints handling mechanisms, including automatic computer bring-up/tracking systems. However, some units of government do not have any such mechanisms.<sup>92</sup>

The committee notes that the former Parliamentary Committee for Electoral and Administrative Review, in its *Report on review of appeals from administrative decisions*, recommended not only the creation of a generalist merits review tribunal for the State (to coexist with the Office of the Ombudsman) but that internal review (before complaints could proceed to external review) be 'an essential element of the reformed administrative review system.'<sup>93</sup> Most public submissions on point agreed with review recommendation 10 on the introduction of internal review in government agencies.

Therefore, the committee supports a two-stage system of dispute resolution which it believes would have considerable benefits for government, citizens and the Ombudsman's Office. Stage 1 would

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<sup>89</sup> Senate Finance and Public Administration Legislation Committee, *Report on 1997-98 annual reports: report one*, op cit, p 18.

<sup>90</sup> Ron McLeod, Commonwealth Ombudsman, 'Changing role of the Ombudsman', address to the AIC Administrative Law Conference, Canberra, 25 September 1998, pp 14-15.

<sup>91</sup> Ibid, p 14.

<sup>92</sup> At the Commonwealth level, a 1996 survey conducted by the Commonwealth Ombudsman found that 70 per cent of government agencies had inadequate or non-existent general service delivery complaint handling mechanisms: Commonwealth Ombudsman, *A good practice guide for effective complaint handling*, 2<sup>nd</sup> ed, Commonwealth Ombudsman's Office, Canberra, 1999, p 3. The Ombudsman consequently produced the document just referred to.

<sup>93</sup> PCEAR, *Report on review of appeals from administrative decisions*, Government Printer, Brisbane, May 1995, p 40.

involve internal review of complaints by agency officers who are removed from the original decision-maker and conclude with subsequent notification to the complainant of the results of the agency's review and of their right to Ombudsman review. (Each agency should have in place internal review procedures to maintain the integrity of its internal system.)<sup>94</sup> Stage 2 would involve external review, if necessary, by the Ombudsman.

To ensure that internal review systems are implemented, the committee considers that internal review procedures should be provided for: (i) in legislation creating the discrete administrative decisions that would be reviewable, where appropriate;<sup>95</sup> and (ii) as a general guideline to departments and agencies in the *Cabinet handbook*.

On this point, the committee is pleased to note that the Department of the Premier and Cabinet has recently established an interdepartmental working group involving that Department, the Department of Justice and Attorney-General, and the Department of State Development to consider the development of consistent standards for internal review of administrative decisions, and the need and options for external review processes.<sup>96</sup>

The committee also agrees with the second part of review recommendation 10. The reviewer clarified to the committee that by asking all local governments and agencies to 'show' all Ombudsman cases in their annual reports, he envisages that agencies will: (1) report on the number of complaints against the agency taken to the Ombudsman; and (2) provide a generic picture on what people complained about and how the agency addressed the complaints/implemented the Ombudsman's recommendations. The committee agrees that reporting this information would ensure that agencies are taking the Ombudsman's recommendations seriously and promote them to develop/maintain their own preventative measures, such as internal complaints handling systems.

Submissions that the committee received on this point generally agreed with the suggestion, provided that agencies are not thereby required to breach confidentiality (or provide commercially sensitive information) in reporting cases.

### 5.2.12 Committee recommendation 11

**The committee endorses review recommendation 10 (reproduced above in section 5.2.10). The committee also notes the interdepartmental working group recently established by the Department of the Premier and Cabinet to consider, among other things, the development of consistent standards for internal review of administrative decisions. The committee recommends that (as a possible outcome for the interdepartmental review) the Premier, as the minister responsible for administrative reform, consider undertaking steps (for example, by inserting a direction in the *Cabinet handbook*) to ensure that:**

- **departments and agencies implement internal complaint handling systems; and**

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<sup>94</sup> Guidance as to what these procedures should include is found in the PCEAR administrative appeals report where the PCEAR suggests various features of an effective internal review code: Ibid, pp 41-42 and the Commonwealth Ombudsman's *A good practice guide for effective complaint handling*, op cit.

<sup>95</sup> The committee notes that the PCEAR characterised as a 'welcome development' statutory internal review provisions in (as they were then): Part 3 Division 2 of the *Environment Protection Act 1994*, Part 3 Division 2 of the *Land Act 1994*; and Chapter 4, Part 1 of the *Transport Operations (Road Use Management) Bill 1995*: PCEAR, op cit, p 43. The *Freedom of Information Act 1992* (Part 3, Division 4 and Part 4 Division 2) also provides for internal review of agency decisions regarding access to documents and amendment of information respectively.

<sup>96</sup> Letter to the committee dated 5 July 1999 from Dr G Davis, Director-General, Department of the Premier and Cabinet.

- **departments take steps to ensure internal review rights and/or procedures are provided for in legislation creating discrete administrative decisions (where appropriate).**

**In relation to the last sentence of review recommendation 10, the committee recommends that all State Government departments and agencies and local governments ‘show’ all Ombudsman cases in their annual reports by including in those reports: (1) statistics on the number of matters they have had before the Ombudsman; and (2) a short summary of the types of matters complained about and how the agency addressed those types of complaints.**

#### **5.2.13 Review recommendation 11**

*Recommendation 11 - The Ombudsman should institute a formal program of secondments, to and from the Office, with State government departments and agencies and local governments. Such secondments should receive formal endorsement and encouragement from the Office of the Public Service and local government associations as a recognised and valued avenue of career enhancement for officials. Home agencies should guarantee employment to returning secondees at a level equal to that which they held immediately prior to the secondment. As a guide, the Ombudsman should pursue a target of one-quarter of investigative staff to consist of secondees by 2003. The secondment program should be widely advertised throughout state and local government and feature on the Ombudsman’s Internet home page.*

#### **5.2.14 Committee analysis and comment**

The committee notes the benefits of a secondment program, as suggested in the review. The committee also notes that some submissions suggested a secondment program potentially had pitfalls: a loss of specialised staff from a small office and a risk to the independence of the Office if it were to be too fully staffed with public service secondees. In this regard, the committee believes that the suggested target of one-quarter of investigative staff to consist of secondees by 2003 should represent an upper limit. In any event, the committee envisages that the Ombudsman would be in a position to recognise any such pitfalls and manage the program flexibly.

#### **5.2.15 Committee recommendation 12**

**In relation to review recommendation 11 (reproduced above in section 5.2.13), the committee considers that the issue of a formal program of secondments—and the extent to which it is implemented—is ultimately an issue for the Ombudsman to decide and regulate.**

#### **5.2.16 Review recommendation 12**

*Recommendation 12 - The Client and Agency Satisfaction Surveys should be carried out every two years as a minimum by the Office of the Queensland Ombudsman. The results should be used to inform and modify the approach and practices of the Office, and serve to highlight areas for further research, especially the extent to which agencies are implementing Ombudsman’s recommendations. The Office also should establish a separate annual random sample follow through with complainants to monitor the extent of agency acceptance of Ombudsman recommendations. Such a measure of the outcomes of the Office should be used to fashion further action such as joint seminars with agencies, provision of more information about the Office, further explanations for reasons for decisions, etc. The results of the surveys and the outcomes monitoring should be synthesised in the annual report and provided in full to the LCARC.*

## 5.2.17 Committee analysis and comment

### The 1998 Surveys

The results of the 1998 Agency Satisfaction Survey and the 1998 Client Satisfaction Survey are contained in Appendices K and L of the review report. The results are summarised by the reviewer on page 18 of the review as revealing ‘a broad range of support for the Ombudsman from within government and in the broader public arena, with a considerable amount of complimentary remarks and satisfaction with the manner in which the Office conducts its business’. However, the results are described differently in pages 40-44 of the report, where the reviewer notes that the designs of future surveys need to be refined and describes the Agency Satisfaction Survey as ‘disturbing’.<sup>97</sup> Further, the reviewer concludes there that, overall, the surveys show that a ‘significant proportion of the public sector of Queensland is not treating the Ombudsman’s role with proper recognition or respect’ and ‘nor are they using the Ombudsman’s investigations and procedures as a means of addressing their own client responsiveness’.<sup>98</sup>

The Ombudsman, in his submission to the committee, interpreted the survey results in a very different manner to the reviewer:

*The Government Statistician’s Office (GSO) was consulted and its guidance and advice were adopted in settling the categories and questions on the survey forms. The GSO received and analysed the data and produced the survey results of the complainant survey whilst the Ombudsman’s office did likewise with the agency survey.*

#### **Complainant Survey**

*Contrary to the report (page 41) the survey results do indicate “which responses came from those clients whose cases were not upheld” as well as from those complainants whose cases were sustained or rectified.*

*It is not correct to say that there was a feeling that “the investigative process did not help them to understand how their complaint had been taken up”. The actual question surveyed was whether “The Ombudsman’s investigation helped me to understand the decision or action I complained about”.*

*There is no basis for the report to suggest that “A full reading of the results of the survey also reveals a lack of understanding on the part of a majority of the respondents of the role and powers of the (Ombudsman’s) Office and particularly the limitation on its powers”. This was never surveyed. Some ad hoc comments to this effect were made by that is a totally different thing. There is no way of knowing if those comments reflected a majority view.*

#### **Agency Survey**

*It is not correct that 10 out of 26 State government departments did not respond. Due to an administrative oversight, there was no follow up with the forms but despite that, 13 of the 18 Departments of State responded, representing 87% of complaints received for 1997/98. In the circumstances this does not “lend considerable weight to the contention that there is now a much lower understanding of the significance of the Ombudsman than when the Office commenced”.*

*The report indicates that it is “particularly worrying that nearly one third of the agencies believe the Ombudsman’s investigation results to have not been correct”. It would indeed be surprising if all agencies agreed with the results of the Ombudsman’s findings. In any event that is not the figure. The question asked of agencies was “The results of the Ombudsman’s investigation regarding your agency have usually been correct”. Only 2% disagreed. However the report added in the 24% who neither agreed nor disagreed, and the*

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<sup>97</sup> Review report, op cit, p 41.

<sup>98</sup> Ibid, p 43.

6% who did not comment and lumped them all together to reach 32%, claiming this is the percentage who disagreed. Clearly this is no basis upon which to make the “particularly worrying” statement in the report (page 42).

Similarly, with respect to the question whether ‘Your agency usually implements suggestions and recommendations by the Ombudsman’, the report says 22% of agencies are not implementing suggestions and recommendations. This is clearly incorrect. Putting aside the question of suggestions as opposed to recommendations, only 1% of agencies disagreed with the proposition that they usually implement the Ombudsman’s recommendations.

The report says nearly half the State government departments neither agree nor disagree, and the non-committal response is “alarming”. The departments in that category were Economic Development and Trade, Emergency Services, Local Government and Planning, Premier and Cabinet, Public Works and Housing and Police. Very few recommendations were made regarding these agencies in the last two years and it should be noted that none of the responses were filled out by a Director-General, Deputy Director-General or senior officer. As opposed to that no department said that it did not implement my recommendations. The overall rate was 1%, consistent with my inhouse data. Again the 22% is obtained by combining “Neither Agree nor Disagree” (14%), “Not Stated” (7%) and “Disagrees” (1%). Again this is no basis for making the “great concern” statement in the report (page 4).<sup>99</sup>

### Discussion of review recommendation 12

The committee believes that strategic planning involving the monitoring of outcomes and client satisfaction is very important to an organisation such as the Office of the Ombudsman. The committee considers that the courses of action suggested in review recommendation 12 are sound and will help the Ombudsman get a better quantitative and qualitative feel for the satisfaction of the Office’s clients, and how agencies are responding to the recommendations of the Office and dealing with procedures involving the Office. The surveys and, particularly, the random sample follow-throughs should also be seen by the Office as an opportunity for it to additionally monitor whether stipulated Office targets and standards are being met. In this regard, the follow-throughs might be considered as an audit tool for management.

Only a limited number of the submissions received by the committee addressed the recommendation. Most of these submissions agreed with the recommendation.

The committee notes that the last part of recommendation 12—that the Ombudsman supply this committee with survey results—would provide a further avenue for discourse between the LCARC and the Ombudsman. In this regard, the recommendation supports the committee’s recommendations in chapter 4 concerning the enhancement of the LCARC’s role in relation to the Ombudsman which will include on-going monitoring of implementation of the strategic review and of the Office’s strategic direction.

### **5.2.18 Committee recommendation 13**

**The committee does not necessarily endorse the strategic reviewer’s analysis of the results of the 1998 client satisfaction and agency surveys. Nevertheless, the committee endorses review recommendation 12 (reproduced above in section 5.2.16). The committee adds that, in preparing each new survey, the Office should look at improving the design of, and the response rate to, the survey.**

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<sup>99</sup> Queensland Ombudsman submission dated 18 September 1998, pp 10-11.

## 6. 'OWN MOTION' INVESTIGATIONS AND PERFORMANCE INDICATORS

### 6.1 OWN MOTION INVESTIGATIONS

#### 6.1.1 Review recommendation 13

*Recommendation 13 - More frequent use should be made of the "Own Motion" Investigations. The Office should constantly identify areas where complaints are clearly stemming from basic systemic causes in sufficient numbers to warrant a research program conducted with the co-operation of the agency/ies concerned to identify the cause, propose new approaches, and change the pattern of administration in the area concerned. The team leader should be chosen for his/her expertise in the area involved but every effort should be made to give the maximum number of staff the opportunity to be part of such an investigation over the medium term. The research capacity to cope with this additional research function should be provided by an enhancement of the resources of the Office, especially on-line facilities.*

#### 6.1.2 Committee analysis and comment

There are three ways in which the Ombudsman can investigate a matter: by reference from the Parliament (or a committee of the Parliament); on receiving a complaint; and under the Ombudsman's 'own motion'.<sup>100</sup> The review notes that it is only very recently that the Ombudsman has embarked on any own motion investigations (one state government investigation and one local government investigation).<sup>101</sup> Since the date of the review report, the Ombudsman has initiated another own motion investigation regarding local government change of ownership charges.

The reviewer sees the use of the own motion power as a 'key element of the preventative and proactive role of the Ombudsman'.<sup>102</sup> Hence, review recommendation 13 promotes more frequent use of the own motion power and suggests that the Office should constantly identify areas where complaints are clearly stemming from basic systemic causes in sufficient numbers to warrant a research program to be conducted with the co-operation of the agencies concerned. The reviewer sees professional development advantages in rotating Office staff through this program.

However, it became apparent through the committee's discussions with both the Ombudsman and the reviewer that each have a different conception of own motion investigations. The Ombudsman has reiterated to the committee that, from the Ombudsman's perspective, own motion investigations are not complaint driven but arise because some deficiency in public administration has come to the Ombudsman's attention through a source other than a complaint. The Ombudsman stressed to the committee that the investigation of issues with systemic causes does not require reliance on the own motion power.

As noted in chapter 3, the Ombudsman has assured the committee that his Office investigates to completion any systemic issues which become apparent through complaints to the Office, although these are not own motion investigations. Mention was also made there of the Ombudsman's attempts to identify underlying defective behaviour which might cause complaints to be made via

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<sup>100</sup> *Parliamentary Commissioner Act*, ss 14-16.

<sup>101</sup> Review report, op cit, p 44. Although the Ombudsman has publicly stated that his own motion investigation into rate recovery practices of local government (September 1998) was not his first own motion investigation, but the first where a formal report to Parliament was appropriate. 'Evidence is the guiding principle', *The Courier Mail*, Brisbane, 12 May 1999.

<sup>102</sup> Review report, op cit, p 44.

'breach codes' and 'report cards' and to convey that information to agencies so that they might address systemic faults. The challenge for the Ombudsman is to be vigilant in ensuring that agencies utilise this valuable information to rectify identified deficiencies.

A number of agencies agreed that the capacity to identify systemic issues arising from patterns of complaints is fundamental to developing preventative strategies.<sup>103</sup> In this regard the Queensland Corrective Services Commission advised the committee that the Ombudsman has been focussing on the identification of systemic issues with the Commission to assist in dealing with blocks of complaints wherever possible. These issues are taken into consideration when policy reviews or initiatives occur.<sup>104</sup> However, other agencies submitted that they would appreciate receiving advice from the Ombudsman on systemic issues causing complaints and would cooperate fully with the Ombudsman in modifying associated administrative practices.<sup>105</sup>

The committee has already noted that it is not in a position to make an assessment as to the frequency that systemic causes of maladministration might become apparent to the Ombudsman. Nor is the committee in a position to determine *how* those systemic issues might become apparent to the Ombudsman. Of course, this question of 'how' dictates (where no formal complaint has been lodged with the Office) whether an own motion investigation is warranted.

Whether there are sufficient systemic issues arising at any one time to warrant a 'research program' as the reviewer suggests is, in the committee's opinion, a matter for the Ombudsman. Own motion investigations do evidently involve significant resource considerations. To be weighed against any dedicated 'own motion' program is the importance of addressing complaints in a thorough and timely fashion especially in light of existing case backlogs. The committee believes that the Ombudsman is best placed to determine how own motion investigations are to be conducted given resources and priorities.<sup>106</sup> (Although, in this regard the committee notes the Office's recent significant funding boost.) The committee also notes the Ombudsman's statement in his Office's 1999-2002 *Strategic and Operational Plan* that the Office will consider and, if necessary, conduct a number of own motion investigations with a view to addressing systemic and/or serious problems in public administration without first requiring a member of the public to lodge a complaint.<sup>107</sup>

Finally, the committee suggests that care must be taken in comparing the number of own motion investigations that the Queensland Ombudsman has conducted *vis a vis* other jurisdictions. For example, whilst the NSW Ombudsman conducts a number of own motion investigations each year, the majority of these relate to police complaints.<sup>108</sup> The Queensland Ombudsman does not have a

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<sup>103</sup> In this regard the ADCQ advised the committee of its computerised complaint handling and records management system (CHARMS) which has the capacity to generate records about particular industry groups, geographical areas etc. In addition to being a tracking and planning system, the system is used to manage and monitor workload.

<sup>104</sup> Queensland Corrective Services Commission submission dated 9 October 1998.

<sup>105</sup> Department of Primary Industries submission dated 16 September 1998. The Department of Communication and Information, Local Government and Planning also submitted that it would be helpful if regular discussions (approx 2 meetings per year) could be held between senior officers of the Department and the Ombudsman's Office so that the department could be kept informed of any emerging strategic or systemic issues relating to local government: 'Such regular dialogue would enable the Minister and the Department to take remedial action before problems escalate'. Submission dated 28 September 1998.

<sup>106</sup> Accordingly, the committee does not agree with the suggestion that the LCARC should decide whether an Ombudsman own motion is warranted and the terms of reference for that investigation. See the Brisbane City Council submission dated 18 September 1998.

<sup>107</sup> Ombudsman's Office, *Strategic and Operational Plan 1999-2002*, June 1999, p 18.

<sup>108</sup> For the period 1 March 1996 to 1 February 1997 the NSW Ombudsman conducted only 3 entirely own motion formal investigations which did not relate to police. This was an increase over the previous year in which 1 such investigation was initiated. NSW Joint Committee on the Ombudsman and the Police Integrity Commission, *Fifth General Meeting with the NSW Ombudsman*, op cit, pp 28-30. The committee's inquiries of the NSW

comparative jurisdiction in relation to the actions of police officers in the course of their operational duties, this being a matter for the Criminal Justice Commission.<sup>109</sup>

The New Zealand Chief Ombudsman advised the committee that he has never used his own motion power during his term. The Chief Ombudsman, while noting the importance of having such a 'residual' power, has found it more effective to use an informal approach to addressing systemic issues. The recipient of such an approach remains aware of an Ombudsman's capacity to initiate an own motion investigation and gives full cooperation in addressing an Ombudsman's concerns, without the need for any formal investigation.

### 6.1.3 Committee recommendation 14

**The committee notes the difference in perception between the Ombudsman and the reviewer as to what constitutes an 'own motion' investigation. These differences aside, the committee believes that the important underlying principle is that the Ombudsman's Office employs various strategies to ensure that systemic causes of maladministration are identified and rectified. The Ombudsman assures the committee that this does occur.**

Therefore, in relation to review recommendation 13 (reproduced above in section 6.1.1), the committee recommends that the Ombudsman:

- **continue to identify where complaints are stemming from systemic causes and take necessary action to see that those administrative deficiencies are rectified. In appropriate cases, and where resources allow, the Ombudsman should do this by conducting own motion investigations;**
- **constantly review the effectiveness of, and be creative in developing, strategies to detect systemic causes of maladministration; and**
- **continue to ensure that any information gathered by the Office in relation to the causes of systemic issues, and any proposed new approaches or changes in patterns of administration is relayed to and employed by the departments and agencies concerned so as to rectify identified deficiencies.**

## 6.2 ENTREPRENEURIAL OPPORTUNITIES

### 6.2.1 Review recommendation 14

*Recommendation 14 - The Queensland Ombudsman should remain open to entrepreneurial opportunities and pursue those which can make good use of the expertise of the Office but which do not cause any fundamental distraction from the main purpose of the Office.*

### 6.2.2 Committee analysis and comment

The committee believes that there is much merit in the Ombudsman pursuing entrepreneurial opportunities, where relevant, provided that this does not cause any fundamental distraction from the main purpose of the Office.<sup>110</sup> The pursuit of such revenue raising opportunities should also not result in the Office's budget being reduced.

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Ombudsman's Office revealed that in 1997/98 the NSW Ombudsman conducted 9 formal 'own motion' investigations. Eight of these investigations concerned police.

<sup>109</sup> However, the Ombudsman noted in his supplementary submission (dated 23 March 1999), that currently neither the Ombudsman's nor the CJC's jurisdiction extends to maladministration by a QPS officer.

<sup>110</sup> This rider was stressed in a couple of submissions.



The Ombudsman is similarly supportive of this recommendation (on the basis that the Ombudsman be able to retain any monies resulting from entrepreneurial ventures), and advises that the Office has already undertaken an entrepreneurial venture in relation to marketing its complaints management database in South East Asia and the Pacific.<sup>111</sup>

To some extent the Ombudsman might be able to tie in the pursuit of entrepreneurial opportunities with increasing education and awareness programs about the Ombudsman as recommended in review recommendation 6. In this regard, the committee notes that the NSW Ombudsman generates income from the sale of publications, and from conducting special inquiries and a number of workshops (which are open to public sector staff) on a fee for service basis. This income contributes to the cost of carrying out the NSW Ombudsman's investigative work.<sup>112</sup>

Queensland's Anti-Discrimination Commission has also developed a 'fee for service' policy which generates revenue. The ADCQ advises that it charges fees for some education/training sessions and publications and, at least in so far as some training sessions are concerned, demand still exceeds supply. The Commission further advises that 'all charging is done in accordance with a Commission-wide policy which carefully balances statutory obligations against responsible use of limited resources'.<sup>113</sup>

Finally, the committee stresses that its support for the Ombudsman pursuing entrepreneurial opportunities does not mean that the committee is advocating the introduction of fees and/or recoverable charges (whether levied on complainants or the agency against whom a complaint has been lodged which the Ombudsman is investigating). In this regard the committee agrees with the review conclusions at pp 45- 46 that: (1) fees levied on complainants is contrary to the principle of free and unfettered access to the Ombudsman; and (2) at this stage, fees in relation to agencies should not be introduced.<sup>114</sup>

### **6.2.3 Committee recommendation 15**

**The committee endorses review recommendation 14 (reproduced above in section 6.2.1).**

## **6.3 PERFORMANCE INDICATORS**

### **6.3.1 Review recommendations 15 and 16**

*Recommendation 15 - The Queensland Ombudsman should construct a new set of performance indicators for the Office in consultation with the LCARC and the Queensland Treasury. Such performance indicators should encompass the full workload of the Office, reflect its qualitative nature, address the complexity of complaints being handled, measure the time involved in handling complaints, the need to share the burden of response between the Ombudsman and the agency which is the subject of the complaint, identify cases which have experienced "legitimate" delay,*

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<sup>111</sup> Queensland Ombudsman submission dated 18 September 1998, p 12.

<sup>112</sup> The NSW Ombudsman's self-generated revenue has averaged around \$200 000 over the last five years. NSW Ombudsman, *Annual Report 1996-1997*, Robert Burton Printers Pty Ltd, pp 180-181. NSW Ombudsman, *Annual Report 1997-1998*, Carillon Graphic Communications, pp 230-231.

<sup>113</sup> ADCQ submission dated 21 September 1998, p 4.

<sup>114</sup> The committee also notes that in its 1993 report, the NSW Joint Committee recommended against the introduction of a general user fees system. However, the committee did recommend that in some instances such as special projects aimed at assisting all government departments in establishing their own complaint handling procedures (that is, projects extraneous to the Ombudsman's ordinary functions), the Ombudsman should examine the possibility of obtaining a portion of the financial expense of such initiatives from the departments to which the Ombudsman provides this service; NSW Joint Committee on the Office of the Ombudsman, *Inquiry into the adequacy of the funds and resources available to the Ombudsman*, op cit, pp 103-105.

and ensure that timeliness remains a key element for cases which require urgent resolution because of impending impacts on complainants. The New Zealand model should be used as a guide.

**Recommendation 16** - The new performance indicators should be incorporated into a new reporting regime for the LCARC and be incorporated into the annual report. They should, in more detailed form, accompany the Ombudsman's estimates in each year's budget round.

### 6.3.2 Committee analysis and comment

At the outset of this discussion it is necessary to distinguish between:

- (internal) indicators of performance which are aimed at individual officers' performance and provide data essential to effective case management within the Office; and
- (external) indicators relating to the office's overall performance—such as number of cases closed, average time to investigate a complaint etc—which would be used by, for example: (1) Treasury and the LCARC to measure Office output for budgetary purposes; and (2) the LCARC and the public to gain a broader appreciation of the health of Queensland's system of public administration.

The reviewer's concept of performance indicators primarily relates to internal indicators, although obviously such detailed material would be integral to collating data to show the Office's overall performance.

The reviewer notes that, at present, the main performance indicator in the Ombudsman's Office is the number of files closed, a measure which the reviewer describes as 'very inappropriate' because it takes little account of a number of matters, such as the qualitative differences in the cases being handled. The reviewer suggests that this has adverse implications on accurately portraying the quality of work being achieved by the Office, resourcing of the Office and staff morale.<sup>115</sup>

Hence, the reviewer advocates the development of new performance indicators for the Office which capture a number of criteria including:

- a differentiation of cases in a *qualitative* way, preferably by a system of classification of complaints according to their complexity (which involves some measure of the amount of time and work involved in a file);
- time involved in handling a particular complaint (with time allocation possibly being based on a bar coding of files and regular electronic surveys of the Office together with a trigger bring-up system);
- a sharing of the burden of response between the Ombudsman and the agency involved;
- the qualitative as well as the quantitative effort required in investigating a case;
- legitimate delay;
- timeliness (that is, some complaints may have their own inherent urgency which should be reflected in the Office's performance measures); and
- the handling of all work in the Office, not just the handling of files/complaints.<sup>116</sup>

The reviewer suggests that the development of new performance indicators of this kind will: (1) enhance feedback to, and information sharing among, staff regarding performance, and make possible a different, more open management style for the Office (which, in turn, should boost staff

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<sup>115</sup> Review report, op cit, p 50.

<sup>116</sup> Ibid, pp 52-53.

morale); and (2) provide a more useful set of supporting material when annual bids are made for resources and for explaining the nature of the caseload to the LCARC and the public.<sup>117</sup>

The reviewer did not, as part of the review, prescribe a new performance indicator regime, noting that to do so would require a deep knowledge of the cases coming before the Ombudsman and an intimate knowledge of the technical capacity of the Office.<sup>118</sup> Rather, the reviewer suggests that performance indicators are best designed by the staff of the Office in consultation with those who will have to use them, such as the LCARC and Treasury.

Nevertheless, the reviewer commends the performance indicators used in the New Zealand Office of the Ombudsmen as a model on which these new indicators should be based. This sophisticated model includes a time component and a degree of categorisation of the complexity of cases and is available as a software package. The reviewer notes that it is open to Queensland to purchase and modify that program.

During its recent study tour the committee met with the New Zealand Chief Ombudsman and gained further insight into the case management system used in that that office, including the bring-up system. The system now uses a scanning machine which incorporates into the case management system, incoming correspondence. The Chief Ombudsman advised the committee that within days of the end of each month he gets a detailed print-out which shows matters such as total workload, complaints-by-age (which allows the Ombudsman to direct staff to focus on a particular category of complaints), performance against agreed statistics and details on which cases each officer is handling (which allows the Ombudsman to make an assessment of each officer's output taking into account the complexity of matters they are assigned).

Further, the Chief Ombudsmen advised that data held on the Office's case management system—such as the number, nature and percentage of cases sustained—provides a good indication of whether organisations within the office's jurisdiction are fulfilling their functions in a fair and reasonable manner.

This detailed material is available to assist the Chief Ombudsman to report monthly to the Speaker as Chair of the Officers of Parliament Committee the financial and performance achievements of the Office. On an annual basis the information is used by the committee in determining the estimates of appropriation for the Office of the Ombudsmen.

In addition, the New Zealand Ombudsmen each year in their annual report explain their performance in some detail against certain performance measures. (These external 'target performance indicators', like those used by other Ombudsmen, still rely heavily on the number of file closures, the average number of days to complete an investigation and the timeliness of Ombudsman responses.)

The committee perceives that, again, there might be a difference in conception between the reviewer and the Ombudsman as to the meaning of 'performance indicators' in the context of the review report (stemming from the internal versus external perspective). The Ombudsman agrees with the reviewer's observation that file closures as a measure, whilst indicative of output and quantity, does not accurately reflect the complexity and quality of work performed in the Ombudsman's Office, but highlights to the committee the difficulty in developing better performance measures.<sup>119</sup> The Ombudsman also referred the committee to the recent output

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<sup>117</sup> Ibid, pp 53-54.

<sup>118</sup> Ibid, p 51.

<sup>119</sup> Queensland Ombudsman submission dated 18 September 1998, p 13.

statement for the Office prepared in conjunction with Treasury as part of the introduction of accrual and output budgeting.<sup>120</sup>

Certainly, in so far external performance measures of an Ombudsman's office are concerned (such as appear in annual reports and are used for budgetary purposes), it seems widely-recognised that file closures as a measure do not accurately reflect the complexity and quality of work performed.<sup>121</sup> However, there is an equally recognised difficulty in devising performance measures for an Ombudsman's office which incorporate quality. In his 1997-98 annual report, the Commonwealth Ombudsman noted that 'qualitative performance indicators for the type of work undertaken by an Ombudsman are difficult to devise'. However, in recognising that there is scope to improve current indicators, that Office is currently developing an enhanced set of indicators which it hopes will provide 'a more comprehensive and meaningful account of the outcomes' the Office achieves in its work.<sup>122</sup> (In chapter 7, the committee recommends that an external person might be able to assist with developing an enhanced set of performance indicators for the Queensland Ombudsman's Office.)

In so far as internal performance monitoring and case management is concerned, the Ombudsman explained to the committee that the internal performance indicators used by the Office include staff targets, file audits, annual performance review of officers and a monthly activity report showing cases carried over from the previous year, new cases allocated, cases closed and cases carried forward per officer with divisional and Office totals.

The committee agrees that efficient complaint handling is dependent on effective internal case management systems.<sup>123</sup> Reliable internal performance indicators also, among other matters, contribute to effective case management. However, the committee is hesitant about being involved in constructing a new set of performance indicators for the Ombudsman's Office (as the reviewer recommends) for similar reasons that the reviewer gave for not prescribing the indicators himself. The committee agrees that developing performance indicators would require an intimate knowledge of the cases coming before the Ombudsman and of the technical capacity of the Office. Although, the committee will take an interest in the performance of the Office in relation to the achievement of those indicators.

However, the committee urges the Queensland Ombudsman to further investigate the viability of purchasing and modifying the software used in the New Zealand Ombudsmen's Office. The argument for a more sophisticated case management system incorporating internal performance

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<sup>120</sup> In this regard, Queensland Treasury submitted that it supported review recommendation 15, noting that it is in accordance with the *Managing for Outcomes* strategy recently approved by Cabinet. Queensland Treasury submission dated 5 October 1998.

<sup>121</sup> A number of other submissions also agreed with this. For example: Department of Equity and Fair Trading submission dated 18 September 1998; Brisbane City Council submission dated 18 September 1998; Queensland Police Service submission dated 15 September 1998.

<sup>122</sup> Commonwealth Ombudsman, *Annual Report 1997-98*, Commonwealth Ombudsman's Office, Canberra, 1998, pp 35-36. See also the Senate Finance and Public Administration Legislation Committee's comments on the Commonwealth Ombudsman's performance information in its *Report on 1997-98 annual reports: Report one*, Senate Printing Unit, March 1999, pp 18-20. The 1993 KPMG management review of the NSW Ombudsman's Office, in devising a number of performance indicators for that Office, noted the difficulty in establishing measures of effectiveness (as opposed to efficiency). KPMG, *New South Wales Office of the Ombudsman Management Review - Final Report*, volume 1, July 1993 (at pp 33-35), contained in the *Companion Volume* to the New South Wales Joint Committee on the Office of the Ombudsman, *Inquiry into the adequacy of the funds and resources available to the Ombudsman*, September 1993, July 1993, pp 33-35.

<sup>123</sup> The ADCQ's submission to the committee demonstrates how that agency used monthly reports with performance indicators for complaint management in addressing a significant backlog of complaints. Submission dated 21 September 1998.

indicators is even more pressing with the recent additional staff to the Office and the unprecedented demand for the Ombudsman's services.

The committee believes that the detailed material which will flow from such internal performance indicators will, in addition to assisting the Ombudsman, assist Treasury, and the committee, in developing and determining the Ombudsman's budget each year.

### **6.3.3 Committee recommendation 16**

**The committee notes that review recommendation 15 (reproduced above in section 6.3.1) is primarily directed at developing internal 'performance indicators' to be used by management to monitor staff performance and assist in case management. In this regard, the committee recommends that the Queensland Ombudsman consider implementing new 'performance indicators' based on the New Zealand model. However, for the reasons noted above, the committee does not recommend that the LCARC be involved in constructing a new set of internal or external performance indicators for the Ombudsman's Office. Although, the committee will take an interest in the performance of the Office in relation to the achievement of those indicators.**

**(In chapter 7, the committee recommends that an external person might be able to assist with developing new internal performance indicators for the Office.)**

**Further, the committee endorses the intent of review recommendation 16 (reproduced above in section 6.3.1) and recommends that the new performance indicators should:**

- **form the basis of discussion at regular meetings of the Ombudsman and the LCARC;**
- **in a summarised form, be incorporated in the Ombudsman's annual report; and**
- **in a detailed form, accompany the Ombudsman's estimates in each year's budget round.**

## **6.4 EARLY INTERVENTION**

### **6.4.1 Review recommendations 17 and 18**

*Recommendation 17 - The classification of cases in the new performance indicators should include categories for cases handled by "early intervention" to reflect the efforts of the Office at case management.*

*Recommendation 18 - The Ombudsman's Office should embark on a fresh approach to case management focussing on early intervention to identify complaints which do not require a full investigation. To this end an intake unit should be re-established in the Office with sufficient powers delegated to the officers involved to judge complaints capable of speedy resolution and to take the appropriate action. All staff should be given the opportunity to take part in rotations to the intake unit and none should serve longer than 6 months at a time. The potential for the intake unit to be on line to a network of Ombudsman contact officers should be explored. The duties and responsibilities of the telephonists/receptionists would need to be redefined once the intake unit were established but, in any event, more consistency should be pursued in the manner in which individual staff respond to callers through the switchboard. The UK experience should be looked to as a model.*

### **6.4.2 Committee analysis and comment**

The review stresses the importance of the Office using case and demand strategies to identify cases capable of speedy resolution. Whilst acknowledging that the Office currently has some procedures

in place to identify such cases, the reviewer advocates a more systematic approach, involving the establishment of an intake unit manned by trained staff to sift through complaints and identify those which do not require full investigation. The reviewer notes that, based on the UK Ombudsman's experience, this approach can reduce the permanent workload of the Office by as much as 40% without reducing client satisfaction. The reviewer also suggests that, for staff development and morale, staff should be rotated between the intake unit and investigation work.<sup>124</sup>

A number of other complaints-based agencies successfully use early intervention strategies incorporating intake units/officers. For example, the ADCQ employs early intervention strategies including a vigorous up-front assessment of complaints on receipt to ensure that the threshold requirements of the *Anti-Discrimination Act* are met. The Brisbane office of the Commission employs two dedicated intake officers who: provide advice to potential complainants and respondents about the application of the Act; refer inquirers to more appropriate avenues; and deal with written inquiries and complaints of a more routine nature.<sup>125</sup>

The committee also notes that, as a demand management technique, the New Zealand Ombudsmen's Office does not normally pursue investigation of a matter raised by a person until that person has first complained to the organisation concerned and given it an opportunity to respond. Resort to the Ombudsmen is seen as a right of last resort.

The Ombudsman informs the committee that in 1997/98, early intervention strategies employed in the Queensland Ombudsman's Office meant that 51% of cases received were not investigated to completion, that is, 1 out of every 2 complaints were not taken up.<sup>126</sup> The Ombudsman further advises that of the remaining cases which are investigated, minor issues are handled by an investigative assistant (AO3) and that staff are well aware that, in dealing with matters, the telephone is to be utilised wherever practical.

The Ombudsman has concerns as to the productiveness and efficiency of establishing a dedicated intake unit. In particular, the Ombudsman does not believe that an intake unit would assist in reducing the backlog as high level investigative staff would need to be taken from their area of specialisation to handle general intake queries. (The Ombudsman's Office has in the past trialed a designated intake officer but dispensed with this in 1991 when team specialisation was introduced.) The Ombudsman further advises that the suggestion of an intake unit was considered at length during the enterprise bargaining process and was rejected.<sup>127</sup> (Although, the Ombudsman later advised the committee that he is considering trialing an intake officer in each division for general intake work.)

The committee urges the Ombudsman to seek to close matters at an early stage. As the reviewer notes, often complainants' concerns can be satisfactorily addressed by an acknowledgment, reply, or the supply of a simple piece of information or explanation. Handling complaints up front, where possible—as opposed to the exchange of written correspondence—reduces formality and the potential for delay.

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<sup>124</sup> Review report, op cit, pp 54-57.

<sup>125</sup> ADCQ submission dated 21 September 1998, p 6. A number of other submissions also supported the use of early intervention strategies with the Central Queensland University noting that, 'the process in use at present dictates a comprehensive and often time consuming exchange of written information'. Submission dated 14 September 1998.

<sup>126</sup> Queensland Ombudsman submission dated 18 September 1998, p 13. On these figures the Queensland Ombudsman is actually 'weeding out' a higher proportion of complaints early in the process than the UK Ombudsman. However, this is not necessarily a fair comparison. In particular, it should be noted that in the UK Ombudsman only receives complaints through a member of Parliament and therefore complaints coming to the Ombudsman have already been through a screening stage.

<sup>127</sup> Queensland Ombudsman submission dated 18 September 1998, p 13.

Further, the committee agrees with the reviewer that the Ombudsman should report on the category of cases handled by early intervention to reflect the Office's efforts at case management and that this should be a separate category of cases in the new performance indicators.

#### 6.4.3 Committee recommendation 17

**The committee endorses the general thrust of review recommendation 18 (reproduced above in section 6.4.1) that early intervention strategies should, where possible, be used in the Ombudsman's Office. In this regard, the committee encourages the Ombudsman to:**

- **exchange experiences regarding the use of early intervention strategies with comparative complaint-handling agencies; and**
- **report on the category of cases handled by early intervention to reflect the Office's efforts at case management and incorporate this category of cases in the Office's new performance indicators.**

**However, whether the Ombudsman wishes to establish a dedicated unit as part of the employment of early intervention strategies is, in the committee's opinion, a matter for the Ombudsman. (In chapter 7 the committee recommends that an external person might be able to assist in advising on the Office's use of early intervention.)**

### 6.5 THE OMBUDSMAN'S USE OF INFORMAL CONFLICT RESOLUTION

For people aggrieved by administrative decisions, Ombudsmen provide a flexible, informal, cheap and relatively quick means of resolving disputes. The committee notes that these qualities of the Ombudsman as an avenue of administrative review can be even further enhanced through the use of informal conflict resolution and alternative dispute resolution techniques such as mediation and conciliation. The use of such techniques would be integral to one of the major objectives of the strategic review: a proactive and preventive Ombudsman.

The benefits of Ombudsmen using mediation has been outlined by the New South Wales Ombudsman,<sup>128</sup> who has suggested that some agreement is reached in most cases when mediation is used by the Office and that:

*Even where agreement is not able to be reached, parties have invariably found the process a useful one for allowing full and frank discussion and for clarifying the issues in dispute. Mediation allows each side to understand the other's point of view and the interests which need to be met for the matter to be resolved or to be taken further.*

*Another benefit of mediation is that fresh ideas which can be generated during the session can be used to improve systems within the government departments taking part in the mediation.*<sup>129</sup>

This last point indicates that using mediation can also be helpful in improving one of the other major objectives of the strategic review, a systemic Ombudsman.

The Commonwealth Ombudsman's Office has also stressed the importance of 'an Ombudsman investigator as a mediator' and noted that in this intermediary role, the Ombudsman can 'often provide a simple solution which the arguing parties have failed to see'.<sup>130</sup>

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<sup>128</sup> For example, see New South Wales Ombudsman, *Report of the Ombudsman for the year ended 30 June 1995*, Office of the Ombudsman, Sydney, 1995, p 148; *Annual report 1996-1997*, op cit, pp 152-157.

<sup>129</sup> *Report of the Ombudsman for the year ended 30 June 1995*, op cit, p 148.

<sup>130</sup> Commonwealth Ombudsman, *Annual report 1997-98*, op cit, p 28.

The New South Wales Ombudsman in 1994-95 put into place a model for in-house mediation appropriate for Ombudsman disputes<sup>131</sup> and, since that time, Ombudsman staff have been involved in an on-going training program on advanced mediation skills. The New South Wales Ombudsman, along with the Attorney-General's department and the Auditor-General, was also involved in the publication in July 1997 of *Public Sector Mediation Guidelines* for public sector managers considering using mediation to resolve a dispute.<sup>132</sup>

The New Zealand Chief Ombudsman advised the committee during its study tour that he believes that even mediation has an element of legalism which he steers away from. The Chief Ombudsman prefers a more informal, direct approach to conflict resolution based on the power to persuade rather than order which he believes the Ombudsman is in a unique position to facilitate. In this regard the Ombudsman must develop a conflict resolution style which avoids adversarialism but does not detract from the Ombudsman's authority. The credibility of the Ombudsman is integral to the success of such a style.

The Queensland Ombudsman informs the committee that his Office uses mediation, but not in the initial stages of an investigation, and only where the Office can establish fault on behalf of an agency.

The committee urges the Queensland Ombudsman to be active in using informal complaint resolution techniques to attempt to settle—or at least to clarify the issues involved in—appropriate disputes. The committee believes that the Ombudsman's strength lies in the office's capacity as an intermediary or problem solver. The objective and impartial perspective which the Ombudsman brings to a matter has the potential to diffuse what might otherwise turn into a prolonged adversarial dispute. The increased use of informal complaint resolution and other alternative dispute resolution techniques by the Office would enhance the Ombudsman's effectiveness as this intermediary in disputes between governments and citizens.

### **6.5.1 Committee recommendation 18**

**The committee recommends that, as far as possible, the Ombudsman's Office should utilise informal complaint resolution and other alternative dispute resolution techniques to enhance the Ombudsman's role as intermediary and problem solver in disputes between citizens and government.**

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<sup>131</sup> New South Wales Ombudsman. *Report of the Ombudsman for the year ended 30 June 1995*, op cit, p 148.

<sup>132</sup> New South Wales Ombudsman, *Annual report 1996-1997*, op cit, p 152.



## 7. MANAGEMENT STRUCTURES AND SYSTEMS

The committee noted in chapter 2 of this report the reviewer's observation that this was a strategic review and not a management or operational/procedural review. The reviewer also reported that 'a great many points which were raised with the reviewer, especially by the staff and former staff, fell outside the scope of the review but were noted'.<sup>133</sup> In various parts of the report, the reviewer notes issues relating to management systems and practices and staff morale.

Nevertheless, the reviewer also noted that some management issues impacted significantly on the strategic direction of the Office and therefore required his comment to that extent.<sup>134</sup> Review recommendations 19-24 and 26 cover areas that fall within this category.

In this chapter the committee discusses the wider issue of management of the Ombudsman's Office.

### 7.1 REVIEW RECOMMENDATIONS 19-24 AND 26

Recommendation 19 - *Following the introduction of the new performance indicators and the case management/early intervention intake system, a new, more open management style should be introduced into the Office. It should feature complete sharing of all individual and office-wide performance data amongst all staff, accompanied by frequent case management/file review staff meetings at least once per month. The coding of cases should be reviewed to ensure that precedents can readily be identified.*

Recommendation 20 - *The work of the Office should continue to be divided broadly into State and local jurisdictions to allow for the benefits of such specialisation, but should be accompanied by regular staff conferences to discuss performance, cases, and targets, and office-wide and individual performance data be made available to all. The opportunity should be provided for more frequent formal meetings of smaller groups of staff with similar case allocations to meet to discuss difficult cases in particular. The Ombudsman should revisit the "two-team" structure after 12 months' operation of a new performance indicator and associated management style, in consultation with the staff, to determine whether smaller teams might be more appropriate.*

Recommendation 21 - *The Queensland Ombudsman should introduce formal training/staff development program particularly for new recruits.*

Recommendation 22 - *The Ombudsman should instigate a review of the classification of positions in the Office to ensure that they reflect the true worth of the work being performed, for both professional and support staff positions, and the need for a more graduated scale of professional and support positions.*

Recommendation 23 - *There should be more delegation of responsibility from Deputy Ombudsman to all staff but particularly senior staff in relation to assignment of intake, signing of correspondence, and the conduct of trips. Deputies should be encouraged to be more involved with the strategic elements of the Office, its outward interfaces, mentoring of staff, raising the profile of the Office, and engaging in related professional activities.*

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<sup>133</sup> Review report, op cit, p 5.

<sup>134</sup> Ibid, p 67.

**Recommendation 24** - *The Ombudsman should review the visits procedures, especially the correctional centres visits, to ensure that the maximum effort is directed to resolving complaints on the spot.*

**Recommendation 26** - *The Ombudsman should reconsider the Management and Work Practices of the Office in the light of comments made by this Review, management and staff meetings should be held more frequently with adequate opportunity for staff feedback, and consideration should be given to establishment of an external grievance appeal mechanism for the Office.*

## **7.2 COMMITTEE ANALYSIS AND COMMENT**

The committee concluded in chapter 2 that the legislative intention is that a strategic review of the Office of the Ombudsman should assess *both* the Office's performance (to evaluate economy, efficiency and effectiveness) and the Office's strategic direction. However, while the inaugural strategic review demanded some assessment of management practices within the Office, the review was not a management review as such and therefore did not assess the overall economy, efficiency and effectiveness of the Office.

The committee is concerned that if there are management issues within the Office that are not addressed, they could adversely impact upon the Office's efficiency and effectiveness, and ultimately on its strategic direction. For example, the committee believes that it is a necessary part of the Office's effective operation that:

- an open, participative management style reflecting contemporary management principles is employed in the Office (review recommendation 19);
- the Office is appropriately structured, regular staff conferences are held, and systems are otherwise in place to ensure shared performance information and staff guidance generally (review recommendation 20);
- all Office staff, particularly new recruits, receive training as part of a formal training/staff development program (review recommendation 21). (In this regard, the committee notes that the Office's most recent strategic and operational plan does propose greater administrative law training for staff.<sup>135</sup>);
- positions in the Office are correctly classified (review recommendation 22). (In this regard the committee notes that funds have been allocated to allow a review the classification of positions in the Office. The Ombudsman advises that he intends to engage an external reviewer to conduct this reclassification in 1999-2000 now that all new positions—created as a result of the 1998/99 funding increase—have been filled and duties finalised. According to the Office's 1999-2002 *Strategic and Operational Plan*, this review will concentrate on 'appropriate divisional and team reporting relationships to maximise efficiency and effectiveness, thereby enabling the Office to better serve the community'.<sup>136</sup>);
- there is appropriate delegation of responsibility within the Office (especially from the Deputy Ombudsmen) to ensure that the Office is operating efficiently and that staff are utilised commensurate to their skills (review recommendation 23). (In this regard the committee notes the Ombudsman's advice that the Office's new structure should ensure greater delegation of responsibility from the Deputy Ombudsmen.);

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<sup>135</sup> Office of the Ombudsman, *Strategic and Operational Plan 1999-2002*, June 1999, p 18.

<sup>136</sup> *Ibid*, p 19.

- the visits program aims to resolve complaints ‘on the spot’ wherever possible (review recommendation 24). (In this regard the committee notes the Ombudsman’s advice that he has recently reviewed the visits procedure to ensure that maximum effort is directed to resolving complaints during the visit.); and
- management and work practices are constantly reviewed and that there is an external grievance appeal mechanism—apart from the Industrial Relations Commission—for the Office (review recommendation 26).

Given its current jurisdiction, the committee believes that it is limited in the extent to which it can inquire into management and operational issues within the Ombudsman Office. (The committee has already commented in chapter 4 that it believes its jurisdiction regarding the Ombudsman should be clarified.)

Hence, the committee has not been in a position to fully review and evaluate the reviewer’s recommendations noted above. Further, the committee has been unable to build for itself a clear overall picture of the economy, efficiency and effectiveness of the Office. This causes the committee some concerns particularly given the committee’s role in relation to developing the Ombudsman’s budget.

Against this background, the committee believes that there should be an additional, management review of the Ombudsman’s Office. Such a review is timely given the Office’s funding increase since the date of the review which has seen the employment of 18 additional staff in the Office, and given the ever increasing demand for the Office’s services.

The committee is also keen that the Ombudsman’s Office embraces, and is seen to embrace, best management practices and operates as a model of good administration to be followed by the agencies within the Ombudsman’s jurisdiction. In other words, the committee believes that the Office should lead the public sector by example.

The committee envisages that this management review, while assessing generally the Office’s economy, efficiency and effectiveness, should:

- where the Office has implemented strategic review recommendations in relation to management, organisational structure and complaint handling, examine the Office’s implementation of those recommendations and determine whether the changes introduced achieve the desired objectives;
- where the Office has not implemented strategic review recommendations in relation to management, organisational structure and complaint handling, examine the necessity or desirability of the Office implementing those recommendations (especially in light of the increased staffing in the Office), with particular focus on:
  - management and administrative processes and procedures within the Office including internal communication and sharing of performance information;
  - Office structure including the delegation of responsibility and the appropriateness of current position classifications;
  - formal and informal staff training and guidance;
  - management issues arising as part of/as a result of the visits program;
  - human resource issues including the establishment of an external grievance appeal mechanism (apart from the Industrial Relations Commission);

- complaint handling methodology and processes including case and demand management strategies (incorporating, in particular, the use of early intervention strategies);
- the performance of management systems used in the Office to see whether they enable the Office to assess whether its objectives are being achieved economically, efficiently and effectively, including the appropriateness of the internal and external performance indicators used in the Office (and how the New Zealand model might be adopted and modified as suggested by the reviewer); and
- make recommendations in accordance with findings in relation to the above matters and any other matters which the review finds impact on the economy, efficiency and effectiveness of the Office.

To ensure that the independence of the Ombudsman's Office is not compromised, the committee believes that this review must be conducted by a person/s external to the Ombudsman's Office and external to the Executive Government.

In light of the possible limits on the committee's jurisdiction, the committee recommends that the Premier, as the minister responsible for the *Parliamentary Commissioner Act*, commission an appropriate person/ to conduct this management review. The committee further recommends that the Premier conduct this review under s 32 of the *Parliamentary Commissioner Act* so that both the committee and the Ombudsman will be consulted about the appointment of the person to conduct the review and the terms of reference for the review.

The Premier might consider conducting this review in conjunction with the upcoming external structural/classification of the Office (for which funding has already been set aside).

### **7.3 COMMITTEE RECOMMENDATION 19**

**The committee recommends that, as a matter of priority, the Premier, as the minister responsible for the *Parliamentary Commissioner Act 1974 (Qld)*, commission a person/s external to the Ombudsman's Office and the Executive Government to undertake an external management review of the Office of the Queensland Ombudsman. Further, the committee recommends that the Premier commission this review under s 32 of the *Parliamentary Commissioner Act*.**

**This review, while assessing generally the Office's economy, efficiency and effectiveness, should:**

- **where the Office has implemented strategic review recommendations in relation to management, organisational structure and complaint handling, examine the Office's implementation of those recommendations and determine whether the changes introduced achieve the desired objectives;**
- **where the Office has not implemented strategic review recommendations in relation to management, organisational structure and complaint handling, examine the necessity or desirability of the Office implementing those recommendations (especially in light of the increased staffing in the Office), with particular focus on:**
  - **management and administrative processes and procedures within the Office including internal communication and sharing of performance information;**
  - **Office structure including the delegation of responsibility and the appropriateness of current position classifications;**

- **formal and informal staff training and guidance;**
- **management issues arising as part of/as a result of the visits program;**
- **human resource issues including the establishment of an external grievance appeal mechanism (apart from the Industrial Relations Commission);**
- **complaint handling methodology and processes including case and demand management strategies (incorporating, in particular, the use of early intervention strategies);**
- **the performance of management systems used in the Office to see whether they enable the Office to assess whether its objectives are being achieved economically, efficiently and effectively, including the appropriateness of the internal and external performance indicators used in the Office (and how the New Zealand model might be adopted and modified as suggested by the reviewer); and**
- **make recommendations in accordance with findings in relation to the above matters and any other matters which the review finds impact on the economy, efficiency and effectiveness of the Office.**

## 8. OFFICE RESOURCES

### 8.1 CORPORATE SERVICES

#### 8.1.1 Review recommendation 25

*Recommendation 25 - The Ombudsman should conduct a complete, realistic inventory of capital and recurrent requirements in the Corporate Services area of the Office. Whilst the delivery of those services should remain, as far as possible, within the Office, discussions should be undertaken with the Queensland Audit Office and the Parliament to determine whether the sharing of establishment and operating costs of some aspects, particularly information technology, could be achieved. Following these discussions and on the basis of the inventory, a costing for these items should be forwarded to the LCARC and Treasury for special one-off funding to bring the corporate services function up to date. Given the precarious and antiquated nature of some of the infrastructure, this request for funding should be viewed sympathetically.*

#### 8.1.2 Committee analysis and comment

Review recommendation 25 amounts to a suggested overhaul of the Office's information technology arrangements, along with a recommendation that the Ombudsman explore the possibility of achieving cost effective administrative synergies with the Queensland Audit Office or the Parliament.

The Ombudsman advises that, since the review, the Office has formulated a 'complete and realistic' inventory with regard to Corporate Services' information technology requirements and that the Office's 1998/99 budget addressed all the items on that inventory.<sup>137</sup> (The Ombudsman Office's 1998/99 budget of \$5.1M—which comes under a combined program with the Office of the Information Commissioner—included funding of \$0.243M for an information technology upgrade and replacement program and additional information technology infrastructure required to support additional staff resources, and \$0.285M for the implementation of an integrated financial/HR payroll system.<sup>138</sup>) The Ombudsman also advises that a dedicated IT systems officer has come on staff.

The committee notes that Ombudsman officers being on line will help facilitate contact with agencies (see review recommendation 8) and the creation of an Internet home page will additionally increase the public's knowledge of when the Ombudsman can and cannot help them resolve a dispute with government (see review recommendation 6).

In relation to the reviewer's suggestion that information services and perhaps other corporate services might be shared between the Ombudsman's Office and other agencies (the QAO and/or the Parliament), the committee notes that discussions have been held between the Ombudsman, Auditor-General, the Speaker and the Clerk of the Parliament to explore whether some

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<sup>137</sup> The inventory had comprised those items listed in Appendix D of the strategic review report as well as additional items to provide IT to new staff.

<sup>138</sup> Queensland. State Budget Papers 1998-99, *Premier - Ministerial Portfolio Statements*, Government Printer, 1998, p 3-7. The Ombudsman has since reported to the committee that the Office has purchased the Navision financial reporting system, which is substantially more cost effective for that particular office than the SAP system which was previously under consideration. A list of IT upgrades which are scheduled for completion in the 1999-2000 financial year are detailed in the Queensland Ombudsman's, *Strategic and Operational Plan 1999-2002*, pp 19-20.

rationalisation of corporate services was feasible. The Ombudsman reported to the committee that the consensus was that it was not feasible.<sup>139</sup>

### 8.1.3 Committee conclusion

**The committee notes that review recommendation 25 (reproduced above in section 8.1.1) has been addressed since the publication of the strategic review report.**

## 8.2 GENERAL RESOURCES

### 8.2.1 Review recommendation 27

*Recommendation 27 - In addition to the extra resources already flagged to bring the information technology capacity up to date, the Office should be resourced to be able to recruit two more staff but on condition that the reforms outlined in this Review are implemented. After this the resourcing of the Office should be indexed to the more realistic set of performance indicators which are developed.*

### 8.2.2 Committee analysis and comment

One of the objectives of the strategic review was to review the level of funding currently available to the Office. The review did this by considering funding in a number of discrete areas<sup>140</sup> and then briefly discussing funding generally (culminating in review recommendation 27).

The committee appreciates the difficulty in assessing the adequacy of the resources of the Queensland Ombudsman.<sup>141</sup> This difficulty is highlighted by the comprehensiveness of the New South Wales Joint Committee on the Ombudsman's September 1993 report, *Report into the adequacy of the funds and resources available to the Ombudsman*, where that committee commissioned independent management consultants to assess the adequacy of the New South Wales Ombudsman's resourcing.

Specifically, review recommendation 27 recommends increased funding for the Ombudsman's Office—over and above that for an IT upgrade (see recommendation 25 immediately above)—for resources 'to recruit two more staff but on condition that the reforms outlined in this Review are implemented'.

In response to this suggested level of general resourcing, the Ombudsman submitted:

*The recommendation [27] is unrealistic. The recommendations contained in the report require the Queensland Ombudsman to perform a variety of additional functions, such as training other agency personnel, advising agencies on policy matters, sitting on committees, publishing regular newsletters, undertaking further research, and suggests that if these additional functions are undertaken then two more staff may be able to be justified.*

*The recommendation completely ignores -*

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<sup>139</sup> These discussions follow a joint finding by the Premier's Department and the Ombudsman some years ago that the provision of the Ombudsman Office's corporate services would be less, rather than more, cost effective if it was provided by the Premier's Department than by the Ombudsman's Office itself. (There were also concerns that the independence of the Ombudsman's Office would be to some degree threatened if its corporate services were provided by a State Government department.)

<sup>140</sup> For example, in relation to review recommendations 6 (awareness strategies), 7 and 9 (the Office working more closely to agencies as an adviser), 13 (own motion investigations), 21 (staff training and professional development) and 25 (IT upgrade).

<sup>141</sup> Review report, op cit, p 68.

1. *The number of written complaints received in 1997/98 increased by 414 on the previous year and reached an all time high of 3739 cases;*
2. *Over the past seven years the number of written complaints received annually has increased from 2318 to 3739 - an average rate increase of 8.75% each year (and this trend is expected to continue); and there has been no comparable increase in funding;*
3. *The backlog of cases over the past seven years has varied from 1100 to 1628 cases and currently stands at an unacceptably high 1826 cases; and*
4. *Investigative staff carry very heavy caseloads.*

*It is clear that a substantial boost of funding is needed and maintained in order to overcome excessive delays and the serious backlog in the conduct of investigations in the Office of the Queensland Ombudsman.*<sup>142</sup>

The reviewer subsequently clarified in a meeting with the committee that review recommendation 27 was ambiguous and that what he meant was to recommend that two additional staff be taken on *now* (based on the existing workload), with future resourcing to be contingent upon the Office introducing reforms suggested in the review.

It has transgressed that the Office's 1998/99 budget of \$5.183M (which is combined with the Office of the Information Commissioner and represents a 55.9% increase over the 1997/98 budget allocation of \$3.323M) more than adequately addressed the type of additional staffing levels suggested by the reviewer on this point. (As already noted, the Office has received an additional 18 staff—13 permanent and 5 temporary—as a result of the funding increase.) However, the committee also notes that this additional funding was not conditional on implementing any of the reforms outlined in the strategic review.

The last suggestion made in review recommendation 27 is that future resourcing should be indexed to the more realistic performance indicators recommended to be developed subsequent to the review. The committee has already discussed in some detail the issue of internal and external performance indicators (see section 6.3) and the committee's role in relation to the Office's resourcing via the requirement for it to be consulted in relation to the formulation of the Ombudsman's budget.

While the committee has acknowledged the difficulty in developing new external performance indicators for the Office, the committee agrees with the reviewer's underlying sentiment that there must be some correlation between the Office's performance and future resourcing. As already noted, the management review of the NSW Ombudsman's Office was instigated by the Ombudsman's parliamentary committee in order to examine the Ombudsman's case for an increase in funding for his Office. This committee similarly sees strategic reviews and the proposed management review of the Ombudsman's Office (recommended in chapter 7) as being instrumental in informing funding decisions and the budgetary process.

### **8.2.3 Committee recommendation 20**

**The committee notes that the suggestion in review recommendation 27 (reproduced above in section 8.2.1)—that, in addition to the extra resources suggested in review recommendation 25 to bring information technology capacity up to date, the Office should be resourced to be able to recruit two more staff—has been addressed by the Ombudsman's Office 1998-99 budget.**

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<sup>142</sup> Queensland Ombudsman submission dated 18 September 1998, p 15.



## 9. THE QUEENSLAND ‘PUBLIC ADMINISTRATION APPEAL MAZE’

### 9.1 USE OF THE NAME OMBUDSMAN

#### 9.1.1 Review recommendation 28

*Recommendation 28* - The government should cease using the word “Ombudsman” in the title of other appeal bodies and mechanisms and should also discourage the private sector from so doing.

#### 9.1.2 Committee analysis and comment

The concept of an Ombudsman developed in 1809 in Sweden as a mechanism through which the Parliament could scrutinise the actions of the King. A hundred years later, Finland established an Ombudsman. Other Scandinavian countries followed. New Zealand was the first English-speaking country to introduce an Ombudsman, in 1962. Western Australia was the first Australian jurisdiction to introduce an Ombudsman (in 1971), followed by South Australia (1972), Victoria (1973), and New South Wales and Queensland (1974). The Australian Commonwealth Ombudsman was established in 1976.

Ombudsmen have come to be seen as an important part of a healthy democracy and are well-respected. The moral authority of Ombudsmen plays a large part in agencies adopting Ombudsman recommendations. The considerable status of Ombudsmen is itself indicated by the fact that private sector bodies, for example in the banking and telecommunications industries, have adopted the name Ombudsman, perhaps trading on the independence and impartiality that ‘Ombudsman’ suggests.

But the introduction of ‘private’ Ombudsmen has led to concerns that use of the name ‘Ombudsman’ by the private sector causes public confusion about the meaning of the term and ‘could devalue the public credibility and standing of parliamentary Ombudsman if standards of independence and accountability are not maintained by the private officers’.<sup>143</sup>

In New Zealand, since 1991 there has been a statutory requirement to obtain the Ombudsman’s consent before using the Ombudsman name.<sup>144</sup> In Australia, the *Justice Statement* made by the Prime Minister and the Attorney-General in May 1995 recommended that the Commonwealth Ombudsman ‘develop an appropriate mechanism for the protection of the name “Ombudsman”’.<sup>145</sup> At the time, the Commonwealth Ombudsman agreed that the Commonwealth *Ombudsman Act* should be amended prevent the use of ‘Ombudsman’ without the Ombudsman’s prior written consent.<sup>146</sup> The recommendation remains unimplemented, though the committee understands that consideration continues to be given at Commonwealth level to means of preventing the use of the title ‘Ombudsman’ by bodies which lack the parliamentary Ombudsman’s statutory guarantees of independence, impartiality and confidentiality.

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<sup>143</sup> Anderson, J, *The Ombudsman: Some nuts and bolts*, reproduced in R Douglas and M Jones, *Administrative Law: Commentary and Materials*, second edition, Federation Press, Leichhardt, NSW, 1996 at pp 146-157, 156.

<sup>144</sup> The New Zealand *Ombudsman Act 1975*, s 28A (inserted in 1991) provides:

**28A Protection of name**—(1) No person, other than an Ombudsman appointed under this Act, may use the name “Ombudsman” in connection with any business, trade, or occupation or the provision of any service, whether for payment or otherwise, or hold himself, herself, or itself out to be an Ombudsman except pursuant to an Act or with the prior written consent of the Chief Ombudsman.

<sup>145</sup> Australia. Attorney-General’s Department, *The justice statement*, May 1995, p 146.

<sup>146</sup> Anderson, op cit, pp 156-157.

Review recommendation 28 seeks to ensure that the reputation built up by Ombudsmen over the last 25 years in Queensland, and in Australia, is not diluted or undermined by other dispute resolution bodies—government or private—using the title ‘Ombudsman’.<sup>147</sup>

The Queensland Ombudsman supported the recommendation, stating that much of the effectiveness of a Parliamentary Ombudsman depends on the uniqueness and stature of the office, and the goodwill related to it.<sup>148</sup> Indeed, the Queensland Ombudsman expressed concern about other bodies using the title Ombudsman as early as 1993.<sup>149</sup> (At State level in Queensland, there is a Legal Ombudsman and an Electricity Industry Ombudsman.<sup>150</sup>)

While one department’s submission to the committee suggested that recommendation 28 ‘seems to take the issue of ownership of title to extremes’, the committee considers that ‘Ombudsman’ is more than simply a generic term meaning any type of review body. It is a unique office in our system of governance. In this regard, the committee agrees with the sentiments of another department which submitted that the use of ‘Ombudsman’ in the title of other bodies tends to mislead the public in relation to the nature of those other bodies and lessens the public’s ‘perception of the Ombudsman’s true roles and activities’.

The committee believes that, where a body is or has been created with ‘Ombudsman’ in its title, it should be ensured that the body, like its namesake, operates as an independent, impartial, just, informal, speedy and effective avenue of review.

The above discussion raises another matter, that of the name of the Queensland Ombudsman.

The committee considers that the name of the ‘Parliamentary Commissioner for Administrative Investigations’ should be changed to reflect the office’s popular title, ‘Ombudsman’. This was not a matter directly canvassed in the strategic review. However, the Ombudsman submitted to this committee that:

*Due to an apparent oversight the Parliamentary Commissioner Act 1974, when drafted in 1974, omitted to bestow on the Office of Parliamentary Commissioner for Administrative Investigations the title of Ombudsman by which it is universally known today.*<sup>151</sup>

In subsequent communications with the committee, the Ombudsman confirmed that he believed a change in the official name of the Ombudsman’s Office would be desirable. Much of the reasoning above in this section supports a name change. The Queensland Ombudsman is better known to citizens as the Ombudsman. Further, as noted by the Ombudsman,<sup>152</sup> references in the media to the newly created Parliamentary Criminal Justice Commissioner as the ‘Parliamentary Commissioner’ will only lead to further confusion.

The Ombudsman has suggested that the formal title of his Office be changed to ‘Queensland Ombudsman’ and the Act be changed to the *Queensland Ombudsman Act*. The committee agrees that the Ombudsman’s title be changed from ‘Parliamentary Commissioner for Administrative Investigations’ to ‘Queensland Ombudsman’. The inclusion of ‘Queensland’ would distinguish the

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<sup>147</sup> Review report, op cit, p 71.

<sup>148</sup> Queensland Ombudsman submission dated 18 September 1998, p15.

<sup>149</sup> Queensland Ombudsman, *Annual Report 1992/93*, Government Printer, Brisbane, 1993, p 15.

<sup>150</sup> If and when the Electricity Industry Ombudsman is established: The *Electricity Act 1994* provides for the establishment of the office of Electricity Industry Ombudsman. The Minister for Mines and Energy, the Hon Tony McGrady MLA, submitted to the committee that the Minister will consider the actual establishment of the office after industry reforms are finalised (submission dated 14 September 1998, pp 1-2).

<sup>151</sup> Queensland Ombudsman, additional submission to the committee dated 23 March 1999, p 6.

<sup>152</sup> Ibid.

Ombudsman from, for example, the Commonwealth Ombudsman and the Legal Ombudsman. The committee also believes the *Parliamentary Commissioner Act* should be retitled to reflect the change in name of the Ombudsman's Office.

One positive aspect of the Ombudsman's existing official title is its reference to the fact that the Ombudsman is an officer of the Parliament. However, section 5 of the *Parliamentary Commissioner Act* establishes 'a commissioner, to be known as the Parliamentary Commissioner for Administrative Investigations' and additionally provides that the commissioner is appointed 'as an officer of Parliament.' So, this important aspect would not be lost if the office was renamed.

### 9.1.3 Committee recommendation 21

**The committee endorses recommendation 28 (reproduced above in section 9.1.1) to the extent that, prospectively, government and the private sector should be discouraged from using the word 'Ombudsman' in entities they create. Where an entity is created with 'Ombudsman' in its title it should be ensured that the entity resolves complaints and disputes in an Ombudsman-like way; namely, in an independent, impartial, just, informal and speedy manner.**

**The committee recommends that the Premier, as the minister responsible for the *Parliamentary Commissioner Act 1974* (Qld), introduce legislation to:**

- (a) amend s 5 of the Act to change the name of the commissioner from 'Parliamentary Commissioner for Administrative Investigations' to 'Queensland Ombudsman';**
- (b) retitle the *Parliamentary Commissioner Act 1974* the *Queensland Ombudsman Act 1974*; and**
- (c) consequentially amend the Act to recognise the change in the name of the commissioner.**

## 9.2 REVIEWING THE STATE-WIDE 'APPEALS MAZE'

### 9.2.1 Review recommendation 29

*Recommendation 29 - Parliament and the government should conduct an overall review of all of the administrative appeal mechanisms in Queensland with a view to streamlining, diminishing the complexity and cost of the administrative appeals machinery, and reducing the burden on the administration, whilst at the same time ensuring there is no net diminution of the rights of citizens to complain about administrative discretion. When new public sector developments occur which require an avenue of appeal from administrative discretion, the presumption should be in favour of incorporating the avenue into the functions of the Ombudsman's Office rather than creating a single purpose channel and new body to oversee it.*

### 9.2.2 Committee analysis and comment

In the course of examining the strategic direction of one of the main avenues of administrative review in Queensland—the Office of the Queensland Ombudsman—the strategic review identified deficiencies in the wider picture of administrative review in this State. The on-going creation of ad hoc, single-purpose administrative appeal bodies has, according to the review, resulted in a 'public administration appeal maze' that is burdensome and costly to government, and confusing to citizens.<sup>153</sup>

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<sup>153</sup> Review report, op cit, pp 69-71.

The reviewer refers to figures estimating that in January 1993 there were 131 review bodies co-existing in Queensland (usually with separate resourcing and staffing arrangements) that could review some 2,000 administrative decisions made under 474 legislative provisions.<sup>154</sup> In his report and during a meeting with this committee, the reviewer argued the desirability of consolidating and rationalising at least some of these appeal mechanisms.<sup>155</sup>

In the submissions received by this committee, recommendation 29 was one of the most widely commented on recommendations of the review. An overwhelming proportion of submissions that came to a position on recommendation 29 supported the recommendation. These included submissions from government departments, agencies and local governments. For example, the Department of Environment and Heritage and Department of Natural Resources submitted that those Departments 'support the need for review of the administrative appeals mechanisms and bodies in Queensland with a view to rationalisation and cost reduction.'<sup>156</sup>

The Queensland Bar Association submitted that:

*There is much to be said for the consolidation of all of these various appeal mechanisms into a single appeal body. Provided that that new body became well-known and its procedures were not complex, costly or time-consuming, the community and all affected persons would undoubtedly benefit.*

...

*The multiplicity of present appeal bodies would likely tend to confuse rather than inform members of the community who may be desirous of using the available procedures. It may also tend to discourage citizens from pursuing rights which have been denied them. That situation is undesirable.*<sup>157</sup>

Submissions contained a clear message that there is a need to reduce confusion about appropriate appeal avenues and increase uniformity in how review bodies are constituted and operated.

The committee notes that recommendations for the rationalisation and review of Queensland's system of administrative appeals have been before State Government for some time.

EARC concluded, in its August 1993 *Report on review of appeals from administrative decisions*, that Queensland's administrative review arrangements were unsatisfactory. EARC subsequently recommended that 'there be established a fair, efficient, cost-effective, simple, independent and relatively uniform system of external merits review of administrative decisions throughout Queensland'.<sup>158</sup> EARC's oversight committee, the PCEAR, endorsed that recommendation.<sup>159</sup>

Both EARC and the PCEAR recommended the creation of:

1. a generalist administrative review body to absorb the jurisdiction of many of the existing administrative review bodies and to be given jurisdiction to review many other

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<sup>154</sup> The figures are from EARC's *Report on review of appeals from administrative decisions*, Government Printer, August 1993, para 2.12, referred to by the PCEAR in its *Report on review of appeals from administrative decisions*, Government Printer, May 1995. The PCEAR listed various other administrative review provisions and bodies that had been created in the then two years since EARC's report: see Appendix G of the PCEAR report. The reviewer notes that there must be more such provisions and bodies now.

<sup>155</sup> Review report, op cit, pp 71-72.

<sup>156</sup> Department of Environment and Heritage and Department of Natural Resources submission dated 25 September 1998.

<sup>157</sup> Bar Association of Queensland submission dated 23 September 1998.

<sup>158</sup> EARC, *Report on review of appeals from administrative decisions*, op cit, para 2.154.

<sup>159</sup> PCEAR, *Report on review of appeals from administrative decisions*, op cit, p 11.

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administrative decisions made under Queensland legislation not already reviewable by administrative review bodies;<sup>160</sup> and

2. a small body akin to the Commonwealth's Administrative Review Council to: keep the State's administrative law system under review; play a coordinating role in the system; monitor developments in administrative law; and recommend to the Attorney-General improvements that might be made to the system.<sup>161</sup>

Whilst agreeing with the presumption expressed in recommendation 29, the Ombudsman in his submission to this committee advocated that 'it is better and more appropriate to utilise the fair, simple, flexible and inexpensive means of administrative review provided over many years by the Queensland Ombudsman rather than create another single purpose review body'. In this regard the Ombudsman reiterated the concerns about the EARC administrative appeals review he expressed in his 1993/94 annual report.<sup>162</sup> In the Ombudsman's supplementary submission to this inquiry, the Ombudsman proposed that he be given determinative power in certain circumstances.<sup>163</sup>

The former LCARC highlighted the outstanding EARC and PCEAR recommendations for rationalising Queensland's administrative review processes as part of its privacy inquiry.<sup>164</sup> The issue arose there in the context of providing for administrative review within the privacy regime proposed by the committee. The committee did not want to establish a new, single-purpose review entity.

This committee soon after its establishment, wrote to the Premier inquiring as to what action the government proposed to take in respect to the EARC and PCEAR administrative review reports. The Premier's response to the committee then indicated that the matter was under review. Further, very recent correspondence from the Premier's Department informed the committee that:

- the Department recently established an interdepartmental working group involving that Department, the Department of Justice and Attorney-General, and the Department of State Development to consider the development of consistent standards for internal review of administrative decisions, and also the need and options for external review processes; and
- that after the working group considered the matters on a preliminary basis, it was anticipated that the process would be broadened to review administrative review processes across the whole of government.<sup>165</sup>

In this committee's view, the strategic review and the submissions received by this committee in relation to it highlight the need for a rationalisation of the myriad of administrative review rights, processes and bodies that make up Queensland's administrative review system, a need that was recognised as early as 1993 in the EARC administrative appeals report.

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<sup>160</sup> The PCEAR suggested, however, that the new generalist tribunal should not have, at least upon its establishment, the breadth of jurisdiction that EARC had recommended. The review report does not specifically endorse the idea of a generalist, merits review tribunal as the solution; it instead simply calls for a review of the situation.

<sup>161</sup> EARC, op cit, para 14.64; PCEAR, op cit, pp 109-112.

<sup>162</sup> Queensland Ombudsman submission dated 18 September 1998, p 16.

<sup>163</sup> Queensland Ombudsman, supplementary submission dated 23 March 1999, p 5. The Ombudsman raised the suggestion of the Office being given determinative powers in the Ombudsman's 1993/94 Annual report (p 10) and the Ombudsman's 1994/95 Annual report which followed the tabling of the PCEAR's administrative appeals report (p 10).

<sup>164</sup> *Privacy in Queensland*, report no 9, April 1998, pp 113-116. Also refer to comments made by the committee in its report, *The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?*, report no 12, Government Printer, Brisbane, November 1998, p 78.

<sup>165</sup> Letter dated 5 July 1999 from Dr Glyn Davis, Director-General, Department of the Premier and Cabinet.

The committee considers that a government response to the matters raised in the EARC and PCEAR reports is now long overdue.

The committee believes that Queensland's administrative review system is evidently unwieldy for the public and—due to separate resourcing and staffing arrangements—is wasteful. The committee would very strongly support moves to rationalise and streamline the administrative appeals machinery in this State. The committee appreciates that a generalist Queensland AAT-type body, as suggested by EARC and the PCEAR, might mean considerable up-front establishment costs. However, in the long term, a streamlined system which reduces bureaucracy and confusion would be cost-effective and would ultimately be good for the State.

Nevertheless:

- a rationalised system should not result in any diminution of citizens' existing appeals rights; and
- if a generalist AAT-type body is to be established, careful consideration will need to be given to the relationship between it and the Ombudsman in order to reduce the possibility of individuals utilising the new merits review tribunal and the Ombudsman, either simultaneously or consecutively, without the consent of both administrative review bodies.<sup>166</sup>

Earlier in chapter 5 of this report, the committee endorsed review recommendation 5 which provides that departments and agencies should consult with the Office of the Ombudsman about matters including providing consequential rights of review whenever proposed legislation provides for administrative discretion. The committee notes that one of the on-going benefits of the establishment of a generalist merits review tribunal as envisioned by EARC and the PCEAR is that the determination of any new administrative appeal provisions can be vested in such a body, rather than creating a single purpose tribunal or other agency in relation to the right of review.

The committee also endorsed in chapter 5 review recommendation 10, that units of government establish (if they have not already done so) effective internal complaint handling procedures (possibly linked with client-focussed service charters).

It is in this context that the committee has considered the second part of recommendation 29. The committee believes that until—and, indeed, beyond—any wider rationalisation of the State's administrative appeals system, there should be a presumption, when an avenue of appeal from administrative discretion is created, in favour of incorporating the avenue into the functions of the Office of the Ombudsman (and/or any future generalist merits review tribunal) rather than establishing a new review body for that sole purpose.

The committee therefore endorses the thrust of review recommendation 29. However, the committee would change the emphasis of that recommendation. What is needed is not another review of the administrative review system (the recommendations of which, again, could remain unheeded by government); what is needed is government making a decision about rationalising the administrative review system in this State and acting upon that decision.

### **9.2.3 Committee recommendation 22**

**The committee endorses the thrust of recommendation 29 (reproduced above in section 9.2.1). The committee, however, would go further. What is needed is not another review of the State's administrative review system, but a government decision—and subsequent action**

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<sup>166</sup> See chapter 12 of EARC's administrative review report, *op cit*.

**on—the recommendations that have already been made by EARC and the PCEAR to reform the State’s administrative review system. Accordingly, the committee recommends that:**

- (a) the government, in the near future, act to rationalise all of the administrative appeal mechanisms in Queensland with a view to streamlining, diminishing the complexity and cost of the administrative appeals machinery, and reducing the burden on the administration, whilst at the same time ensuring there is no net diminution of the rights of citizens to complain about administrative discretion; and**
- (b) when new public sector developments occur which require an avenue of appeal from administrative discretion, the presumption should be in favour of incorporating the avenue into the functions of the Ombudsman’s Office (or possibly a generalist merits review tribunal, should one be established) rather than creating a new single purpose review body.**

### **9.3 NOTIFICATION OF APPEAL RIGHTS**

The *Legislative Standards Act 1992* (Qld) requires that new legislation creating administrative discretions should, wherever possible, include provision for appropriate review.<sup>167</sup>

In his supplementary submission the Ombudsman suggested that, in light of this requirement, perhaps any such legislation should include a requirement that agencies notify people of their rights of review (including a right to Ombudsman review) when notifying them of a decision.<sup>168</sup>

As the Ombudsman noted:

*This concept is common in the Commonwealth sphere and has been recommended by a number of authorities, including the former Electoral and Administrative Review Commission and the Commonwealth Administrative Review Council. S.49(e) of the Administrative Decisions Tribunal Act (NSW) requires decision makers to notify affected persons of any appeal rights they have in respect of “reviewable decisions”.*

*Similar provisions apply in WorkCover, Freedom of Information and Children’s Commission legislation.*<sup>169</sup>

The committee has already stated in section 5.2.11 of this report that agencies should provide for internal review of administrative decisions, where appropriate, and that internal review should conclude with notification to the client that they have a right to Ombudsman review should they be dissatisfied with the outcome of the internal review. The Ombudsman’s suggestion would mean that agencies, upon making an original administrative decision would be required to notify the affected person that the person has:

- firstly, a right to internal review (if appropriate); and
- if they are dissatisfied with the outcome of the internal review (where applicable) a right to such other avenues of appeal that are open to them, eg. an appeals tribunal; the Ombudsman.

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<sup>167</sup> *Legislative Standards Act 1992*, section 4(3)(a).

<sup>168</sup> Queensland Ombudsman, supplementary submission dated 23 March 1999, p 7. The Ombudsman’s *Strategic and Operational Plan* for 1999-2002 similarly states: ‘Consistent with the *Legislative Standards Act* and EARC’s Principles of Good Administration, the Office will encourage all agencies to include in correspondence with the public advice as to statutory appeal rights or in the absence thereof a right to apply for review by this Office, when conveying decisions adverse to the individual concerned’. Queensland Ombudsman, *Strategic and Operational Plan 1999-2000*, June 1999, p 19.

<sup>169</sup> Queensland Ombudsman, supplementary submission dated 23 March 1999, p 7.

The committee sees a number of advantages in this system. Complaints resolved by internal review need go no further. After internal review, from the citizen's perspective, the suggestion would help to guide citizens through the confusing 'appeals administration maze' discussed in the section immediately above. Implementation of this suggestion would additionally reduce the amount of time that the Ombudsman's Office spends in advising people of their rights to external review.

### **9.3.1 Committee recommendation 23**

**The committee recommends that all new legislation which involves the exercise of administrative decision-making or discretion should include a requirement that agencies notify people of their:**

- **rights to internal review by the agency (if appropriate); and**
- **their rights to external review (including their right to Ombudsman review);**

**when notifying them of a decision.**

**The committee further recommends that the Premier, as the minister responsible for administrative reform, consider inserting a direction in the *Cabinet handbook* to this end.**

## **9.4 SIMILAR ADMINISTRATIVE REVIEW BODIES SHARING RESOURCES**

### **9.4.1 Review recommendation 30**

*Recommendation 30 - Potential synergies should be explored between the numerous appeal bodies in Queensland in relation to commonality of training, research, library resources, and joint seminars to keep abreast of developments in the public sector in Queensland and elsewhere.*

### **9.4.2 Committee analysis and comment**

Despite the fact that it has not undertaken a comprehensive and systematic review of the State's administrative review system, the committee supports recommendation 30 that administrative review bodies that are similar should 'explore potential synergies' in respect of training, education, research and other resources. Submissions to the committee that addressed this matter endorsed recommendation 30 and supported, as one agency put it, 'joint activities which make effective use of ideas and resources'.

### **9.4.3 Committee recommendation 24**

**The committee endorses recommendation 30 (reproduced above in section 9.4.1).**



## 10. OTHER MATTERS ARISING OUT OF THE STRATEGIC REVIEW

A number of other issues relating to the Ombudsman's Office were brought to the committee's attention during the course of its review. Some of these additional issues emerged from discussion in the review report and/or submissions received by the committee. Other issues were raised by the Ombudsman. The committee discusses these additional issues in this chapter.

### 10.1 MATTERS RAISED BY THE OMBUDSMAN

During discussions between the Ombudsman and the committee in relation to the strategic review, the Ombudsman suggested that there were other matters of a wider, though still strategic, nature that had not been addressed in the review. The committee invited the Ombudsman to provide an additional submission on what the Ombudsman considered those further matters to be.

The Ombudsman's supplementary submission (dated 23 March 1999) contains a range of such matters, some of which have been addressed in this report. Most of the other matters contained in the Ombudsman's supplementary submission were in the form of suggestions to amend provisions of the *Parliamentary Commissioner Act* and other legislation to clarify the Ombudsman's jurisdiction, powers, and procedures. The Ombudsman submitted that the proposals were matters affecting the effectiveness—and hence the strategic direction—of the Office.

Specifically, the Ombudsman's proposals are to:

- amend s 4 of the *Parliamentary Commissioner Act* ('the Act') to ensure that administrative action reviewable by the Ombudsman specifically includes policy;
- amend s 12(2) of the Act to provide the Ombudsman with jurisdiction to review the purely administrative action carried out by police officers [as opposed to Queensland Police Service operational duties (eg arresting persons/investigating crime etc), in relation to which the Criminal Justice Commission has—appropriately—exclusive jurisdiction];
- amend s 13(5)(d) of the Act to clarify the Ombudsman's jurisdiction regarding the Public Trustee<sup>170</sup>;
- amend s 13(5)(e) of the Act to ensure that the Ombudsman has jurisdiction in relation to administrative action by court staff;
- revisit the s 22 secrecy provisions which currently curtail the Ombudsman's ability to comment on matters of public interest;
- give the Ombudsman the power to be able to order an agency to stay a proposed action for a reasonable period pending the outcome of an investigation;
- revisit whether the Ombudsman should be granted determinative powers instead of recommendatory powers in certain circumstances (perhaps, where an amount of under \$5,000 is involved) and subject to ministerial override;
- review the *Government Owned Corporations Act* vis a vis the Ombudsman's jurisdiction;
- clarify the jurisdiction of the Ombudsman in relation to the Criminal Justice Commission in light of amendments to the *Criminal Justice Act* giving greater power to the Parliamentary

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<sup>170</sup> The QSuper Board's submission to the committee also raised the application of s 13(5) in the case of the QSuper statutory trust. Submission dated 18 September 1998.

Criminal Justice Committee to review complaints against the Criminal Justice Commission; and

- investigate the ability of agencies to argue that they are no longer able to review matters because of an unsuccessful applicant's ability to sue the agency pursuant to specific appeal rights and thereby frustrate Ombudsman investigations against them.

The committee considers the above proposals worthy of further consideration.

In addition, the committee has itself noticed that a number of provisions in the *Parliamentary Commissioner Act* dealing with the tabling of the Ombudsman's annual and other reports need to be reviewed. The *Parliamentary Commissioner Act* has not been systematically reviewed since its introduction in 1974. At least, a number of provisions in the Act need to be re-expressed in modern drafting style. In this regard, the committee notes the Ombudsman's recently stated intention to review the *Parliamentary Commissioner Act* during the period of its current operational and strategic plan (1999-2002) with a view to 'bringing [the Act] up to date and to address areas where time and experience have shown that the Act can be improved'.<sup>171</sup>

The committee does not propose to come to a position and make recommendations in relation to the additional strategic issues raised by the Ombudsman in this report. The committee has neither called for submissions in relation to the proposals nor had the opportunity to give the proposals full consideration. The committee's priority has been to table this report in relation to matters directly related to the recommendations made in the May 1998 strategic review report. However, these are matters which the committee proposes to review in the future (should they remain outstanding). In so doing, the committee would liaise with the Ombudsman regarding other amendments the Ombudsman suggests should be made to the *Parliamentary Commissioner Act*.

### 10.1.1 Committee conclusion

**The committee notes the matters raised by the Ombudsman which the Ombudsman submits are of a wider, though still strategic, nature that were not addressed in the review. The committee also notes that the Ombudsman intends to conduct a full review of the *Parliamentary Commissioner Act 1974 (Qld)* in the short term. The committee proposes to review these additional matters in the future (should they remain outstanding). In so doing, the committee would liaise with the Ombudsman regarding other amendments the Ombudsman suggests should be made to the *Parliamentary Commissioner Act*.**

## 10.2 OTHER MATTERS

### 10.2.1 Concurrent roles: Information Commissioner and Ombudsman

The Ombudsman has concurrently been the Information Commissioner for the purposes of the *Freedom of Information Act* since 1992. The linkage between the two offices is discussed in pages 46-47 of the review report. It is there noted that:

*A few of those consulted for this Review felt that this arrangement was inappropriate and that the Information Commissioner should be an entirely different entity. One submission expressed nervous concern that the Ombudsman was unable to investigate formally actions of the Information Commissioner. Some local governments are also obviously concerned and confused about the one person wearing two hats.*<sup>172</sup>

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<sup>171</sup> Queensland Ombudsman, *Strategic and Operational Plan 1999-2000*, June 1999, p 18.

<sup>172</sup> Review report, op cit, p 46.

The report also suggests that:

- on the face of it, there might need to be a ‘minor adjustment’ to more fairly share the overheads of the offices of the Ombudsman and the Information Commissioner; and
- the ‘Ombudsman himself seems to be able to cope with the added Information Commissioner responsibilities, time factor, and other burdens of holding the two offices, although it does seem to result in a fair degree of delegation of Ombudsman responsibilities to the Deputy Ombudsman’ and that ‘this would need to be kept under close attention in the move to a more proactive role for the Office’.<sup>173</sup>

The reviewer concludes that, on the broader question, there seems no reason to suggest a split in the two roles, noting that: ‘Indeed, experience regarding the vagaries of access to public information is a useful adjunct to the work of an Ombudsman given that the difficulty of obtaining various kinds of information lies at the heart of many complaints to the Ombudsman’.<sup>174</sup>

While this issue did not result in a formal recommendation of the review, the committee did receive two submissions from members of the public who argued for a separation of the two offices given the potential for a conflict of interest.

### 10.2.2 Committee conclusion

**The committee is currently conducting a comprehensive review of Queensland’s freedom of information legislation and believes that that seems a more appropriate forum for this committee to consider whether the offices of the Ombudsman and the Information Commissioner should remain as is or be separated.**<sup>175</sup>

### 10.2.3 A limit on the Ombudsman’s term of office

The committee notes that the trend in many jurisdictions has been for incumbents to hold the office of Ombudsman for many years. This ensures continuity in the office and enables the one person to steer the course of an office for long enough to implement and monitor the success or otherwise of their ideas. Conversely, there is a need to ensure that one person does not become entrenched in the office and that periodically there is a fresh injection of ideas and approach. It is partly for this reason that some Acts that establish statutory officers specifically place a cap on the maximum aggregate term of their office.

One example is the *Criminal Justice Act 1989* (Qld), s 14 of which provides that the chairperson of the commission is not eligible to be reappointed if the total of his or her terms as chairperson would be more than five years. The *Ombudsman Act 1973* (Vic), s 3 provides that the Ombudsman holds office for a term of ten years and is not eligible to be reappointed.

The *Parliamentary Commissioner 1974* (Qld), s 5(3) provides for the Ombudsman to be appointed for a term of not more than five years but s 5(7) allows for reappointment of the Ombudsman. Whilst the committee believes that the Act should continue to provide for terms of *up to* five years, the committee believes that, on the next occasion that the office of the Queensland Ombudsman is vacant, the Act should be amended to provide that the Ombudsman is not eligible to be reappointed if the total of his or her term as Ombudsman would be more than ten years (that is, an aggregate ten-year cap to the incumbency of an Ombudsman).

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<sup>173</sup> Ibid, p 47.

<sup>174</sup> Ibid.

<sup>175</sup> A copy of the terms of reference for the FOI review is available via the committee’s Internet website at <<http://www.parliament.qld.gov.au/committees/legalrev.htm>>.

#### **10.2.4 Committee recommendation 25**

**The committee recommends that the Premier, as the minister responsible for the *Parliamentary Commissioner Act 1974 (Qld)*, on the next occasion that the office of the Queensland Ombudsman is vacant, amend that Act so as to provide that the Queensland Ombudsman is not eligible to be reappointed if the total of his or her term as Ombudsman would be more than ten years.**

## 11. CONCLUSION

The terms of reference of the committee's inquiry included whether there was a need to recommend any changes to s 32 or to the strategic review process. Subject to the committee's recommendations in chapter 2 (regarding clarification of what is a strategic review), the committee has been satisfied with the manner in which the strategic review process has operated. The committee also sought the reviewer's comments on whether—and, if so, how—the strategic review process could be improved. While the reviewer had no suggestions for improvement, the reviewer commented that, if the reforms outlined in the review are implemented (especially performance indicators, more frequent client surveys, newsletters, proactive activity), this should make future reviews straightforward. The reviewer also complimented the committee on its role in the review process.

Nevertheless, the committee suggests one specific issue which might require reconsideration. In the interests of procedural fairness and accuracy, the committee recommends that s 32 of the *Parliamentary Commissioner Act 1974* be amended to better provide for the Ombudsman to respond to any significant comments or findings made in future strategic reviews.

Currently subsections (9) and (10) of s 32 provide:

*(9) If a person proposes to include in the report a matter that, in the person's opinion, is a matter of significance, the person must—*

- (a) give the Minister and the commissioner written advice of the matter;*
- (b) include in the advice a statement to the effect that comments on the matter may be made in writing to the person within—*
  - (i) 21 days after the advice is received; or*
  - (ii) such longer period as is specified in the advice.*

*(10) If the matter is included in the report, any comments given to the person under subsection (9)(b) must also be included in the report.*

This procedure was not utilised in the current review. This can be contrasted with the procedure undertaken in relation to the strategic review of the QAO where the reviewer considered it appropriate to provide a complete copy of the draft report on that review to both the Premier and the Auditor-General for comment. A copy of the Auditor-General's comments was included as an appendix to the final strategic review report.

Following its receipt of a submission from the Ombudsman to such effect<sup>176</sup>, the committee is of the opinion that a copy of the draft report—not only a notification of 'matters of significance' (which is a concept not defined)—should be forwarded to the Ombudsman. The Ombudsman should subsequently be given a reasonable period, say 21 days, to respond in writing to any matters that the Ombudsman considers significant. The Ombudsman's response, if any, should be incorporated into the published report, either as negotiated amendments or reproduced as an attachment to the report.

The committee notes that its review of the strategic review report has enabled the Ombudsman to publicly respond to all matters raised in the review via the tabling of the Ombudsman's submissions and by the committee including the Ombudsman's comments in this report. However, the committee believes that it is preferable for the Ombudsman to have the opportunity to respond to the reviewer's comments before the publication of the final report on the strategic review.

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<sup>176</sup> Queensland Ombudsman, supplementary submission dated 23 March 1999, p 4.

## 11.1 COMMITTEE RECOMMENDATION 26

The committee considers that s 32(9) and (10) of the *Parliamentary Commissioner Act 1974* (Qld) should continue to provide that, if the strategic reviewer proposes to include in the strategic review report a matter of significance, the reviewer must give the Premier and the Ombudsman written advice of the matter and an opportunity to provide a written response to the matter (to be subsequently published in the report).

However, the committee recommends that the Premier, as the minister responsible for the *Parliamentary Commissioner Act*, amend s 32 to additionally provide that:

- regardless of whether there is a ‘matter of significance’, the strategic reviewer must provide a copy of the draft strategic review report to the Ombudsman, notifying the Ombudsman that the Ombudsman has 21 days to respond to any matters contained in the report that that the Ombudsman considers significant; and
- the Ombudsman’s subsequent response, if any, be:
  - in writing and of reasonable length; and
  - incorporated into the report as negotiated amendments and/or reproduced as an attachment.

## APPENDIX A - STRATEGIC REVIEW TERMS OF REFERENCE

### Scope

Section 32 of the *Parliamentary Commissioner Act 1974* states that strategic reviews of the Parliamentary Commissioner are to be conducted at least every five years by an appropriately qualified person appointed by the Governor in Council. The terms of reference for the Review are also to be decided by the Governor in Council. The requirement for strategic reviews was included in the Act only in 1995. This is the first such review of the Parliamentary Commissioner.

### Objectives

The objectives of the Review are:

- (1) to review **the purpose** of the Office and provide advice and recommendations on the strategic direction for the Office and on how to ensure that the Office has a clear focus for the future;
- (2) to review the **complaint and other procedures** currently utilised by the Office and provide advice and recommendations on whether these or alternative procedures (including demand management procedures) will better enable the Office to meet efficiently and effectively its statutory and other responsibilities;
- (3) to review the current **organisational structure and staffing arrangements** within the Office, and provide advice and recommendations on whether alternative structures and staffing arrangements will better enable the Office efficiently and effectively to meet its statutory and other responsibilities;
- (4) to review: (a) the **level of funding** currently available to the Office and (b) **how the level of funding is used**, and provide advice and recommendations on whether alternative levels of funding and their use are appropriate to support the procedures, structures and staffing as recommended;
- (5) to provide advice and recommendations on the **performance measures and performance reporting** that should be applied in determining and monitoring the efficiency and effectiveness of the Office; and
- (6) to provide advice and recommendations on these other management issues during the course of the Review:
  - the extent and effectiveness of **demand management techniques** applied by the Office and whether alternative and/or additional demand management options could be initiated;
  - identification of the key features of the **organisational culture, workplace and management practices** and the degree to which they may impede or enhance the efficient and effective functioning of the Office;
  - the extent to which the Office is appropriately **client focussed**; and
  - how best the Office should address the needs of clients in **regional areas**.

## Methodology

The Review will include:

- interviews with staff and former staff of the Office, both individually and in focus groups;
- consultation with key government agencies;
- surveys of complainants;
- data analysis of work flows based on existing data records of approaches and complaints to the Office;
- budget analysis of current and planned expenditure;
- analysis of relevant legislation, documented policies and procedures; and
- organisational structure and analysis.

## **Duration**

The Review is expected to take a maximum of three (3) months from the appointment of a person to conduct the Review through to presentation of the final report.

## **Reporting**

Written progress reports are to be provided to the Premier, the Parliamentary Commissioner, and the Parliamentary Legal, Constitutional and Administrative Review Committee at the end of the first and second months, with the final report completed at the end of the third month.

The final report of the Review is to be presented to the Premier, the Parliamentary Commissioner and the Legal, Constitutional and Administrative Review Committee in a suitable format for tabling in the Legislative Assembly.

Throughout the review process the Reviewer will liaise with the Legal, Constitutional and Administrative Review Committee.



## APPENDIX B - SUBMISSIONS TABLED

SUBMISSION No	SUBMISSION FROM:
1	Shadow Minister for Local Government and Planning (Mr Howard Hobbs MLA)
2	Mr T Barnes
3	Pine Rivers Shire Council
4	Mr John Orr
5	Department of Mines and Energy
6	Department of Tourism, Sport and Racing
7	Queensland Audit Office
8	Ipswich City Council
9	Banana Shire Council
10	Australian Justice for All
11	Redland Shire Council
12	Logan City Council
13	Queensland School Curriculum Council
14	Minister for Emergency Services (Hon M Rose MLA)
15	Queensland Rail
16	Kingaroy Shire Council
17	Office of the Public Service
18	QSuper Board
19	Department of Equity and Fair Trading
20	Department of Housing
21	Queensland Ombudsman
22	Brisbane City Council
23	Department of Public Works
24	Alternative Dispute Resolution Branch, Department of Justice
25	Department of Families, Youth and Community Care
26	Children's Commission of Queensland
27	Queensland Police Service
28	Anti-Discrimination Commission of Queensland
29	Queensland Board of Senior Secondary School Studies
30	James Cook University

<b>SUBMISSION No</b>	<b>SUBMISSION FROM:</b>
31	Department of Primary Industries
32	Queensland University of Technology
33	Bar Association of Queensland
34	Queensland Health
35	Council of the Shire of Cardwell
36	Central Queensland University
37	Prisoners' Legal Service Inc
38	Stanthorpe Shire Council
39	Department for Environment and Heritage and Department for Natural Resources
40	Department of Communication and Information, Local Government and Planning
41	Queensland Treasury
42	Deputy Premier and Minister for State Development and Minister for Trade (Hon J Elder MLA)
43	Queensland Corrective Services Commission
44	Department of Transport
45	Burnett Shire Council
46	Local Government Association of Queensland Inc
47	Queensland Ombudsman (supplementary submission)

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