

LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

**Report on the Review of the Strategic Management Review  
Report – Office of the Information Commissioner, April 2006;  
Report on the 2005-2006 Annual Report of the  
Office of the Information Commissioner**

December 2006

Report No. 56

# LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

## 52<sup>ND</sup> PARLIAMENT

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## LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

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

REPORTS	DATE TABLED
29. Annual report 2000-01	2 August 2001
30. Progress report on implementation of recommendations made in the <i>Report of the strategic management review of the Offices of the Queensland Ombudsman and the Information Commissioner</i>	8 August 2001
31. Review of the Members' oath or affirmation of allegiance	25 October 2001
32. Freedom of Information in Queensland	20 December 2001
33. The Electoral (Fraudulent Actions) Amendment Bill 2001	27 March 2002
34. Meeting with the Queensland Ombudsman – 12 April 2002	14 May 2002
35. Annual report 2001-02	23 August 2002
36. The Queensland Constitution: Specific content issues	27 August 2002
37. Meeting with the Queensland Ombudsman – 26 November 2002	12 December 2002
38. Meeting with the Queensland Ombudsman – 29 April 2003	6 June 2003
39. The role of the Queensland Parliament in treaty making – Review of tabling procedure	17 July 2003
40. Annual report 2002-03	21 August 2003
41. Review of the Queensland Constitutional Review Commission's recommendations regarding entrenchment of the Queensland Constitution	27 August 2003
42. Hands on Parliament – A parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes	11 September 2003
43. Meeting with the Queensland Ombudsman (25 November 2003) and final report on implementation of recommendations made in the <i>Report of the Strategic Management Review of the Offices of the Queensland Ombudsman and the Information Commissioner</i>	17 December 2003
44. Meeting with the Queensland Ombudsman - 11 May 2004	17 June 2004
45. Annual Report 2003/2004	19 August 2004
46. A preamble for the Queensland Constitution?	30 November 2004
47. Meeting with the Queensland Ombudsman – 23 November 2004	21 December 2004
48. Publication of Committee Proceedings – 22 February 2005	10 March 2005
49. Meeting with the Queensland Ombudsman (24 May 2005); meeting with the Queensland Information Commissioner (24 May 2005); and report on matters raised in a Ministerial Statement by the Premier and Minister for Trade on 23 March 2005	9 June 2005
50. Constitutional and Other Legislation Amendment Bill 2005 (Old)	28 September 2005
51. Annual report 2004/2005	30 September 2005
52. Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner – 29 November 2005	21 December 2005
53. Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner – 23 May 2006	14 June 2006
54. Annual Report 2005/2006	10 August 2006
55. <i>Voices &amp; Votes</i> – A parliamentary committee inquiry into young people engaging in democracy	10 August 2006

PAPERS	DATE TABLED
Truth in political advertising (Issues paper)	11 July 1996
Privacy in Queensland (Issues paper)	4 June 1997
The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights? (Issues paper)	1 October 1997
Upper Houses (Information paper)	27 November 1997
Inquiry into issues of Queensland electoral reform (Background paper)	25 November 1999
The role of the Queensland Parliament in treaty making (Position paper)	25 November 1999
Freedom of Information in Queensland (Discussion paper)	8 February 2000
Four year parliamentary terms (Background paper)	11 April 2000
Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution (Position paper)	27 April 2000
Inquiry into the prevention of electoral fraud (Issues paper)	8 September 2000
The Queensland Constitution: Specific content issues (Issues paper)	18 April 2002
The Queensland Constitution: Entrenchment (Proposals for Comment)	27 August 2002
<i>Hands on Parliament</i> - A Parliamentary Committee Inquiry into Aboriginal and Torres Strait Islander Peoples' Participation in Queensland's Democratic Process (Issues paper)	12 December 2002
A preamble for the Queensland Constitution? (Issues paper)	17 June 2004
<i>Voices &amp; Votes</i> – A Parliamentary Committee Inquiry into Young People's Engagement in Democracy in Queensland (Discussion paper)	8 July 2005
The Accessibility of Administrative Justice (Discussion paper)	1 December 2005

## **CHAIR'S FOREWORD**

The Legal, Constitutional and Administrative Review Committee of the 52<sup>nd</sup> Parliament is pleased to report on two matters: the *2005-2006 Report of the Strategic Management Review - Office of the Information Commissioner*, April 2006, and the 2005-2006 Annual Report, Office of the Information Commissioner.

In relation to the strategic review report, the committee has had the benefit of considering public submissions received by the committee of the 51<sup>st</sup> Parliament. I acknowledge the work of that committee. In relation to both matters, the committee met with the strategic reviewer and the Information Commissioner and members of the staff of the Office of the Information Commissioner.

In this report, the committee finds that the recommendations of the strategic review report provide a strong framework for the economic, effective and efficient performance by the Information Commissioner of functions conferred by the *Freedom of Information Act*. It is pleasing to note that significant progress has been made towards the implementation of these recommendations by the Information Commissioner.

The committee commends the strategic reviewer, Mr Henry Smerdon for his report. In addition, I thank him for meeting with the committee to discuss the recommendations made in the report and their implementation by the Information Commissioner.

I thank Ms Cathi Taylor, Information Commissioner, Ms Rachael Rangihaeata, First Assistant Information Commissioner and Ms Fiona Henry, Assistant Information Commissioner for meeting with the committee, and the staff of the Office of the Information Commissioner who were involved in assisting and providing information to the strategic review process and to the committee.

The timely and accurate assistance provided by Hansard for the transcription of committee meetings regarding this report is greatly appreciated. Finally, I thank my fellow committee members for the interest and dedication with which they have taken on the committee functions regarding the Information Commissioner and the committee's secretariat staff for supporting the committee's performance of those functions.

**Mrs Dianne Reilly MP**  
**Chair**

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## 1. INTRODUCTION

### THE COMMITTEE

- 1.1 The Legal, Constitutional and Administrative Review Committee (the committee) is a multi-party, permanent statutory committee of the Queensland Parliament. It is established by the *Parliament of Queensland Act 2001* (Qld). The committee of the 52<sup>nd</sup> Parliament was appointed by the Legislative Assembly on 11 October 2006.

### THIS REPORT

- 1.2 This report to the Parliament follows consideration by the committee of:
- the Office of the Information Commissioner Queensland, *Annual Report 2005-2006*<sup>1</sup> (2005-2006 Annual Report) and
  - the *2005-2006 Report of the Strategic Management Review - Office of the Information Commissioner, April 2006, commissioned by the Queensland Government pursuant to the Freedom of Information Act 1992* (strategic review report);<sup>2</sup> and
  - public submissions received by the committee of the 51<sup>st</sup> Parliament regarding the strategic review report.
- 1.3 On 27 November 2006, the committee met with the Information Commissioner and staff of the Office of the Information Commissioner and discussed issues relevant to:
- the strategic review report; and
  - the 2005-2006 Annual Report.
- 1.4 On 28 November 2006, the committee met with Mr Henry Smerdon (reviewer) who had conducted the strategic management review of the Office of the Information Commissioner. The committee discussed with Mr Smerdon the recommendations made in the strategic review report and matters relevant to the implementation of those recommendations.
- 1.5 The meetings of 27 and 28 November 2006 were transcribed by Hansard and the transcripts appear as appendices to this report. Concurrent with the strategic review of the Office of the Information Commissioner, Mr Smerdon conducted a strategic review of the Office of the Ombudsman.<sup>3</sup> For this reason, Appendix C, the transcript of the committee's meeting with Mr Smerdon, contains discussion of the strategic review of the Office of the Ombudsman as well as the strategic review of the Office of the Information Commissioner.

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<sup>1</sup> Office of the Information Commissioner Queensland, *Annual Report 2005-2006*, tabled on 3 November 2006.

<sup>2</sup> *Report of the Strategic Management Review - Office of the Information Commissioner, April 2006*, tabled on 11 May 2006, available electronically and in paper copy from the Queensland Parliament's Table Office.

<sup>3</sup> *Report of the Strategic Management Review - Office of the Ombudsman April 2006*; LCARC report 57, *Report on the Review of the Strategic Management Review Report – Office of the Ombudsman April 2006*; *Report on the 2005-2006 Annual Report of the Office of the Ombudsman*.



## 2. RELEVANT COMMITTEE RESPONSIBILITIES

- 2.1 The *Parliament of Queensland Act* and the *Freedom of Information Act 1992* (Qld) each confer the committee with responsibilities regarding the Office of the Information Commissioner.

### *PARLIAMENT OF QUEENSLAND ACT*

- 2.2 The main role of a statutory committee of the Queensland Parliament is to deal with issues within its areas of responsibility.<sup>4</sup> The Legal, Constitutional and Administrative Review Committee has the following areas of responsibility:

- administrative review reform;
- constitutional reform;
- electoral reform; and
- legal reform.<sup>5</sup>

- 2.3 The committee's responsibility regarding administrative review reform includes considering legislation about:

- access to information;
- review of administrative decisions;
- anti-discrimination; or
- equal employment opportunity.<sup>6</sup>

### *FREEDOM OF INFORMATION ACT*

#### Functions of the Information Commissioner

- 2.4 Under the *Freedom of Information Act*, the committee is required to:

- monitor and review the Information Commissioner's performance of functions conferred by the *Freedom of Information Act*;
- report to the Legislative Assembly on any matter concerning the Information Commissioner, the Information Commissioner's functions or the performance of the Information Commissioner's functions that the committee considers should be drawn to the Assembly's attention;
- examine each annual report tabled in the Assembly under the *Freedom of Information Act* and, if appropriate, comment on any aspect of the report; and
- report to the Assembly any changes to the functions, structures and procedures of the Office of the Information Commissioner the committee considers desirable for the more effective operation of the *Freedom of Information Act*.<sup>7</sup>

- 2.5 The functions of the Information Commissioner include:

- investigating and reviewing decisions of agencies and Ministers regarding the release of documents under the *Freedom of Information Act*; and

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<sup>4</sup> *Parliament of Queensland Act*, s 84(1).

<sup>5</sup> *Parliament of Queensland Act*, s 85.

<sup>6</sup> *Parliament of Queensland Act*, s 86.

<sup>7</sup> *Freedom of Information Act 1992*, s 108C.

- providing information and help to agencies and members of the public on matters relevant to the external review of decisions by the Information Commissioner or the Office of the Information Commissioner.<sup>8</sup>

### **Strategic review of the Office of the Information Commissioner**

- 2.6 The *Freedom of Information Act* requires a review to be conducted at least every five years of the:
- Information Commissioner's functions; and
  - Information Commissioner's performance of those functions to assess whether they are being performed economically, effectively and efficiently.<sup>9</sup>
- 2.7 Each such review must be undertaken by an appropriately qualified person, who provides a report on the review.<sup>10</sup>
- 2.8 After first consulting with the committee and the Information Commissioner, the Governor in Council:
- appoints the reviewer; and
  - decides the terms of reference for the strategic review.<sup>11</sup>
- 2.9 The report by the reviewer is referred to the committee for consideration and report to the Legislative Assembly.<sup>12</sup>

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<sup>8</sup> *Freedom of Information Act 1992*, s 101C.

<sup>9</sup> *Freedom of Information Act*, ss 108A(2) and (8).

<sup>10</sup> *Freedom of Information Act*, s 108A(4).

<sup>11</sup> *Freedom of Information Act*, ss 108A(4), (5) and (6).

<sup>12</sup> *Freedom of Information Act*, s 108AB(7) and *Parliament of Queensland Act*, s 84(2-3).

### 3. STRATEGIC REVIEW REPORT

#### BACKGROUND

##### 2000 Strategic management review

- 3.1 In 1997-1998, Professor Kenneth Wiltshire AO conducted the inaugural strategic review of the Office of the Ombudsman in accordance with section 32 of the *Parliamentary Commissioner Act 1995* (Qld).<sup>13</sup> His report was tabled in the Parliament in May 1998.<sup>14</sup>
- 3.2 At that time and until February 2005, the Ombudsman performed the functions of both Ombudsman and Information Commissioner. Both offices were combined for budgetary purposes and were supported by a single Corporate and Research Division. However, when the 1997-1998 review was conducted there was no statutory requirement for a strategic review of the Office of the Information Commissioner.
- 3.3 In accordance with its responsibilities regarding the Ombudsman specifically, and administrative review reform generally, the committee of the 49<sup>th</sup> Parliament reviewed Professor Wiltshire's report and reported on its review in July 1999.<sup>15</sup>
- 3.4 Professor Wiltshire's report had stressed that the strategic review was not a management review. In that regard, the committee of the 49<sup>th</sup> Parliament felt that a further management review would enable the committee to build a clearer overall picture of the economy, efficiency and effectiveness of the Office. Accordingly, the committee recommended the Premier, as the Minister responsible for the *Parliamentary Commissioner Act*, commission an external management review of the Office of the Ombudsman.
- 3.5 Further, in March 1999 the Queensland Parliament referred the *Freedom of Information Act* to the committee for review (the FOI review). The committee considered that a management review of the Office of the Information Commissioner would be timely as it would enable the committee to consider the review report before handing down its report on the FOI review.
- 3.6 On 26 August 1999, the Premier informed the Parliament that he endorsed the committee's recommendation for a strategic management review of the Ombudsman's Office. In September of that year, the Legislative Assembly carried a resolution calling on the Premier to conduct the review.
- 3.7 The Parliamentary Commissioner and Freedom of Information Amendment Bill 1999 was introduced in the House on 23 November 1999. The bill provided for the planned management review to be expanded to encompass the Office of the Information Commissioner. The bill:
  - inserted a provision equivalent to section 32 of the *Ombudsman Act* (as amended by the bill) into the *Freedom of Information Act* to provide for the conduct of strategic reviews of the Office of the Information Commissioner at least every five years;
  - enabled combined reviews of the Offices of the Ombudsman and Information Commissioner where the same person held both offices and the ministers responsible for the administration of both Acts agreed to a combined review;
  - clarified that the scope of a strategic review of each Office should be a management review involving assessment of efficiency, economy and effectiveness; and
  - referred the future review reports to the committee for consideration and report to the Parliament.

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<sup>13</sup> The *Parliamentary Commissioner Act* was replaced by the *Ombudsman Act 2001* (Qld) on 13 November 2001.

<sup>14</sup> Queensland Government, *Report of the Strategic Review of the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations)*, Brisbane, May 1998.

<sup>15</sup> See LCARC report no 14, *Review of the Report of the Strategic Review of the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations)*, July 1999 (available at: [www.parliament.qld.gov.au/LCARC](http://www.parliament.qld.gov.au/LCARC)).

- 3.8 The Legislative Assembly passed the bill on 8 December 1999. The bill was assented to on 14 December 1999.
- 3.9 The amended sections of the *Freedom of Information Act* regarding the conduct of the strategic reviews required the responsible ministers to consult with the committee and the Information Commissioner about the appointment of the reviewer and the terms of reference for the review.<sup>16</sup>
- 3.10 A Consultative Reference Group was established comprising representatives of the Premier, the Attorney-General, the committee and the Ombudsman (in both his capacity as Ombudsman and Information Commissioner) to act as a forum for consultation for the duration of the review. This group was chaired by the then Chair of the committee.
- 3.11 On 16 December 1999, following consultation within this forum, the Governor in Council appointed The Consultancy Bureau Pty Ltd, headed by Mr Peter Forster, Director, to conduct the combined management review of both Offices. The Governor in Council also approved the terms of reference for the review.
- 3.12 In accordance with the terms of reference (and the timeframes and guidelines set by the Consultative Reference Group), the reviewer prepared a written progress report at the end of the first and second months of the review and a proposed report at the end of the third month. The Consultative Reference Group met following the presentation of each of these reports. The committee also met separately with the reviewer on a number of occasions.
- 3.13 The Ombudsman, in his capacity as Information Commissioner, took the opportunity to provide written comments on the reviewer's proposed report. Those comments are appended to the respective volume of the review report.<sup>17</sup>
- 3.14 The final report of the Forster review was tabled on 19 June 2000. As required by the *Freedom of Information Act*, the committee reviewed and reported to the Parliament on the report. The committee's report was tabled on 19 July 2000.<sup>18</sup>
- 3.15 The LCARCs of the 49<sup>th</sup>, 50<sup>th</sup> and 51<sup>st</sup> Parliaments then monitored the Ombudsman's progress in implementing the recommendations from the report.<sup>19</sup> The committee notes that the 2005-2006 reviewer stated in his reports that those committees were:

*... diligent in monitoring the progress with implementation and provided a significant report on progress with implementation of the recommendations.*<sup>20</sup>

### **2005-2006 Strategic review**

- 3.16 The Office of the Ombudsman and the Office of the Information commissioner were separated in early 2005.
- 3.17 On 8 September 2005, following consultation with the committee, the Governor in Council:
- appointed Mr Henry Smerdon to undertake a strategic review of the Office of the Information Commissioner; and
  - decided the terms of reference for the strategic review.<sup>21</sup>
- 3.18 During the conduct of the strategic review, the committee of the 51<sup>st</sup> Parliament met with Mr Smerdon on 25 October 2005 and 14 December 2005 to discuss the strategic review of the Office of the Information Commissioner. Discussion included matters regarding the committee's responsibilities in respect of the Information Commissioner.

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<sup>16</sup> See the *Parliamentary Commissioner Act*, s 32(5) and the *Freedom of Information Act*, s 108A(5).

<sup>17</sup> See the *Parliamentary Commissioner Act*, s 32(9) & (10) and the *Freedom of Information Act*, s 108A (9) & (10) regarding the statutory basis for the Ombudsman/Information Commissioner providing comments and the way in which comments were to be treated.

<sup>18</sup> See LCARC report 26, *Review of the Report of the Strategic Review of the Queensland Ombudsman* (Parliamentary Commissioner for Administrative Investigations), July 1999 (available at: [www.parliament.qld.gov.au/LCARC](http://www.parliament.qld.gov.au/LCARC)).

<sup>19</sup> See LCARC reports no 30, 34, 37, 43, 44, 47, 49 and 52.

<sup>20</sup> Strategic review report, p 56.

<sup>21</sup> In accordance with the *Freedom of Information Act*, s 108A(4) and (5).

- 3.19 On 11 May 2006, the Attorney-General and Minister for Justice tabled in the Queensland Parliament the *Report of the Strategic Management Review - Office of the Information Commissioner, April 2006, commissioned by the Queensland Government pursuant to the Freedom of Information Act 1992*. The report was deemed to be referred to the committee for its consideration and reporting.<sup>22</sup>
- 3.20 After the tabling of the strategic review reports, the previous committee determined that its review would include:
- consideration of written submissions; and
  - questions of the reviewer and Information Commissioner at public hearings to be held on 25 August 2006.
- 3.21 Prior to the dissolution of the 51<sup>st</sup> Parliament, the committee of the 51<sup>st</sup> Parliament tabled in the Legislative Assembly 10 non-confidential submissions it had received. A further confidential submission was received but not tabled.
- 3.22 Following the dissolution of the 51<sup>st</sup> Parliament, those invited to the planned public hearings were advised that the hearings would not be convened on 25 August 2006.
- 3.23 Once appointed, the committee of the 52<sup>nd</sup> Parliament considered the strategic review report, including by way of:
- consideration of the 11 public submissions received by the committee of the 51<sup>st</sup> Parliament; and
  - questioning the reviewer and Information Commissioner about issues relevant to the report at respective meetings on 27 and 28 November 2006.

## GENERAL COMMENTS

- 3.24 The requirements for a strategic review of the Information Commissioner and the Office of the Information Commissioner are set out in sections 108A to 108B of the *Freedom of Information Act*. The 2005-2006 strategic review has been conducted in accordance with these.

- 3.25 The terms of reference required the reviewer to:

*... generally assess, and provide advice and recommendations about, the functions and the performance of the functions of the Information Commissioner and the Office of the Information Commissioner in order to assess whether those functions are being performed economically, effectively and efficiently.*<sup>23</sup>

- 3.26 The terms of reference then provided:

*In this context, the review is to examine all structural and operational aspects of the Office, as well as its relationship with public sector entities, relevant Ministers, parliamentary committees and the Legislative Assembly.*

*Consideration is also to be given to the recommendations arising from the 2000 strategic management review of the Office, particularly to the extent to which those recommendations have been implemented and whether they are achieving the desired objectives.*

- 3.27 It was envisaged in the terms of reference that the review would take a maximum of three months to conduct. Although, in the event, the timeframe required was longer, the reviewer otherwise conducted the review in accordance with the defined scope and the methodology set out in the terms of reference.

- 3.28 Indeed, the strategic review was conducted in a consultative way, with the reviewer discussing aspects of the review with current and former staff of the Office, agency representatives, persons in other Australian and international jurisdictions and the committee of the 51<sup>st</sup> Parliament. In addition, the reviewer examined a sample of external review files and examined documents and other information provided by the Information Commissioner.

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<sup>22</sup> *Freedom of Information Act*, s 108AB(7).

<sup>23</sup> Terms of Reference, p 2: see Appendix A.

3.29 The strategic review report contains 38 positive and practical recommendations directed to structural and operational aspects of the Office of the Information Commissioner and its relationship with external review applicants, public sector agencies and the Freedom of Information (FOI) Unit in the Department of Justice and Attorney-General. The committee commends the reviewer on the positive and workable recommendations which will bring about improved performance in relation to the functions conferred on the Information Commissioner by the *Freedom of Information Act*.

3.30 The reviewer's report demonstrates a clear understanding of the important role freedom of information legislation plays in our Queensland system of representative democracy, as enshrined in section 4 of the *Freedom of Information Act*. When meeting with the committee, the reviewer described the Office of the Information Commissioner together with the Office of the Ombudsman as:

*... two relatively small institutions but very important institutions in terms of the overall governance and accountability framework for government.*<sup>24</sup>

3.31 It is pleasing to note that the reviewer concluded, again in relation to both Offices that, 'overall, in terms of where they were five or six years ago when the previous review was done, both agencies have come a long way in terms of what they were doing. That does not mean to say that there could not be further improvements.'

3.32 The committee commends the strategic review report to the Parliament as a framework for the continuing structural and operational effectiveness of the Office of the Information Commissioner as an accountability mechanism. Specific comment regarding certain recommendations is set out in paragraphs 3.33 to 3.96 below. This comment endorses the recommendations of the strategic review report and the committee has found it unnecessary to make any additional recommendations to Parliament.

## CONSIDERATION OF CERTAIN RECOMMENDATIONS

### External Review Task – Role of the Information Commissioner

**Recommendation 1:** The current arrangement whereby the Office of the Information Commissioner is the body charged with external review of decisions made by agencies in regard to FOI applications is endorsed.

**Recommendation 2:** If in the future the Government moves to establish a tribunal or similar body for the review of administrative and other related decisions, then consideration should be given to including the current external review function of the Office of the Information Commissioner within the powers and responsibilities of such a tribunal or other similar body.

3.33 In 1992, the Electoral and Administrative Review Commission and then, subsequently the then Parliamentary Committee for Electoral and Administrative Review, made recommendations for the introduction of a co-ordinated system of merits review – review by an independent, usually statutory body, which gives fresh consideration to whether an administrative decision was the correct or preferable one in all the circumstances of the matter. These recommendations have not been implemented.

3.34 The LCARC of the 51<sup>st</sup> Parliament commenced an inquiry into *The Accessibility of Administrative Justice* which expressly excluded from its terms of reference reform regarding appeals from administrative decisions. This express exclusion was because the committee had been informed by the then Attorney-General that the matter was under review by the Department of Justice and would be the subject of forthcoming legislation. When dissolved, the committee of the 51<sup>st</sup> Parliament had not reported to the Parliament on the inquiry.

3.35 In 2007, the committee of the 52<sup>nd</sup> Parliament will report to the Parliament on the *Accessibility of Administrative Justice*. Accordingly, the committee has written to the Attorney-General and Minister for Justice requesting advice about any proposed reforms to appeals from administrative decisions.

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<sup>24</sup> Meeting with the reviewer – Transcript of Proceedings, 27 November 2006, p 1: see Appendix C.

- 3.36 When meeting with the Information Commissioner on 27 November 2006 and the reviewer on 28 November 2006, the committee respectively discussed the experiences of the FOI external review models in other Australian and international jurisdictions. The committee notes that the sharing of operational and structural experiences in this way is of significant value.

### External Review Task - Independence of the Office of the Information Commissioner; Security and Confidentiality Issues

**Recommendation 3:** The establishment of an OIC separate from any agency subject to the FOI Act is endorsed.

**Recommendation 4:** The Office should be located in self-contained secure office accommodation not shared with any other agency.

**Recommendation 5:** The Office should continually assess and monitor its systems, processes and practices to ensure the highest possible level of security and confidentiality, consistent with the nature of its operations and the information and documents it is required to hold and access.

- 3.37 In a submission, the Cairns City Council stated that it supported these recommendations.<sup>25</sup>
- 3.38 The reviewer indicated to the committee that the independence of the Office of the Information Commissioner was one of two key themes of the 2005-2006 strategic review.<sup>26</sup>
- 3.39 When it met with the Information Commissioner on 27 November 2006, the committee was informed about measures being taken by the Office of the Information Commissioner to implement recommendations 3, 4 and 5 including the:
- establishment of the Office of the Information Commissioner as a statutory office; and
  - independent nature and characteristics of the Office, such as its office accommodation, case management systems and corporate services which are no longer shared with the Office of the Ombudsman and are separate from all other agencies subject to the *Freedom of Information Act*.
- 3.40 Further information about the implementation of these recommendations is set out in the 2005-2006 Annual Report of the Information Commissioner.<sup>27</sup>
- 3.41 The committee notes the implementation of these recommendations by the Information Commissioner.

### External Review Task – Conduct of External Reviews

**Recommendation 6:** The Office should ensure that external reviews proceed in accordance with the principles espoused in s72 of the Act, namely that the proceedings be conducted with as little formality and technicality as possible and that the review be conducted expeditiously.

- 3.42 Section 72 of the *Freedom of Information Act* provides:

#### s 72 Procedure on review

(1) On a review under this part—

- a) the procedure to be followed is, subject to this Act, within the discretion of the commissioner; and
- b) proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the commissioner permits; and
- c) the commissioner is not bound by the rules of evidence and may inform himself or herself on any matter in any way the commissioner considers appropriate.

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<sup>25</sup> Submission 4, p 1.

<sup>26</sup> The other was timeliness: see paragraphs 3.66 to 3.73.

<sup>27</sup> 2005-2006 Annual Report, p 16.

(2) The commissioner may, during a review, give directions as to the procedure to be followed on the review.

3.43 Cairns City Council indicated in a submission that it supported recommendation 6. Similarly, the Department of Public Works submitted that:

*The Department supports the view put forward ... that the resolution of referred matters should occur in a timely manner and be informal and non-legalistic to the greatest extent practicable to facilitate all parties' understanding of decisions.*<sup>28</sup>

3.44 In relation to the substance of recommendation 6, section 72 of the *Freedom of Information Act* requires that the informal resolution of applications, without technicality and in a timely way, must be balanced with resolution in accordance with the requirements of the Act and a proper consideration of the matters before the Information Commissioner. In short, timely decisions must be balanced with the need for 'quality' decisions.

3.45 Accordingly, recommendation 6 focuses on timeliness, informality and lack of technicality. Other recommendations go to the balancing elements of ensuring decisions are made in accordance with the requirements of the Act (such as recommendation 12) and proper consideration of the matters before the Information Commissioner (such as recommendation 11). However, the committee notes that the Office of the Information Commissioner no longer reports on performance measures regarding the 'quality' elements. The former performance measure of the proportion of formal decisions overturned in judicial review proceedings may have been one measure of these but has been discontinued. Performance measures are discussed in paragraph 3.83 and 3.90.

3.46 In relation to implementation of recommendation 6, the 2005-2006 Annual Report indicates that, in that financial year 342 applications were received and 336 were finalised (for the 2004-2005 financial year, 307 applications were received and 265 were finalised).

3.47 The 2005-2006 Annual Report states in relation to the implementation of recommendation 6:

*The Office is committed to attempting informal resolution of reviews through negotiation and mediation between parties. In 2005-06, 77 per cent of finalised reviews were resolved informally.*

*The Office case management plans are geared to achieve expeditious resolution of reviews. In 2005-06 the median days to close a review, excluding the 'backlog' reviews closed in 2005-06, was 77 days.*

*The Office has also made significant progress in finalising the 'backlog' reviews that were older than 12 months when the office was established as a separate entity. On 30 June 2006, 11 open applications (7.8% of all open applications) were more than twelve months old. By comparison, at 30 June 2005, 25 open applications (18.7% of all open applications) were more than twelve months old.*<sup>29</sup>

3.48 When meeting with the Information Commissioner, the committee was pleased to discuss the conduct of external reviews in accordance with section 72 of the *Freedom of Information Act*. Clearly, there had been an increase in the timeliness with which external review applications were resolved in 2005-2006. Delay in the resolution of applications is not in accordance with the principles set out in section 72. Accordingly, the committee commended the Information Commissioner and staff of the Office on the significant reduction in matters older than 12 months. The committee trusts that, in the 2006-2007 year, the target of no more than 10 outstanding external review applications older than 12 months will be met.

3.49 The committee noted, however, a significant increase in the number of matters finalised by way of a written decision, either reported or unreported. This increase cannot be due solely to the resolution of older 'backlog' cases. In 2005-2006, 72 of the 336 applications resolved were resolved by way of a written decision (compared with 32 out of 265 in 2004-2005 and 31 out of 256 in 2003-2004). The 2005-2006 Annual Report states that only 27 of these written decisions related to 'backlog' reviews.<sup>30</sup> The implementation of recommendation 6 and the possible

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<sup>28</sup> Submission 8, p 1.

<sup>29</sup> 2005-2006 Annual Report, p 16.

<sup>30</sup> 2005-2006 Annual Report, p 11.



increase in the number of written decisions required to finalise an application for external review will be monitored by the committee.

### External Review Task – Informal Resolution

**Recommendation 7:** The Office should continue to embrace mediation strategies wherever appropriate to resolve external reviews. The Office should also ensure that all staff have access to appropriate mediation resolution training.

**Recommendation 8:** The Office should endeavour to issue a 'preliminary view' as early as possible in the process as a means of expediting the resolution of the external review.

- 3.50 At page 27 of the strategic review report, it is stated that, 'for some applicants mediation is not feasible or appropriate'. A submission from Mr Thomas Mahon suggested that this statement should be disregarded and that mediation should be 'fully supported' in all external review applications:

*I submit that even the dull witted or enraged Applicant is entitled to compassionate understanding and every attempt should be made by those well trained Staff to mediate an acceptable outcome.<sup>31</sup>*

- 3.51 The committee was informed by the Information Commissioner and by Ms Fiona Henry, Assistant Information Commissioner, of professional development and training regarding mediation undertaken by staff of the Office of the Information Commissioner. The committee notes that, in 2005-2006, 77% of finalised external review applications were resolved informally, without a written decision. While this was a decrease on the proportion resolved informally in 2004-2005, it exceeds the performance target of 75%.<sup>32</sup>

- 3.52 The committee observes also that, as envisaged by recommendation 8, a strong, well-reasoned 'preliminary view' of the matter in issue provided to the parties to an external review application at an early stage is an important mediation strategy. The preliminary view of the Information Commissioner provides the parties, and in particular individual Queenslanders who are applicants, with information and a basis for mediation. In this context, recommendation 12 provides that preliminary views should make reference to all relevant legal principles and decisions. Such a preliminary view is a key element of the informal mediation of external review applications.

### External Review Task – Decisions of the Information Commissioner

**Recommendation 11:** The Office should continue to develop templates for decisions that result in decisions that are brief, accurate, easy to comprehend and helpful to stakeholders.

**Recommendation 12:** The 'preliminary views' and decisions issued by the Office should reference the most recent relevant higher court cases where possible in the first instance, then decisions of tribunals from other jurisdictions and if still necessary and currently applicable, previous decisions of the Information Commissioner.

- 3.53 A submission received from Reverend Spiros Pandelakis told the committee of concern and frustration regarding an external review decision which had not provided him with access to flood maps requested under the *Freedom of Information Act* from a local government authority:

*I would like to refer you to a complaint I made to the FOI Commissioner... The FOI Commissioner just keeps on relaying what the council has told them and refuses to make a fair decision regarding my complaints. They seem to be taking the Council's side in the matter rather than the complainant's.<sup>33</sup>*

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<sup>31</sup> Submission 7, p 7.

<sup>32</sup> See paragraph 3.49 regarding monitoring of the implementation of these recommendations.

<sup>33</sup> Submission 1, p 1.

- 3.54 The reviewer was asked by the committee about steps being taken by the Information Commissioner to improve the written decisions issued and was asked to identify the criteria for better decisions. Mr Smerdon advised the committee that:

*If you go back to when FOI started and they started writing decisions, we know that it is a legal process. You can never walk away from the fact that it is a legal process. There is a legal decision involved that will supplant the decision of the agency. You have to be very careful about how you write it.*

*There was probably a need back in the early days for a significant writing of the decision so that people understood where the Information Commissioner was coming from in terms of making the decision. We probably passed the use-by-date for that many years before it actually started to change. At the end of the day, those decisions go back to the person who has made the request.*

*I looked at one decision which was 26 pages long. I think I am a reasonably intelligent person, but I really struggled to understand what it was all about. If I were the applicant I would struggle to understand why my request was being refused. I think the essence is to make sure you have all the legal principles covered, that it is concise and that the person who receives it will actually understand why the decision has been made...*

*A 26-page decision being written back to an ordinary person in the street with no legal training defies imagination. You cannot expect someone to really comprehend what that means. The process is there to put a system in place for people to have issues resolved. If they are not getting the information and they are entitled to it, they can make an application – if they cannot get the agency to change – to an independent party. Once that decision is made they should be able to understand why the decision has been made. They should be able to read a page or two and say, 'I understand it. I don't like it, but I understand and I accept the decision.' That is the criteria I would use.<sup>34</sup>*

- 3.55 The committee of the 51<sup>st</sup> Parliament discussed the clarity of written communications produced by the Office with the Information Commissioner,<sup>35</sup> and had advised that it intended to revisit the matter of the nature of written decisions during its review of the strategic review report.<sup>36</sup>

- 3.56 At the committee's meeting with the Information Commissioner on 27 November 2006, the Information Commissioner was asked to outline for the committee the nature of the process of decision-making regarding external review decisions, including the difference between informal decisions, written decisions and reported decisions. Additionally, the committee was informed about the legal research sources utilised by the staff of the Office of the Information Commissioner and relevant training received by staff.<sup>37</sup>

- 3.57 Implementation of recommendations 11 and 12 is outlined also in the 2005-2006 Annual Report.<sup>38</sup> The reviewer suggested to the committee that for the Office of the Information Commissioner 'writing better decisions and clearer decisions, taking account of more recent decisions in other tribunals' would be an ongoing matter, and that:

*It is not a singular task that you can tick off and say, 'It's done.' It is an ongoing thing. So I think the task for the committee will be to ensure that that continues to happen.<sup>39</sup>*

- 3.58 In accordance with its functions under section 108C of the *Freedom of Information Act*, the committee will continue to monitor and review the performance by the Information Commissioner of the Commissioner's functions under the Act. This will include monitoring the clarity and effectiveness of written decisions.

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<sup>34</sup> Meeting with the reviewer - Transcript of Proceedings, 28 November 2006, p 5: see Appendix C.

<sup>35</sup> Report 52, Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner ~ 29 November 2005, p 7.

<sup>36</sup> Report 53, Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner on 23 May 2006, p 11.

<sup>37</sup> Meeting with the Information Commissioner – Transcript of Proceedings, 27 November 2006, pp 2-3: see Appendix B.

<sup>38</sup> 2005-2006 Annual Report, p 17.

<sup>39</sup> Meeting with the reviewer - Transcript of Proceedings, 28 November 2006, p 2: see Appendix C.

## External Review Task – Demand Management

**Recommendation 13:** The current investment by the Department of Justice and Attorney-General in providing training and other support for agency FOI decision makers should be maintained and increased to provide greater support to all agencies, including local government and universities across Queensland.

**Recommendation 14:** Consideration should be given to introducing a fee for internal reviews of FOI decisions, along the lines currently applying in New South Wales and at the Commonwealth Government level.

3.59 In relation to recommendation 13, the Director-General of the Department of Public Works stated in a submission that the Department supported 'the provision of effective support and training to public sector agencies to facilitate sound decision-making'.<sup>40</sup> Similarly, the Manager, Administration, of the Cairns City Council supported recommendation 13.

3.60 The committee of the 51<sup>st</sup> Parliament discussed provision of training and support for FOI decision-makers with the Information Commissioner. This included discussion of the relationship between the FOI information and awareness activities of the Office of the Information Commissioner and those of the FOI Unit in the Department of Justice and Attorney-General. In report no 52, the committee stated that it was:

*... pleased to report on training activities being provided to public agencies in conjunction with the FOI unit in the Department of Justice and Attorney-General. Enhancement of the understanding of the FOI Act, including by way of assistance to those in agencies who make decision regarding the application of the Freedom of Information Act, is an important function of the Office of the Information Commissioner.*<sup>41</sup>

3.61 The committee of the 52<sup>nd</sup> Parliament was informed by the Information Commissioner that, as set out in the 2005-2006 Annual Report, a priority of the Office will be to:

*... continue to enhance the information we are providing on our web site so that applicants particularly, but decision makers in agencies as well, are more informed about the issues at play in an external review. Hopefully, that will assist in the timeliness.*<sup>42</sup>

3.62 The committee is pleased to report, therefore, that complementary to recommendation 13 (for the current investment by the Department of Justice and Attorney-General in providing training and other support for agency FOI decision makers to be maintained and increased to provide greater support to all agencies, including local government and universities across Queensland), information and assistance will continue to be provided by the website of the Office of the Information Commissioner.

3.63 In relation to recommendation 14, Mr Thomas Mahon argued against the introduction of a fee in his submission:

*The fact that three (3) Government instrumentalities out of nine (9) in Australia charge a fee is no justification for this State to introduce a fee.*

*The oft touted expression, 'user pays' is already causing Applicants to pay an Initial Fee of \$35.25.*

*Based on the figures of 12,288 Applicants for FOI in 2003-04, the income for that year alone was \$433,152.00. It is more than possible that the income for the years ended 05 and 06 would be in excess of \$500,000 per year. These figures relate only to the initial Application fee and do not include time and photo copy charges at \$20.80 per hour and 20 cents per A4 photo-copy respectively.*

*If the initial cause of a problem, perceived or real, is caused by a Government Agency, why is the Applicant required to pay to have the matter clarified or rectified?*<sup>43</sup>

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<sup>40</sup> Submission 8, p 1.

<sup>41</sup> Report 52, *Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner – 29 November 2005*, p 9.

<sup>42</sup> *Meeting with the Information Commissioner – Transcript of Proceedings*, 27 November 2006, p 8: see Appendix B.

<sup>43</sup> Submission 7, p 9.

- 3.64 The committee of the 51<sup>st</sup> Parliament discussed recommendation 14 with the Information Commissioner, who advised the committee that:

*I think it is a decision for the government [to] to make that internal review decision. I expressed concern about the quality of internal review decisions that I have seen in the past. I acknowledge that part of the reason for that may have been that there was only 14 days for a person in an agency to make that internal review decision, which must, under the Act, be a completely fresh, new consideration of all of the matters.*

*In the first instance at least, it would indicate to the applicant that the effort has been made, that it has actually been a genuine fresh look. If there was to be a fee introduced it may be that at least they would get more value. Equally, it may be that applicants value the internal review decision more. I am not sure. Applicants who have not received an initial decision and who have not been satisfied have almost said that they will have an internal review and external review in one go. They do not seem to have valued the internal review decision as much as perhaps they might.<sup>44</sup>*

- 3.65 In 2007, the committee of the 52<sup>nd</sup> Parliament will report to the Parliament on the *Accessibility of Administrative Justice*. As that committee report will contain detailed consideration of the existing FOI fees and charges regime, the committee will address recommendation 14 in that report.

### External Review Task – Timeliness

**Recommendation 15:** The Office should establish tight timeframes for resolution of external reviews and incorporate them in the Office strategic and operational plans and also in individual performance plans.

**Recommendation 17:** The Office should adopt as policy, a commitment to resolve all applications for external review within 12 months of receipt. In the event that a file cannot be closed within twelve months, an explanation of why the file(s) cannot be dealt with in the prescribed time frame should be included in the annual report together with a target completion date.

- 3.66 In a submission, the Director-General of the Department of Public Works supported the view that resolution of external review matters should occur in a timely manner.<sup>45</sup>
- 3.67 The committee was informed by the reviewer that, together with the independence of the Office of the Information Commissioner, timeliness was one of the two key themes of the 2005-2006 strategic review. He told the committee that:
- 3.68 *There is nothing worse for a person who has an issue to raise than to have it take months and months and sometimes years to be resolved. So, expeditious resolution of matters was something that I stressed.<sup>46</sup>*
- 3.69 Steps taken by the Information Commissioner towards the implementation of recommendation 15 are set out in the 2005-2006 Annual Report:

*The Office continues to seek expeditious resolution of reviews. Two new performance measures have been adopted by the Office. These performance measures are:*

- *The target 'median days to finalise a review' is 90 days*
- *The target number of open reviews older than twelve months is 'less than 10'.*

*These targets have been incorporated into the 2006-10 Strategic Plan and the 2006-07 operational plan and individual officer's performance plans for 2006-07.<sup>47</sup>*

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<sup>44</sup> Report 53, *Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner on 23 May 2006*, pp 2-3.

<sup>45</sup> Submission 8, p 1.

<sup>46</sup> *Meeting with the reviewer - Transcript of Proceedings*, 28 November 2006, p 1: see Appendix C.

<sup>47</sup> 2005-2006 Annual Report, p 17.

- 3.70 At its meeting with the Information Commissioner, the committee discussed changes to the performance measures regarding timeliness and the Information Commissioner described these measures in the following way:

*The median days to finalise a review is 90 days and that is no matter how the review is resolved – whether it is resolved informally quite quickly or whether we attempt informal resolution and that is not able to be achieved and we end up making a written decision. The 90 days is across all reviews. We also have a very specific measure about the number of open reviews at the end of the reporting period. That is there so that we make sure we do not end up with a backlog. We just cleaned one up and we do not want another one.<sup>48</sup>*

- 3.71 See, further, paragraphs 3.45 to 3.49.

- 3.72 In relation to implementation of recommendation 17, the 2005-2006 Annual Report states:

*The Office is committed to resolving external reviews within twelve months. A case management plan, using a standard template, is now completed at the outset of each review and agreed by the supervising Assistant Information Commissioner. The case management plan is focused on achieving a timely resolution of the review, with the median days to close a review being 90 days.*

*The Office has made significant progress in finalising reviews older than 12 months. On 30 June 2006, 11 open applications (7.8% of all open applications) were more than 12 months old. By comparison, at 30 June 2005, 25 open applications (18.7% of all open applications) were more than 12 months old. The target for 2006-07 is less than 10 open applications older than 12 months old.*

*This Annual Report reports on those reviews older than twelve months as at 30 June 2006. These reviews were unable to be finalised due to the nature and complexity of the matter in issue, the volume of documents, and/ or circumstances of application.<sup>49</sup>*

- 3.73 The committee notes, however, that while the 2005-2006 Annual Report did report on reviews older than 12 months, it did not particularise the 11 reviews that fell into this category nor did it provide, in each case, target completion dates. However, the committee is in a position to request this general information of the Information Commissioner if it is not provided in future annual reports.

### Organisation and Management Issues – Workloads

**Recommendation 20:** Management should establish clear expectations of staff in regard to file management and closure. A reasonable expectation would be a target of file closures of 40 to be set for individual full-time officers depending on experience and responsibility level.

- 3.74 The 2005-2006 Annual Report states, in respect of the implementation of recommendation 20:

*Targets for file closures at the Office and individual levels are incorporated into the Office's strategic plan, operational plan and individual performance plans. The Office target is 300 closures in 2006-07 and the individual full-time case officer's target is 40 closures per annum.<sup>50</sup>*

- 3.75 The committee notes that the implementation of other complementary recommendations in the strategic review report will assist the Office to achieve these targets. Recommendation 11 regarding the development of templates for decisions is one example; recommendation 15 regarding the incorporation of tight timeframes for the resolution of external review applications into individual performance plans is another.

- 3.76 The committee looks forward to discussing rates of file closures in future meetings with the Information Commissioner.

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<sup>48</sup> Meeting with the Information Commissioner – Transcript of Proceedings, 27 November 2006, p 4: see Appendix B.

<sup>49</sup> 2005-2006 Annual Report, p 18.

<sup>50</sup> 2005-2006 Annual Report, p 19.

## Organisation and Management Issues – Staff Training and Development

**Recommendation 24:** The Office should continue to devote significant budget funds for training and development with a longer-term target of 2% of employee-related expenses.

**Recommendation 25:** The focus of staff development in the short to medium term should continue to be enhancement of decision making skills and mediation/ dispute resolution.

- 3.77 At the meeting on 27 November 2006, the committee was informed by the Information Commissioner and the Assistant Information Commissioner of the training and development undertaken by staff in 2005-2006 and planned for 2006-2007. The 2005-2006 Annual Report indicates that:

*In 2005-06 the Office spend on training and development was 2.3 per cent of total employee expenses for the year. In 2006-07 the Office has planned expenditure of at least 2 per cent of total employee expenses for the year.*

*The priorities in the Office Staff Development Plan for 2006-07 are alternative dispute resolution training and decision writing training.<sup>51</sup>*

- 3.78 With both the Information Commissioner and the reviewer, the committee discussed the relationship between training and professional development and improved performance.<sup>52</sup> With the Information Commissioner, the committee discussed training needs of staff regarding stress management.<sup>53</sup>
- 3.79 The committee notes the strong commitment of the Information Commissioner to the professional development of staff in all roles throughout the Office. It is likely that this commitment will continue to contribute to increases in the quantity and quality of resolutions, including written decisions, and the timeliness with which resolutions are brought about.

## Governance Issues – Strategic Planning and Risk Management

**Recommendation 28:** The Office goals, strategies and performance measures should be revised to strengthen the focus on timely resolution of external reviews and to reflect the substantially reduced requirement for FOI information and training now that the FOI Unit in the Department of Justice and Attorney-General is (rightly) undertaking this role as part of their lead agency responsibilities.

- 3.80 This recommendation is discussed below in paragraphs 3.81 to 3.82.

## Governance Issues – Annual Report and Other Financial Statements

**Recommendation 29:** The Office should report on its performance against the revised performance measures in the Strategic Plan in future Ministerial Portfolio Statements and Annual Reports.

**Recommendation 30:** The Offices' Annual Report should provide performance data linked directly to the revised goals and performance measures in the Office's Strategic Plan.

- 3.81 The implementation of recommendations 28 to 30 is outlined in the 2005-2006 Annual Report:

*The Office goals, strategies and performance measures have been revised to focus on timely resolution of reviews. Two new performance measures have been adopted in the 2006-07 Ministerial Portfolio Statement, the 2006-10 Strategic Plan and the 2006-07 operational plan:*

- *Median days to finalise a review. The 2006-07 target is 90 days.*

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<sup>51</sup> 2005-2006 Annual Report, p 19.

<sup>52</sup> *Meeting with the reviewer - Transcript of Proceedings*, 28 November 2006, pp 4-5: see Appendix C and *Meeting with the Information Commissioner – Transcript of Proceedings*, 27 November 2006, p 3: see Appendix B.

<sup>53</sup> *Meeting with the Information Commissioner – Transcript of Proceedings*, 27 November 2006, p 8: see Appendix B.

- Number of open reviews at the end of the reporting period that are more than 12 months old. The 2006-07 target is less than ten.

The revised performance measures have been included in the 2006-10 Strategic Plan, and reported on in the 2006-07 Ministerial Portfolio Statement and in this 2005-06 Annual Report.<sup>54</sup>

3.82 With the move towards the provision of FOI information and training by the FOI Unit in the Department of Justice and Attorney-General, the committee supports the reduced focus on these by the Office of the Information Commissioner. At the same time, the committee notes the important informative role played by the website of the Office.<sup>55</sup>

3.83 In relation to the revised performance measures, the committee identifies two issues:

- that performance measures do not adequately measure the quality of decisions; and
- that the performance measure of 'median days' to resolve an external review application does not distinguish non-complex and complex applications.

3.84 First, in paragraph 3.45, the committee identified concerns that the Office of the Information Commissioner does not have performance measures which specifically indicate whether external review applications are resolved in accordance with the requirements of the *Freedom of Information Act* and a proper consideration of the matters before the Information Commissioner.

3.85 While recommendations 6, 7, 8, 15, 16, 17 and 28 direct a greater focus on the timeliness of resolution, the committee is confident that the reviewer did not intend the increased attention to timely resolution to adversely impact upon attention to other requirements in section 72 of the *Freedom of Information Act*, that is, the quality of decisions. Indeed, the strategic review report contains specific recommendations directed towards quality outcomes and the Information Commissioner advised the committee of the importance of these when she said, 'we need to make a decision that is lawful under the Act and based on the facts of [the parties'] situation'.<sup>56</sup>

3.86 Table 4 in the 2005-2006 Annual Report sets out the rationale for the discontinuance of the performance measure of the proportion of formal decisions overturned in judicial review proceedings and its replacement with a new measure of the percentage of applicants satisfied with the conduct of their review (sourced from an applicant survey):

**Rationale for discontinuing:** *All decisions of the Office, not just the few 'formal' (i.e. reported) decisions, are open to judicial review. There have been very few judicial review applications regarding External Review decisions over the past ten years and there has not been any External Review decision overturned in judicial review proceedings in 2005-06.*

**Rationale for adoption:** *This measure provides a comprehensive assessment of applicants' satisfaction with the conduct of Office staff in interacting with them and the range of information provided to them. A new applicant survey has been developed to progressively capture this data and results will be available for 2006-07.*<sup>57</sup>

3.87 The committee suggests that the new measure, described by the Information Commissioner as a 'satisfaction measure',<sup>58</sup> is not in itself a measure of the quality of resolutions or decisions. While, in the past ten years, there have been few Information Commissioner decisions the subject of judicial review, this measure is an important indicator of the quality of the finalisation of external review applications by the Information Commissioner. Continued reporting on the measure in addition to the two measures of quality resolutions identified in the 2005-2006 Annual Report would provide a better indication in this area. However, as noted by the reviewer, the

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<sup>54</sup> 2005-2006 Annual Report, p 20.

<sup>55</sup> See paragraph 13.61 and 13.62

<sup>56</sup> *Meeting with the Information Commissioner – Transcript of Proceedings*, 27 November 2006, p 4: see Appendix B.

<sup>57</sup> 2005-2006 Annual Report, p 23.

<sup>58</sup> *Meeting with the Information Commissioner – Transcript of Proceedings*, 27 November 2006, p 4: see Appendix B.

committee's performance of its functions under the *Freedom of Information Act* encompasses requesting of the Information Commissioner information regarding the number of reviews the subject of judicial review proceedings in a financial year and the number of those judicial review applications which were successful.

- 3.88 Second, in relation to timeliness, the Information Commissioner has, in past annual reports and in information provided to the committee in answer to questions on notice, reported on the proportion of cases finalised in each reporting period finalised within three months, six months or 12 months. This measure has been discontinued and was not reported on in the 2005-2006 Annual Report. The rationale for a change to the new measure of median days to finalise a review is stated to be:

*This is the best measure of timeliness in finalising reviews as it is not distorted by the total number of reviews finalised or by extreme measures at either end of the spectrum. The Victorian Civil and Administrative Appeals Tribunal (VCAT) uses this measure as the key driver of improved performance. Excluding the finalised 'backlog' reviews, in 2005-06 the median days to close a review was 77 days. When the finalised 'backlog' reviews are included, the median days to close a review in 2005-06 was 109 days.<sup>59</sup>*

- 3.89 When asked about this change, the reviewer said:

*I think you can use a variety of measures to measure how well you are doing. I think the real argument is being consistent in what you do. If [the Information Commissioner] has made that change now to adopt the median, she needs to be consistent so that can be compared year to year... I do not have a particular issue. I would probably like to have seen both measures used.<sup>60</sup>*

- 3.90 In this context, the committee is of the view that timeliness is best represented by a matrix of measures which indicate the time taken to resolve both non-complex and complex matters. In past years, one way in which the committee has monitored the timeliness of the finalisation of external review applications has been to ask the Information Commissioner questions about the proportion of cases finalised within three, six and 12 months. Performance of the committee's functions under the *Freedom of Information Act* encompasses requesting statistics regarding timeliness, including the finalisation of non-complex and complex matters.

### Communication – Applicant Surveys

**Recommendation 34:** Applicant surveys should continue but the questionnaire should be simplified to a single page if possible and mailed to the applicant with the final letter closing the file for their external review.

- 3.91 A submission from Mr Thomas Mahon suggested that the past applicant survey procedure and the information collated from those surveys were not as useful as they might have been.<sup>61</sup>
- 3.92 However, in accordance with recommendation 34, the Office of the Information Commissioner has developed a one-page survey that is mailed to an applicant when his or her file closes.<sup>62</sup> The information from these survey responses will be of greater use to the Office. In this context, the committee notes discussions with the Information Commissioner regarding applicants for whom English is a second language, applicants with low levels of functioning literacy and applicants who might benefit from independent legal advice.<sup>63</sup> Similarly, information from applicant surveys may provide insights that will assist the Office of the Information Commissioner in responding to people who make frequent external review applications.
- 3.93 The committee looks forward to hearing about measures put in place to facilitate the Office of the Information Commissioner's responses to feedback received from applicant surveys.

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<sup>59</sup> 2005-2006 Annual Report, p 23.

<sup>60</sup> *Meeting with the reviewer – Transcript of Proceedings*, 28 November 2006, p 2: see Appendix B.

<sup>61</sup> Submission 7, p 5.

<sup>62</sup> *Annual Report 2005-2006*, p 21.

<sup>63</sup> *Meeting with the Information Commissioner – Transcript of Proceedings*, 27 November 2006, p 6: see Appendix B.



## Communication – Agency Surveys

**Recommendation 35:** The Office should implement a range of feedback mechanisms to obtain ongoing feedback from agencies, such as those listed in this report.

3.94 In relation to the implementation of recommendation 35, the 2005-2006 Annual Report states:

*The Office has conducted a review of its communication strategies with agencies, including the annual survey of agencies, the Liaison Officer role and communication channels with JAG.*

*The Office's annual agency survey instrument and process have been redesigned. In 2006 the Office agency survey achieved a 78 per cent response rate and a 73 per cent overall satisfaction rating. In 2007, the Office will further enhance the agency feedback process through the use of web-based technology.*

*The Liaison Officer role has been clarified to ensure the independence of the Office, a survey instrument of Liaison Officer contact with agency FOI Coordinators is now used to ensure consistency in regular contact by Liaison Officers, and clear communication protocols are now in place with JAG.<sup>64</sup>*

3.95 In the past, agency surveys have provided significant feedback which has assisted the Office of the Information Commissioner to improve performance; for example, the committee of the 51<sup>st</sup> Parliament discussed with the Information Commissioner surveys which had delivered positive responses but had identified continuing concerns regarding the timeliness of decisions. Similarly, agency surveys will identify information or resources which might assist agencies to provide access to documents more efficiently or more effectively. Where appropriate, such information could be passed on to the FOI Unit in the Department of Justice and Attorney-General.

3.96 The committee notes the feedback received from agency surveys in 2005-2006 identified in the 2005-2006 Annual Report.<sup>65</sup> However, the 2005-2006 Annual Report does not identify concerns expressed by agencies nor strategies to address these.

## CONCLUSION

3.97 When meeting with the committee on 28 November 2006, the reviewer commended the Information Commissioner for the progress made regarding the implementation of the recommendations in the strategic review report.<sup>66</sup> The committee endorses this view.

3.98 In accordance with the functions conferred on the committee by the *Parliament of Queensland Act* and the *Freedom of Information Act* and as noted above in paragraphs 3.33 to 3.96, the committee will continue to monitor the implementation of all recommendations. This will include recommendations not specifically discussed in this report, such as recommendations 20 and 21 regarding the recruitment and training of staff of the Office of the Information Commissioner.

3.99 We note that the strategic review report acknowledged the diligent way in which the committees of the 49<sup>th</sup>, 50<sup>th</sup> and 51<sup>st</sup> Parliaments monitored the implementation of the recommendations made in the report of the 2000 strategic review and look forward to continuing these responsibilities.

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<sup>64</sup> 2005-2006 Annual Report, p 21.

<sup>65</sup> 2005-2006 Annual Report, p 15.

<sup>66</sup> *Meeting with the reviewer - Transcript of Proceedings*, 28 November 2006, p 1: see Appendix C

## **4. 2005-2006 ANNUAL REPORT**

### **BACKGROUND**

- 4.1 The 2005-2006 Annual Report of the Information Commissioner was tabled on 3 November 2006.
- 4.2 To fulfil the 'monitor and review' responsibilities conferred by the *Freedom of Information Act*, the committee of the 51<sup>st</sup> Parliament commenced a process of formal, transcribed meetings with the Information Commissioner. The committee envisaged this process would include:
- two general meetings with the Information Commissioner each year, one preceding the estimates process and the other following the tabling of the Information Commissioner's annual report;
  - written questions on notice to the Information Commissioner, prior to the meetings, with a request for written responses to the questions to be provided by the Information Commissioner;
  - consideration of the written responses;
  - meeting with the Information Commissioner to further discuss the responses to the questions on notice and to ask additional questions without notice; and
  - a report to Parliament on that meeting incorporating a transcript of the meeting.
- 4.3 The committee of this Parliament has considered the 2005-2006 Annual Report and discussed matters arising out of the report at a meeting with the Information Commissioner on 27 November 2006.
- 4.4 Substantive matters given consideration by the committee are discussed in paragraphs 4.5 to 4.10.

### **MATTERS DISCUSSED WITH THE INFORMATION COMMISSIONER**

- 4.5 At the meeting on 27 November 2006, topics discussed with the Information Commissioner and her staff relevant to the committee's examination of the 2005-2006 Annual Report included:
- improvements made in 2005-2006 to existing arrangements for office accommodation, case management systems and corporate services;
  - the timely resolution of applications for the external review of FOI decisions in 2005-2006;
  - a further reduction in 2005-2006 in the number and age of external review applications unresolved after 12 months;
  - professional development and training undertaken by the staff of the Office during the previous financial year and the likelihood of a relationship between that development and training and performance improvements;
  - an increase in the number of written decisions required to finalise applications and any consequential increase in the workload imposed on the Office;
  - reporting by way of changed performance measures and, in particular –
    - a new timeliness measure of 'median days to finalise a review'; and
    - whether performance measures disclose the cost of outcomes (ie, the average cost to finalise an application);
  - whether statistics were kept regarding applicants' success rates in relation to complex applications resolved in 2005-2006 (ie, those requiring a written decision);
  - information sharing and professional contact with Information Commissioners and equivalents in other jurisdictions in the relevant financial year;

- whether analysis of the external review applications made (by individuals in 87% of cases in 2005-2006) indicated –
  - what proportion was ill-founded in a legal sense;
  - any trends regarding the need for applicants to seek independent legal advice;
  - the level of understanding of the provisions and requirements of the FOI legislation by individuals who made application for external review, such as applicants who may have had low levels of functioning literacy or for whom English was a second language; or
  - a strong awareness and understanding in the community of freedom of information and of rights of access to information and to seek external review of FOI decisions by agencies;
- certain matters regarding the 2005-2006 Annual Report Financial Statements, namely –
  - budgetary changes following the administrative separation of the Office of the Information Commissioner from the Office of the Ombudsman;
  - an operational surplus of \$701 000 due to office relocation costs incurred in 2005-2006 not being billed until 2006-2007; and
  - reasons for increased expenditure on commercial and professional services; and
- as stated in the 2005-2006 Annual Report, the areas on which the Office of the Information Commissioner would focus in 2006-2007 – timeliness, professional development and information provided on the Office of the Information Commissioner website.

## COMMITTEE COMMENTS

- 4.6 The meeting on 27 November 2006 was the first meeting of the committee of the 52<sup>nd</sup> Parliament with the Information Commissioner. As section 108C of the *Freedom of Information Act* confers the committee with significant functions, the committee was pleased to have the opportunity to discuss the nature of the Information Commissioner's functions under that Act and to discuss with her practical matters regarding the external review of FOI decisions. For example, the Information Commissioner described for the committee the difference between the informal, unreported and reported decisions she issues.
- 4.7 As the 2005-2006 Annual Report of the Office of the Information Commissioner details the implementation of recommendations made in the strategic review report, many matters regarding the 2005-2006 Annual Report are discussed in Chapter 4. The committee will not repeat those comments in this part of the report.
- 4.8 The committee was pleased to be informed by the Information Commissioner about continuing improvements in the timely resolution of applications for external review. At the meeting on 27 November 2006, the Information Commissioner told the committee that:
- I am happy to report that we are able to indicate significant improvement in timeliness. For instance, in 2005-06 we achieved a 27 per cent increase in the number of reviews resolved compared with the previous year. That was in an environment where we had an 11.5 per cent increase in applications received. So we had more coming in, but we were still able to resolve more.*
- In addition, of those 336 external reviews that we have resolved in that period, 68 were part of a significant backlog that I had inherited from the Ombudsman.<sup>67</sup>*
- 4.9 Although performance measures and targets have changed, these new measures were not reported on in the 2005-2006 Annual Report. As outlined on page 27 of the 2005-2006 Annual Report, the new measures will form the basis

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<sup>67</sup> *Meeting with the Information Commissioner – Transcript of Proceedings, 27 November 2006, p 2: see Appendix B.*

of reporting in 2006-2007. The committee looks forward to receiving performance data according to these new indicators and discussing this with the Information Commissioner in order to report to the Parliament.

- 4.10 The information provided in the 2005-2006 Annual Report demonstrates that the Information Commissioner and the staff of the Office of the Information Commissioner have carried out their functions in a professional and dedicated way. The committee commends them on their achievements.

# APPENDIX A

## Terms of Reference

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## ATTACHMENT A

### SCHEDULE

#### 2005 STRATEGIC REVIEW OF THE OFFICE OF THE INFORMATION COMMISSIONER

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#### TERMS OF REFERENCE

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#### CONTEXT

Section 108A of the *Freedom of Information Act 1992* (the Act) requires a strategic review of the Information Commissioner to be conducted at least every five years.

The inaugural strategic review of the Ombudsman was conducted by Professor Kenneth Wiltshire in 1997-98. The parliamentary Legal, Constitutional and Administrative Review Committee (the Committee), which has statutory responsibilities with respect to the Ombudsman and administrative review reform generally, conducted a review of Professor Wiltshire's report.

The Committee, in a report tabled on 15 July 1999, recommended that an additional management review be conducted of the Ombudsman's Office to, in the Committee's view, complete the strategic review process and enable the Committee to establish a clear overall picture of the economy, efficiency and effectiveness of the Office.

In 2000, acting on the recommendations of the Committee, a strategic management review of the Offices of the Ombudsman and the Information Commissioner was undertaken by *The Consultancy Bureau*. *The Consultancy Bureau's* final report, tabled on 21 June 2000, contained a total of 122 recommendations intended to enhance the economy, efficiency and effectiveness of both Offices.

Following the tabling of *The Consultancy Bureau's* final report, the Committee conducted a review of the report and its recommendations, tabling its own report in July 2000 (Report No. 26). In its report, the Committee commented favourably concerning the conduct of the strategic management review, and stated that it intended to take an active interest in the Office of the Ombudsman's consideration and implementation of the review recommendations.

Prior to the recent appointment of a separate Information Commissioner, the Committee continued to monitor the Office's progress in implementing the strategic management review recommendations, tabling a progress report in August 2001 (Report No. 30) and a final report in December 2003 (Report No. 43). In its final report, the Committee noted that the vast majority of the recommendations relating to the Office of the Information Commissioner had been implemented or substantially implemented.

In September 2001, Mr David Bevan was appointed as Ombudsman and Information Commissioner for a term of three years. In a Ministerial Statement in the Legislative Assembly of 2 September 2004, the Premier indicated that it was his intention that the roles of Ombudsman and Information Commissioner would be formally separated in the near future. In September 2004, Mr Bevan was reappointed for a further three years, on the understanding that a separate appointment would be made to the role of Information Commissioner.

In a Ministerial Statement of 23 November 2004, the Premier advised that it was his intention that a separate appointment to the role of Information Commissioner would be made early in 2005. On 24 February 2005, Ms Cathi Taylor was appointed to the position of Information Commissioner.

The Attorney-General and Minister for Justice will nominate a delegate as a point of contact for consultation for the duration of the review.

## **SCOPE**

The appointee will be required to generally assess, and provide advice and recommendations about, the functions and the performance of the functions of the Information Commissioner and the Office of the Information Commissioner in order to assess whether those functions are being performed economically, effectively and efficiently, as set out in section 108A(8) of the Act.

In this context, the review is to examine all structural and operational aspects of the Office, as well as its relationship with public sector entities, relevant Ministers, parliamentary committees, and the Legislative Assembly.

Consideration is also to be given to the recommendations arising from the 2000 strategic management review of the Office, particularly the extent to which those recommendations have been implemented and whether they are achieving the desired objectives.

## **QUALIFICATIONS OF APPOINTEE**

The strategic review is to be conducted by persons/agencies of high professional standing with a sound understanding of models of independent review functions within an administrative law context; modern decision making frameworks; public sector administration; and the management of a public sector agency. The appointee will need to demonstrate they have no pecuniary interest in the outcome of the review and have no established relationship with the Office. The appointee will also be required to demonstrate independence from the Office. In addition, knowledge of contemporary managerial and organisational standards and techniques would be beneficial.

## **METHODOLOGY**

In conducting the strategic review, the appointee is to have regard to existing strategic plans, annual reports, the organisational structure, goals, operational conduct, internal/external policies, operational management, corporate management and service provision of the Office, and operational models in other Australian and international

jurisdictions. In addition, the appointee is to have regard to the Committee's progress report on implementation of recommendations made in the 2000 strategic management review (Report No. 30), and the Committee's reports concerning its biannual meetings with the Ombudsman and Information Commissioner (Reports No. 34, 37, 38, 43, 44 and 47).

Particular reference is to be given to:

- (a) current and alternative review methodologies and processes, including case management;
- (b) the extent to which the recommendations of the 2000 strategic management review of the Office have been implemented, and whether the changes introduced are achieving the desired objectives;
- (c) the strategic direction and the operation of the Office in the context of its recent separation from the Office of the Ombudsman including the organisational structure and/or skill profile of the Office and whether it is adequate for the Office to effectively discharge its functions;
- (d) the efficiency and effectiveness of the current arrangements wherein the Office of the Ombudsman provides certain corporate services for the Office of the Information Commissioner, compared with other models and options for the delivery of corporate services for the Office of the Information Commissioner
- (e) the effectiveness of existing processes and methodologies in fulfilling the mandate of the Office within the legislative requirements and contemporary accountability requirements of Queensland's system of government;
- (f) examination of trends in the workload of the Office, including an examination of current and past methodologies relating to practices and procedures employed by the Office;
- (g) the quality and clarity of decisions by the Commissioner and delegates and their effectiveness in providing guidance for agencies, Ministers, applicants and other participants in reviews, and for practitioners and students in the area of administrative law;
- (h) the standard and quality of service provided by the Office to agencies, Ministers of the Crown, applicants and other participants;
- (i) the level of resourcing available to the Office and whether this resourcing is adequate and appropriately used to discharge the functions and objectives of the Office; and
- (j) any other matters which impact on the strategic direction, economy, efficiency and effectiveness of the Office.



**Duration**

The review is expected to take a maximum of three months, commencing on or about 12 September 2005, through to the presentation of a proposed report required to be delivered under section 108AB of the Act.

**REPORTING**

The reviewer is to prepare a written progress report at the end of each month and is to provide a copy of each progress report to the Attorney-General and Minister for Justice and the Information Commissioner. The Attorney-General will determine the matters the reviewer is to address in the progress reports.

As required under section 108AB of the Act, the reviewer will provide a copy of the proposed report to the Attorney-General and the Information Commissioner prior to finalising the report. The Information Commissioner may, within 21 days of receiving a copy of the proposed report, provide comments on the proposed report, in which case the reviewer must comply with section 108AB(3) of the Act.

The final report of the review is to be presented to the Attorney-General and the Information Commissioner, in a suitable format for tabling in the Legislative Assembly.

# **APPENDIX B**

**Transcript of meeting with the Information  
Commissioner**

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# ***LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE***

**Members:**

Mrs D.A. Reilly MP (Chairperson)  
Mr A.P. Cripps MP  
Ms V.E. Darling MP  
Mrs B.M. Kiernan MP  
Ms R.T. Lee Long MP  
Mr T.J. Nicholls MP  
Mr S.P. Wettenhall MP

**MEETING WITH THE INFORMATION COMMISSIONER**

**TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 27 NOVEMBER 2006**

**Brisbane**

## MONDAY, 27 NOVEMBER 2006

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### Committee met at 12.35 pm

**CHAIR:** Regarding the committee, Tim is the Deputy Chair. Betty Kiernan from Mount Isa has sent an apology today and Rosa Lee Long from Tablelands is on the teleconference here.

**Ms Taylor:** Good afternoon.

**Ms LEE LONG:** Hello.

**CHAIR:** Sorry to keep you waiting. I always think it is a bit ambitious to do a whole meeting in 15 minutes. Everyone has been provided with a copy of the instructions to committees regarding witnesses and we have Hansard with us to record today's proceedings. Welcome. Thank you very much for agreeing to meet with us. The committee has been really looking forward to meeting you and your staff and we have had a look at things like the annual report. You might like to make an opening statement.

**Ms Taylor:** I would be happy to. Thank you very much. Firstly, I would like to introduce the First Assistant Commissioner, Rachael Rangihaeata, and Assistant Information Commissioner Fiona Henry who are here with me today. Thank you very much for the opportunity to meet with the committee. I know you have a lot on your plate so I will be succinct.

I understand that today is about our annual report and also the strategic management review report—the review that was finalised earlier this year. The two recurring themes in that report are independence and timeliness. You will see from our recent annual report for 2005-06 that we have provided performance information there that demonstrates a significant improvement in timely resolution of external reviews in 2005-06 compared with the previous arrangement when the Ombudsman was also the Information Commissioner. I think everyone would know that I was appointed as the first stand-alone Information Commissioner in February 2005 and a separate organisation, the Office of the Information Commissioner, was formed at that time. Due to some legislative amendments it was subsequently created as a statutory body on 1 July 2005. So the annual report that you are looking at is our first full year of operation as a separate statutory body.

I thought I might just give you a little bit of history of how we came to where we are now because that will give you the context for the strategic review. Upon my appointment on 24 February 2005 I and my new office were co-located physically within the Office of the Ombudsman. That was problematic, particularly because my office reviews FOI decisions made by the Ombudsman and their staff. So there was not the necessary separation between our team and some of their staff, particularly the corporate services staff who I guess would handle some of the FOI work. We had our confidential files in a shared area where they would go to photocopy and they would walk through our work area to get to the single kitchen on the whole floor and things like that. It was very problematic. One of the key recommendations of the strategic review was that we actually move into separate independent secure premises and we have now done that. We are now in a building that does not have any public servants; it is a private sector building. We have a lease there.

Another difficulty was that, because the Ombudsman had also been the Information Commissioner, all of the electronic data and case management records relating to external review of FOI decisions was all embedded in the Ombudsman's case management system. That was quite a difficult issue. So we have also commissioned a new separate case management system that we can use for our own purposes. It is quite a slimline case management system. It is not highly customised like the Ombudsman's one, so it is a lot less expensive to maintain as well. We have new independent accommodation with a number of security provisions to protect the very sensitive data that we hold, and we have an electronic case management system that is separate and independent. You would be aware that a lot of the data that we hold is people's very personal information. You will see from my annual report that 87 per cent of applicants are individuals. Often what they are seeking through the external review is access to documents about very, very sensitive matters relating to their lives. So we need to make sure that that is maintained in a very confidential manner.

As well, that space that I described that we shared with the Ombudsman was very poorly configured. So we had a large space that we were not using effectively but we did not have an option to reduce within it because of the nature of it. Now we are in new accommodation it is quite a snug fit for our 14 people, but it means that we are actually making savings in rental costs, electricity, cleaning et cetera.

**CHAIR:** How long have you been there?

**Ms Taylor:** I secured a lease in December 2005 and then Public Works was responsible for refurbishing the area to suit our needs because it had been used by a completely different organisation. After a series of delays we actually moved there in July. So we have been there since July, but now we are fully fitted out. It is a really good set-up. It has the security and confidentiality that we require.

Another of the arrangements that I inherited on my appointment was that it was assumed that our office would share corporate services provided by the Ombudsman's corporate services people. Again, that was extremely unsatisfactory, particularly because of the separation required, given that we review FOI decisions of the Ombudsman. My concerns about that were reinforced by the independent reviewer who conducted the strategic reviews. So there are recommendations you will see there about changing our corporate services provision. We now receive our corporate services from the Parliamentary Service and I am very happy with those services and with the confidentiality and independence that that gives us. We are on the parliament network now. All of our ICT is provided through the Parliamentary Service. They provide excellent service and much better value for money than the previous arrangement.

So we have moved to secure premises, we have a separate independent case management system, separate independent corporate services and we have a range of policies and procedures now in place that means that as the CEO I can be confident of the confidentiality and security of the files.

We have also looked at our performance and particularly the emphasis on timeliness. I am happy to report that we are able to indicate a significant improvement in timeliness. For instance, in 2005-06 we achieved a 27 per cent increase in the number of reviews resolved compared with the previous year. That was in an environment where we had an 11.5 per cent increase in applications received. So we had more coming in, but we were still able to resolve more.

In addition, of those 336 external reviews that we have resolved in that period, 68 were part of a significant backlog that I had inherited from the Ombudsman. When you are working on backlog files it is a lot of work, because obviously if they were easy they would have been resolved. The ones that tend to be in the backlog involve a high volume of documents and intractable positions by the parties. Over time they have sort of rusted on to their position and there is less capacity for informal resolution. The corporate memory has been lost in a lot of the agencies where the documents are held. The people who knew where we normally keep such and such type of document have long moved on, because with some of these reviews it is not just about documents that have already been identified; they are about questions of whether the organisation searched sufficiently. So to go back many years to say that there should have been a document of this nature is very difficult.

The office aims to resolve 75 per cent of reviews informally. In 2005-06 we resolved 77 per cent of reviews informally. We also resolved more in that the number of reviews was significantly greater. We resolved 223 informally in 2005-06 compared to 184, I think it is. These figures are set out in the diagram on page 10 of the annual report in one table. In 2005-06 it was necessary to make a larger number of written decisions to finalise reviews than the previous year, partly because of that backlog as people were not prepared to settle for an informal resolution after all of those years. Again, we provided 72 written decisions in 2005-06, which was more than twice the number of written decisions made in the previous year. Achievement of this significant improvement in the timeliness and volume of reviews resolved requires a sustained investment in professional development and in online legal research resources. I just might ask Fiona Henry to give you a quick snapshot of the way we approach professional development in the office.

**Ms Henry:** Several of the strategic review recommendations place a high priority on professional development as a key enabler of enhanced and more timely resolution of external reviews. Specifically, there was a recommendation for staff to engage in mediation and decision-writing training. Regarding mediation, three of our staff attended a week-long intensive mediation course last week. That was run by the Department of Justice's Dispute Resolution Centre. With regard to decision-writing training, we had four staff successfully complete a semester-long decision-writing course through Monash University in the 2005-06 year. We have recently had staff complete an online decision-making course offered through the Queensland Law Society's new online learning facility.

The office has invested in various legal research resources. These are primarily online. Additionally, we have access to libraries run by the Department of Justice, the Supreme Court and the Law Society. To make full use of these resources, the office has invested in all staff having training in online legal research. The strategic review also recommended that the office look at staff interchanges with officers from other relevant agencies and also that we hold debriefs with staff to discuss new or interesting points that arise out of our external reviews.

**Ms DARLING:** Fiona, are the interchanges with other jurisdictions?

**Ms Henry:** No, within Queensland.

**Ms DARLING:** Just with other departments?

**Ms Henry:** Yes. We have had Brigita White come from the Department of Justice and also Victoria Corby from Health. We have also invited special guests to come and address staff on issues affecting whole of government like records management and IT systems. In summary, the review recommended that the office spend two per cent of employee related expenses on professional development this year. We expect to exceed that, reflecting the high priority we place on professional development given that it does enhance and enable the timely resolution of reviews.

**Mr CRIPPS:** Do you feel that the performance improvements that you have made this year are a direct result of some of the money that has been invested in your professional development program?

**Ms Taylor:** Certainly the performance is a credit to everybody in the team and the team is made up of very experienced people such as Rachael and Fiona who have come from various other areas—not from the state government. They have a wealth of experience to bring combined with some relatively new graduates just a few years out who have topnotch online legal research skills from their training. They benefit from the guidance and mentoring of more experienced people. So I think that is part of the dynamic that works as well as the formal professional development and the culture that we now have, which is an unerring focus on timely resolution of reviews.

**Mr CRIPPS:** Are there any examples that you could give where specific training has led to timely resolution of a particular inquiry?

**Ms Taylor:** We do not discuss individual reviews.

**Mr CRIPPS:** No, but do you find particular types of professional development are more helpful than others?

**Ms Taylor:** I think consistent with this strategic management review the two key areas are decision writing and informal resolution mediation, because they are both important.

**Mr CRIPPS:** And that reflects the statistics you gave earlier?

**Ms Taylor:** Yes.

**CHAIR:** Cathi, I know that you cannot discuss individual cases but if you could give a sort of broad description of just the difference between the written decisions area—a formal reported decision—and a letter decision so that all committee members understand that that is a difference in weight. Also, does an informal resolution really just involve discussion or a face-to-face meeting or a phone call?

**Ms Taylor:** Sure. If you have the annual report, if you turn to page 5 it sets out a flow diagram. I am assuming everyone understands that in the first instance people need to make an FOI application to the organisation that actually holds the documents they are interested in, and in most cases they need to make an internal review application there as well. You will see from the diagram on page 4 that most people just make their original application and settle on that. Then in that year a further 404 of those people went on to seek an internal review and then 307 persisted and wanted an external review from my independent office, and we are completely independent of executive government and all of those organisations that have the documents—that is, state government departments, local councils, universities et cetera.

When an application comes in we first check to see whether we have jurisdiction, because sometimes people seek external review about documents that are actually held by an organisation that is not covered by the Queensland FOI Act. It might be a Commonwealth Centrelink document or something or they have not met the time frames within the act or the requirements—that is, they might not have already applied for an internal review first. If we find that we do have jurisdiction, then we move into the informal resolution stage. So we almost always attempt informal resolution, and that is a wide spectrum of activity. It may be that it is a misunderstanding or something that can be resolved quite quickly, but mostly even the informal resolution is quite an onerous endeavour because by the time they have made it all the way to external review they are pretty dissatisfied and untrusting of the organisation that they are trying to obtain documents from.

Informal resolution can be discussions over the phone, and a lot of it is over the phone. So, in that sense, anyone all over Queensland still has the same kind of service from us; they do not need to be able to come in. A lot of it is in writing through emails or through other kinds of letters et cetera right through to where we may in fact write quite a lengthy letter that sets out our preliminary view on the matter. So that is fairly close to what they would receive as a decision. That can be quite a lot of work and research into relevant precedent cases et cetera. All of that is covered under what we call informal resolution, and for 77 per cent of people in one way or other we were able to resolve the matter informally. Then for that last remaining group we needed to take it forward. Mostly, they receive a preliminary review letter from us. If they do not accept it, they provide us with further submissions and eventually we make a written decision that substitutes for the decision made by the organisation that made the original decision.

**CHAIR:** So at which point do you start counting the time that it takes to finalise a review?

**Ms Taylor:** From the day we receive the application.

**CHAIR:** From the first contact?

**Ms Taylor:** They make an application to us in writing and it is logged in our case management system. We start counting the days from then, and that relates to our performance measure of 90 days as the median days to close. Obviously if there are some that take more than 90 then there must be some that take less than 90. The clock starts on day 1 and we immediately begin work on it. It is allocated to a review officer and work starts.

**CHAIR:** In terms of your performance measures for next year—and this is your first full year; I got a bit confused. You have changed it from the proportion of cases that were finalised within three, six or 12 months to the median days.

**Ms Taylor:** The median days to close.

**CHAIR:** And you have set yourself a target of 90. So next year will we be able to see how many met the median target?

**Ms Taylor:** We will report on the median days to close reviews in that period. That indicator is recognised across Australia as the most useful indicator to drive improved timeliness. I have talked with Justice Morris from VCAT. He is very strongly of that view. He has used that to drive significant improvements in timeliness in VCAT.

**CHAIR:** Will that give someone from outside looking at your performance the ability to identify that the median will be affected by the number of informal resolutions that do not end up being complex but continue and then get extended into a complex review. Will it indicate that you aim for informals but they can become complex. That will potentially blow out your 90-day target.

**Ms Taylor:** Page 27 of the annual report sets out performance targets for 2006-07. We have a quantum number of reviews resolved. We have the per cent of reviews resolved informally compared to reviews resolved by written determinations. We still have that measure—that is, that we still want to resolve the majority through informal resolution. That tends to satisfy people if they can accept that the decision is the right decision. They may not like it but if they accept that it is the correct decision under the law then they are more likely to feel it is a resolution.

We also have satisfaction measures through our surveys of both applicants and agencies. Again, it is not so much whether they are satisfied with the result because we need to make a decision that is lawful under the act and based on the facts of their situation. It is more their experience of our office—that is, that we were polite, professional, assisted them with educative material that was appropriate, communicated with them regularly and if we said we would provide them with something within a week in the mail then we did. It is more those sorts of measures.

Then there are the timeliness measures. The median days to finalise a review is 90 days and that is no matter how the review is resolved—whether it is resolved informally quite quickly or whether we attempt informal resolution and that is not able to be achieved and we end up making a written decision. The 90 days is across all reviews. We also have a very specific measure about the number of open reviews at the end of the reporting period. That is there so that we make sure we do not end up with a backlog. We just cleaned one up and we do not want another one.

**CHAIR:** So you currently do not have a backlog?

**Ms Taylor:** We have cleared the backlog that I have inherited. Every day we monitor where we are sitting with all of our reviews and exactly how old each review is. Really what is measured is managed. We focus on that aspect of our work all of the time.

**CHAIR:** I have to congratulate you on that. It must be a relief to be rid of that.

**Ms Taylor:** It is a significant achievement and I do pay credit to the team because it has been a lot of hard work.

**CHAIR:** Well done. I may have missed it, but did you cover earlier the difference between a formal reported decision and when you might go to a letter decision?

**Ms Taylor:** That is again a distinction that I inherited from the Ombudsman. It is before my time. I think it predates the internet. In those days decisions that were published in full through the administrative review reports were called formal decisions. A lot of decisions really did not create any new precedent; they dealt with the same sorts of issues that have been dealt with at length previously. The vast majority of our work relates to the exemption provision section 44 and people's personal affairs.

It was not particularly useful to keep publishing every decision made on the same sorts of issues. Over time they began to provide those decisions by letter to just the applicant and organisation; hence the name letter decisions. But I agree that it is not immediately obvious to people outside. In fact we have changed the terminology. We refer to them as reported and unreported. We still provide the vast majority of our decisions just to the applicant and agency and do not reproduce them in full on our web site because then you would not be able to see the wood for the trees. Any decision that deals with a novel issue or has a new factual situation that might be useful to the agency decision makers, we would reproduce in full on our web site so they can see the way the decision was made.

**CHAIR:** That seems to make more sense.

**Mr NICHOLLS:** In terms of your finalisation of external reviews—336 as outlined on page 10—how many of those are affirmations of the department's decision? You have 72 requiring a decision to be finalised. Schedule 2 lists them all.

**Ms Taylor:** Table 2 lists all of them. They are the written decisions. You can see whether the agency's decision was affirmed.

**Mr NICHOLLS:** I draw your attention to page 13 at 5/320. You have a decision that is affirmed which has access granted which would seem to be somewhat counterintuitive, if I can put it that way. So someone is appealing against a decision that has already been made to give them access to information.

**Ms Taylor:** I will not go into the details of any particular case. There is a possibility for someone to seek external review of a decision when they are a third party—they are not the original applicant—and they do not want the information released but the decision by the organisation was to release it.

**Mr NICHOLLS:** So they are an affected person.

**Ms Taylor:** So they say, 'I want that decision reviewed because I think there are good grounds under the FOI Act that that information should not be released.' If we affirmed the decision then it is likely that that was the case and access was granted.

**Mr NICHOLLS:** So of those 72 it would be fair to say that the majority of your reviews have affirmed the department's decision?

**Ms Taylor:** I do not think that would give an accurate picture because a number of those decisions are where the final outcome in the written decision is affirmed. As I said when speaking about the flow chart, the classic pattern is that a lot of the matters in issue in the review are resolved informally, even within these 72, which invariably means that the applicant did receive more. The final part that requires a written decision is where we are saying in our preliminary view that a person is not entitled to access these documents under the act and they do not accept it and that part needs to go through to a written decision. That can distort the picture. Also, it is quite obvious that there are a couple of places where one applicant has made numerous applications. In those cases, particularly that last one on page 13, you will see that it was a sufficiency of search issue.

**CHAIR:** What does that mean, sorry?

**Ms Taylor:** That means that the dispute is not about whether these documents that we can all look at and make an assessment about should be exempt from the FOI Act or the documents given to someone; it is about the applicants saying, 'I believe there are other documents responsive to the terms of my application that have not been identified but I believe that they exist in that organisation and I am not happy with the outcome of my application because of that.' So the whole dispute is about whether there have been sufficient searches made within the organisation to identify the documents that the applicant believes are there.

**CHAIR:** So what does it mean when it says 'affirmed' and then 'not applicable/sufficiency of search'?

**Ms Taylor:** 'Affirmed' means the external review about the matter remaining in issue in these reviews because, in a classic scenario, more documents may have been identified once the external review was conducted by my office and through people from my office asking the organisation to look here and there and pressing them, they may, in fact, identify more documents. But then the applicant still believes that there are other documents. So it may come to a decision where we say, having pressed the organisation, having asked for further searches and possibly asked them to give us a statutory declaration that—

**CHAIR:** That there are no more documents.

**Ms Taylor:** That they have no more. It varies from case to case. There may be a point where we say, 'We are now satisfied that the agency has conducted sufficient searches and there are no more documents that can be identified as responsive,' that is, we have affirmed the agency's decision in that respect. The 'not applicable/sufficiency of search' column is about whether access has been given or the amendment that the person has sought has been granted, because if it is about documents that have never been found or may not exist, that is not relevant to that column.

**Mr NICHOLLS:** In terms of your 223 where they are informally settled, do you keep any indication or statistics in terms of how they are informally settled? Are they informally settled by granting access or by refusing access to that information at all? There seems to be a significant overlay, if I can put it that way, between your 223 and your 72.

**Ms Taylor:** The nature of the informal resolution is that it is not as clear cut. It is usually a bit of everything. Sometimes it is a clear-cut matter that all of the documents they are continuing to seek at external review are subject to legal professional privilege and when we look at it we say, 'Yes, that is right, it is. Bad luck.' But oftentimes it is a bit of everything. More documents might be identified, or we might have a different view than the agency on some of the documents. But on others we agree—say where it is more clear cut, or there may be more searches conducted and more documents identified that were not even in issue in the first review. So it does not lend itself to that same sort of categorisation. Often there are a number of exemptions claimed using exemption sections of the act. So it tends to be quite blurred.

**Ms DARLING:** I am interested in the information sharing that you have with other jurisdictions for best practice. I saw the Commonwealth FOI practitioners forum. Is that the only experience you have had or is there a lot more informal contact? I imagine that everyone in every state and federally is trying to run a tight ship.

**Ms Taylor:** There is not a lot of time spent liaising with other jurisdictions but, as I mentioned, I have spoken with Justice Morris on a few occasions about his approach, because I admire his approach to achieving significant improvements in timeliness across the whole spectrum of VCAT, which is much broader than FOI. We exchange annual reports and some other performance information with the Irish Information Commissioner and the British Information Commissioner. We have had visits from people in some of the Commonwealth countries looking to bring in an FOI regime for the first time, which is quite a big undertaking.

**Ms DARLING:** So they are learning from us.



**Ms Taylor:** Yes, we have had visitors from India and also Fiji, where they have their own issues, naturally. As you would know, under the statutory interpretations legislation, a 'document' is very broadly defined. So under FOI people can seek tapes and surveillance—CCTV and email—whatever. But the people in Fiji were even defining a document as being a slab of carved stone and all kinds of other matter. So I thought they had a very big challenge on their hands before the recent troubles.

**Ms LEE LONG:** I will have to leave the meeting now.

**CHAIR:** Yes. That is fine. Thank you very much for joining us. Do you have any questions for Cathi before you go?

**Ms LEE LONG:** No, not at the moment, thanks. It all sounds very interesting. It is good for us to hear that and see how it all works. Yes, thanks very much for coming, too.

**Ms Taylor:** Thank you.

**Mr WETTENHALL:** Congratulations to you and your staff on the improvements that are documented. Having looked through the annual report, I wonder whether you have at your disposal a measure that discloses the cost of an outcome in terms of a decision of the Information Commissioner?

**Ms Taylor:** The short answer is no. Obviously, there are costs of my office, which are recorded in the annual report. We endeavour to conduct reviews so that they have the least impost on participants. A very small proportion of the applicants have legal representation. I think that is a good thing in terms of them keeping the cost down. There is no fee or charge for an external review. Most people are happy to conduct a review themselves with us without needing legal representation. The few applicants who have legal representation are mainly companies.

As you will see from the pie chart on page 6, overwhelmingly the applicants are individuals—87 per cent of them. So in terms of costs, applicants pay their own costs. It may be photocopying. A lot of applicants email us now, so they do not even have extensive postal costs. For any research that they want to do, again, we are endeavouring to provide them with the relevant educative information on our web site to make participation as easy for them as possible. In fact, we have just launched a new product called FOI Concepts on our web site where we try to explain the main concepts and exemption provisions under the FOI Act that might come into play in an external review. We try to describe those in plain language for people so that they are more empowered to participate with us. Also, that will hopefully have a flow-on effect in terms of, if it is more efficient and effective for them to participate, that should enhance our timeliness in the conduct of the whole review.

**Mr WETTENHALL:** Are there any trends that emerge from the applications that are processed by your office that would indicate that a significant proportion of applications in a legal sense are ill-founded?

**Ms Taylor:** They vary so much that I do not think there would be a clear trend one way or the other. FOI is an absolutely fascinating area because it gives you a window into people's lives. People make an FOI application because they want to do something with those documents. It is usually not an end in itself. It is a means to an end, which is again why I am so conscious of the importance of timeliness for them. A broad spectrum of organisations are covered by the FOI Act—all the different local councils, universities and state government departments of every type—combined with a huge variation in individuals, from people with very low literacy—for example, we have prisoners who have very low literacy—to people in remote areas who now have a lot better access to information with the internet right through to, as I said, companies with high-powered legal representation. The spectrum is very broad and the documents at issue vary enormously in their content and nature. I do not feel I could comment about any clear trend in that context.

**Mr WETTENHALL:** So you would not be able to identify cases or a class of cases or trends where, for example, an applicant might benefit from independent legal advice on the question of whether to pursue an external review?

**Ms Taylor:** No, I do not think so.

**CHAIR:** There may not be a trend that you referred to before, Cathi, but is there a trend within the group of applicants who may have low literacy or where English is their second language that might indicate that they are seeking external review of something that they perhaps could not have had in the first place, or does that trend not show?

**Ms Taylor:** No. Some of the people with very low literacy or with limited English are, in fact, very active participants and invariably can point to grounds where they can say, 'I think there should be other documents,' or 'I think the agency was wrong in making a finding this way,' and they are quite persistent. But there is no cost to them.

**CHAIR:** Is it possible that they are found to be correct as opposed to a big company with a lawyer running the case for them and they are pretty confident of winning the case or having the review decision made in their favour?

**Ms Taylor:** There is no clear trend in that way—quite not.

**CHAIR:** I think that is a good thing. That indicates to me that there is a strong awareness in the community across a broad spectrum that FOI exists and that they can access it, as you say, to achieve some other outcome that they require rather than the concern that I have with access to justice, which is

whether people know that they can actually seek it. Are you getting a high percentage of individual citizens ringing up—a mum or dad, or someone who does not have a university degree, or someone who is not a barrister—saying, 'I want this information'?

**Ms Taylor:** No. The applicants are from across the spectrum. Some are quite elderly people who may not have grown up with these sorts of mechanisms available but they are very savvy and they use them.

**CHAIR:** Is that a fair observation that I am making?

**Ms Taylor:** A very broad spectrum of people use our external review service.

**CHAIR:** Which indicates that they know about FOI.

**Ms Taylor:** They are aware of it. As I said, we had an 11.5 per cent increase in applications for external reviews on the previous year. Again, in discussions that I have had with Justice Morris, we can identify that an increase in the population, an increase in interstate migration of people from other areas that have a longer history with these regimes and an increase in education levels within the community—all of those things—tend to point to a greater uptake of this option.

**CHAIR:** That probably answers the question I was going to ask, which is whether the office undertakes any promotion of your ability to carry out an external review. You have a web site, but do people know the web site exists?

**Ms Taylor:** The main way people find out about the option of making an application for external review is through the organisations where they originally seek the documents, because when they give them their first decision they tell them about their review rights in writing.

**Mr NICHOLLS:** Cathi, your budget was \$2.294 million from grants. I presume that is the government giving you dough?

**Ms Taylor:** That is right.

**Mr NICHOLLS:** Was that transferred from the Ombudsman's office?

**Ms Taylor:** No. There was obviously a transition process in the financial year before 2005-06. I receive a quarterly grant and it comes in a postbox effect through the Department of Justice, which is why the Attorney-General answers questions at estimates.

**Mr NICHOLLS:** You are resourced beyond your need because you have a \$701,000 operating surplus. When can we see that money coming back to Treasury?

**Ms Taylor:** That gives a misleading picture. It is a timing issue.

**Mr NICHOLLS:** So this is a misleading picture?

**Ms Taylor:** Because we had one-off funds for our refurbishment and because there were delays in our refurbishment that took us into the next financial year, there is a blip. When you see my annual report next year that will not be there.

**Mr NICHOLLS:** You undertake to fully spend all of your money?

**Ms Taylor:** In a normal year our costs are overwhelmingly staff salaries and anything over that we spend on professional development, apart from rental and ICT. That is a blip for the refurbishment and to get the new case management system. It is usually \$1.7 million.

**Mr NICHOLLS:** Is that \$701,000 now gone?

**Ms Taylor:** It is pretty much, and will be, soaked up by bills from Public Works.

**Mr NICHOLLS:** So your assets register will then change as well, obviously.

**Ms Taylor:** Yes.

**Mr NICHOLLS:** Because you will then have assets showing—being your office fit-out and equipment and all those sorts of things.

**Ms Taylor:** You will see more of that in the Attorney-General's Ministerial Portfolio Statement. That is where that is reported.

**CHAIR:** I have a question since we are looking at the financial statements.

**Ms Taylor:** I am not sure that that is what this meeting is about. My understanding is that budget questions are for the Attorney-General at estimates. I am happy to answer something general.

**Ms Copley:** The committee has a monitoring and review role and part of that is to report on the annual report of the Office of the Information Commissioner. So to the extent that these things are in the annual report—

**Ms Taylor:** Okay.

**CHAIR:** Thank you, Cathi. There is an increase in the supplies and services, the commercial and professional services and equipment maintenance. Were there problems with the commercial services you had before and that is why there is an increase this year?

**Ms Taylor:** No. They relate to the transition to the new premises and new case management system and having staff moved from being employed under the FOI Act to the Public Service Act. So there was a range of different mechanisms that we needed to adjust.

**CHAIR:** That is professional services as well.

**Ms Taylor:** Yes. That is largely the case management system.

**CHAIR:** Thank you. I thought that that was what that might refer to. I just wanted to clarify that. I have one more question on staffing and professional development. Obviously most people when they first make contact with your office are unhappy. So they are probably cranky, to put it mildly. Is part of the ongoing professional development or management of staff to give staff the opportunity to debrief or to go through how to deal with difficult clients? You may be a law graduate and have experience writing letters and all of those things, but it is the contact with difficult individuals that can have a toll on the individual person who is dealing with that response. So I just wondered how you deal with that as an agency so that it is not the same staff spending every day taking cranky calls.

**Ms Taylor:** We are certainly very aware of the issue that you mentioned. You are right; debrief is one of our important mechanisms, particularly to the supervisor. The reviews are spread across the various review officers. So we do not have an intake role in that sense. People make an application in writing and that comes to me in the first instance and then the reviews are allocated to various staff. Each of those review officers works to a very experienced assistant information commissioner who is always there for them to debrief with or to provide guidance in the first instance. Often you can tell from the written incoming whether someone is going to be particularly—

**CHAIR:** They could be very emotional about the matter.

**Ms Taylor:** They can be very emotional about the matter and sometimes the documents in issue are of a very sensitive, even traumatic, nature for the applicants. So we need to be very sensitive to that.

**CHAIR:** It can be hard for staff to be continually going through and reading that sort of thing all the time.

**Ms Taylor:** That is right.

**CHAIR:** Does anyone have any other questions? Do you have any closing remarks before we let you go?

**Ms Taylor:** I am aware of the committee's time. We have mentioned in the annual report our priorities for 2007, which is to maintain that unerring focus on timeliness, to continue to invest in professional development and to continue to enhance the information we are providing on our web site so that applicants particularly, but decision makers in agencies as well, are more informed about the issues at play in an external review. Hopefully, that will assist in the timeliness. So around we go.

**CHAIR:** Thank you very much for coming along today.

**Ms Taylor:** Thank you very much. It was good to meet you.

**Committee adjourned at 1.26 pm**

# APPENDIX C

Transcript of meeting with the reviewer

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# ***LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE***

**Members:**

Mrs D.A. Reilly MP (Chairperson)  
Mr A.P. Cripps MP  
Ms V.E. Darling MP  
Mrs B.M. Kiernan MP  
Ms R.T. Lee Long MP  
Mr T.J. Nicholls MP  
Mr S.P. Wettenhall MP

## **MEETING WITH THE STRATEGIC REVIEWER**

### **TRANSCRIPT OF PROCEEDINGS**

**TUESDAY, 28 NOVEMBER 2006**

**Brisbane**

## TUESDAY, 28 NOVEMBER 2006

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**Committee met at 2.55 pm.**

**SMERDON, Mr Henry, Strategic Reviewer**

**CHAIR:** Welcome to the meeting, Mr Smerdon. We are delighted that you could join us.

**Mr Smerdon:** Thank you.

**CHAIR:** I will just go around the table so you know who everyone is. Rosa Lee Long is the member for Tablelands; Steve Wettenhall is the member for Barron River; Vicki Darling is the member for Sandgate; Tim Nicholls is the member for Clayfield and deputy chair; Andrew Cripps is the member for Hinchinbrook; and Betty Kiernan is the member for Mount Isa. We are very pleased that you have been able to come. You have been provided with a copy of the instructions to committees regarding witnesses. The committee will be following these instructions during our meeting. The meeting will be recorded by Hansard. Mr Smerdon, you might like to make an opening statement.

**Mr Smerdon:** My opening statement is going to be quite short. You have had the reports. You know what is in them. It was an interesting exercise to undertake. I guess they are two relatively small institutions but very important institutions in terms of the overall governance and accountability framework for government. In terms of the Information Commissioner's office, I think the two key themes out of there was having created the independent Information Commissioner. It was important that that independence was strengthened and reinforced in my review. I guess the other big thing is timeliness in terms of dealing with issues quickly. There is nothing worse for a person who has an issue to raise and it take months and months and sometimes years to be resolved. So expeditious resolution of matters was something that I stressed in both reports.

In terms of the Ombudsman, the Ombudsman was a slightly bigger task with a greater number of staff. Looking at the issues for the Ombudsman, there were a couple of things that came through. It tended to be a rather structured and somewhat bureaucratic organisation and it probably needed to be a bit more flexible in the way it approached things. One of the key things for me in terms of the initial round of discussions was that there were quite a number of people slipping through the cracks, so to speak, who had made a complaint to the Ombudsman and it was not appropriate for the Ombudsman to deal with the complaint initially because the person still had unresolved remedies through the agency. They were referred back to the agency and about half of those dropped out of the system, and that is a bit of a concern, because if a person has enough, I guess, courage to ring the Ombudsman's office I would like to think that 100 per cent of those were actually dealt with in some way, shape or form. So that is a major challenge for the Ombudsman to deal with.

I think the second thing is the thrust that the Ombudsman's office has now with management improvement practices within agencies. They have been devoting resources which they have taken out of the assessment process, but I think that probably more can be done there and hopefully a government would provide some additional resources for them. I think the other issue is complaints management processes to ensure that every agency has an appropriate complaint management process. A lot do; some do not. The good agencies really see the complaint management process as an opportunity for improvement rather than as a pain in the backside to have to deal with. I guess I was encouraged by most of the interviews that I undertook in that most agencies seem to see complaint management processes as something that they really have to get right. But overall in terms of where they were five or six years ago when the previous review was done, both agencies have come a long way in terms of what they were doing. That does not mean to say that there could not be further improvements.

Coming back to the Information Commissioner, I noticed in her annual report that she said that she has completed most of the recommendations. Some of those I think are really in progress but she has addressed the issue, which I think was important. She was very keen to get things moving quickly. So I can understand why in her report she says that she has completed most of them, because I believe she will have addressed all of those issues because it was a very interactive process with her working through what I believed needed to be done within the office. I guess there was some concern about how that might impinge on the role of this committee in terms of reviewing the report and finally coming up with a set of recommendations which are endorsed, but I did not think there was any great difficulty with her doing that. I think she needs to be commended for getting on with the job. Certainly, the Ombudsman was also quite enthusiastic in taking on board the recommendations early and getting on with the task. He probably was not quite as publicity conscious in terms of getting out there and saying, 'I'm actually doing all these things as well,' but I am sure that he has many of those improvements in place already or is acting upon them anyway. I am very happy to take any questions that the committee would like to ask.

**CHAIR:** One of the things that I was going to ask you about you have already raised, and that is the annual report of the Information Commissioner where the recommendations are listed and that they all say completed. When you say that she is addressing them in that they are being considered and you still think some are in progress or not quite completed, are you satisfied with that?

**Mr Smerdon:** I must admit that I have not studied the Annual Report in detail and have not been back to her to say, 'Well, what particular things have you done?' An example might be writing better decisions. Yes, she is addressing that issue in terms of writing better decisions and clearer decisions, taking account of more recent decisions in other tribunals. That is an ongoing thing. She has put in place a process which I assume will address that issue. But with regard to saying it is completed, it is not a singular task that you can tick off and say, 'It's done.' It is an ongoing thing. So I think the task for the committee will be to ensure that that continues to happen. If you continue to meet on a six-monthly basis with both officers, that is something that I would be raising to make sure that that is continuing to be done.

**CHAIR:** Another matter that you raised was the timeliness and things with the most priority. You probably noticed in the annual report that the performance measure relating to timeliness is somewhat different to what it was in last year's report. Instead of a proportion of cases or reviews being completed in three or six months, it is now a median time and 90 days is the targeted median. I just wondered if you have particular views on that because other jurisdictions may use a mean or an average length of time and if a median is the best one and if that is a better indicator of performance than the previous performance measure.

**Mr Smerdon:** I think you can use a variety of measures to measure how well you are doing. I think the real argument is being consistent in what you do. If she has made that change now to adopt the median, she needs to be consistent so that can be compared year to year. I know certainly when we went to Victoria and spoke to VCAT they use the median. The median will certainly smooth out some of the bumps you will get, because you will have cases that will take quite a significant time to resolve. If you get two of those that will impact on the overall whereas the median does not quite do that; the median will be a rather more stable measure than simple averages. I do not have a particular issue. I would have probably liked to have seen both measures used. But I think that the median is as appropriate as any other measure.

**CHAIR:** Okay. With regard to performance measures, I note that a measure that indicates the number of applications made for judicial review of decisions is not going to be measured or does not seem to be there.

**Mr Smerdon:** I do not think there were too many. I am just trying to think back through.

**CHAIR:** Even if there are none, that still gives an indication of customer satisfaction or client satisfaction to some extent, does it not?

**Mr Smerdon:** Yes, I am not quite sure why that has dropped out. I can probably hazard a guess. I cannot remember the last case that was subject to judicial review. In fact, if my memory serves me correctly—and I stand to be corrected—I do not think there has been one instance of judicial review, certainly in recent times. I think there were a couple of cases that were heading that way, but at the last they actually pulled out before they went through the process.

**CHAIR:** I think there was a reference to none being successful but that does not tell you how many were taken or how many were referred, just as a test of the legal quality of the decision which is something Cathi told us yesterday was part of the parameter that they were seeking to achieve—that is, the legality, and really all they can rule on is the legality of the decision by the department.

**Mr Smerdon:** That is right.

**CHAIR:** So in terms of that legality, if none are going to judicial review and none have been sent that is a good thing in terms of their performance. But you do not think it is a concern if it is not in the performance measures as such in the annual report to be seen?

**Mr Smerdon:** Again, it is one of those issues where, for the sake of completeness, it probably would have been preferable to include a comment rather than a performance measure. But I do not necessarily feel people should just put things in for the sake of putting things in. If you have not had any and you are not going to have any, it is unlikely that you do. But I would not set up special tables or special collection processes. I think it is one of the things you could ask her to do in the annual report in the future—that is, to include a comment as to whether there have been any cases subject to judicial review during the year.

**CHAIR:** Thank you. We will take that on board. Do other members have any questions?

**Mr NICHOLLS:** Yes. Henry, in terms of your summary, one of the comments I picked up was, 'One of the challenges for the office going forward is to raise its profile and relevance,' and you go on and say a few things. I will not repeat all of what you have already written, but you say, 'It will not achieve this though without some significant cultural changes.' Are you talking about cultural changes within the Office of the Ombudsman, or are you talking about cultural changes within the broader governmental department community? What types of changes did you envisage when you made that statement? Could I just put it in context. We have some comments in relation to that, where someone has provided us with a comment in relation to cultural changes.

**Mr NICHOLLS:** That is a comment that has been made. I certainly picked that out of the report myself going through it. Cultural change is often the hardest thing to bring about.

**Mr Smerdon:** It is.

**Mr NICHOLLS:** But the most effective thing to change, if you can.

**Mr Smerdon:** I come from the perspective from when I was in the bureaucracy that we are all part of a whole and we should be trying to improve for that whole. We should not be adversarial unnecessarily. Too often, I found some of the staff in the Ombudsman's office had a very adversarial type relationship with the agency, to the point where it was almost poisoned in some respects. That is not healthy.

The Ombudsman has a role to play and a role to fulfil, as do agencies. Agencies are the first port of call for complaints. That does not work. The Ombudsman is there to play the honest broker. It should not be either carrying the case for the person who applies or carrying the case for the agency. It is there to take a balanced, objective, independent view about the particular set of circumstances and come to a decision.

I found with a number of staff, particularly staff who had been there for some time, it was, 'The agency's got this wrong again,' or, 'That agency always does this.' That is a very difficult culture to shift. Sometimes it requires staff changes to do it. Sometimes people have been in the Ombudsman's office a little longer than perhaps they should have been, and I think there is some argument for saying that there should be a fairly healthy change of personnel.

The other strategy I was trying to encourage in the report was to have an interchange so there was a better understanding of what the Ombudsman's office does within agencies. There was not an exception to this. All the agencies I spoke to were very happy and quite willing to accept an interchange so that their staff came in and appreciated what the Ombudsman's office had to do. The Ombudsman was also supportive but recognised that it had some staff issues for the office in terms of losing good people to an agency. Quite often, the person has gone from the Ombudsman's office to the agency and all of a sudden the agency says, 'This is a very valuable person. We'll upgrade the position two grades,' or something like that and all of a sudden that person is lost to the Ombudsman's office. With a bit of maturity, I think both sides can work through that and achieve significant cultural change. It is a tough ask because there is a fairly ingrained approach that has been around for awhile. The previous reviewer I think also had this issue in terms of the culture of the organisation.

**Mr NICHOLLS:** So the Ombudsman staff tend to think they are there to investigate and probe and that barriers may be thrown up in their way so they have to take that attitude—I mean some staff.

**Mr Smerdon:** Some. They are a front-line agency. If I have personal complaints about a decision an agency has made, the Ombudsman's staff get called on, and the person does not want to go back to the agency that has apparently caused the problem. I think sometimes the Ombudsman's staff take the view, 'We're here to help.' You are there to help but you are not there to advocate. You are there to make an independent assessment of the situation and assist where you can to get a good decision. The best decision is a mutual decision, so the role of the Ombudsman should be not to dictate but to get the two parties together to arrive at a consensus view that, 'That really is the best outcome.'

**CHAIR:** Do you think the community sees the role of the Ombudsman's office as being their advocate? Certainly, in my experience of people who say, 'I'm going to take it to the Ombudsman,' they do it because they think the Ombudsman is going to be an advocate for them; that they are going to get to the bottom of it and find out.

**Mr Smerdon:** Most applicants think the Ombudsman will right the wrong.

**CHAIR:** Absolutely.

**Mr Smerdon:** Unfortunately, it is not always the case. If you go back and look at the decisions that come out of the Ombudsman's office, the vast bulk say that the department has actually made the correct decision, that it has followed all the appropriate processes but the decision is not one that the applicant really likes, and it is hard to tell the applicant that. I have a lot of sympathy for people who believe that they have been wronged by an agency, but sometimes that is the fact of life. It is the one where there has been a real stuff-up, if you like, in the decision-making processes where the Ombudsman does not have to become the advocate but can certainly get the agency to change its point of view. I think that where there is a systemic issue the Ombudsman can use that to change the whole processes within government, and that has happened on a couple of occasions previously.

**Mr WETTENHALL:** Was the conclusion you drew that there was a need for cultural change based on anecdotal observations that there was an adversarial approach evident in the Ombudsman's office, or was it part of a systematic approach to eliciting issues about workplace culture that drew you to that conclusion?

**Mr Smerdon:** I took two approaches. I met with every staff member who wanted the opportunity to meet with me. That was sometimes on an individual basis—certainly for more senior staff members—or through focus groups. The invitation was there for anyone in the focus group who wanted to meet with me individually to do so, and a number of staff took that up. So every staff member in the Ombudsman's office



had the opportunity to meet with me. I also examined probably 80 to 100 files and looked through them. The system was quite good in terms of documenting correspondence between agencies.

Out of that came a feeling—I would not say it is an absolute, cast-iron, 100 per cent accurate view but it was a perception—that the adversarial role that had been identified in previous reviews still existed. When you spoke to some staff, certainly it did not take too much questioning to understand that their approach to life was, ‘Those agencies out there are so-and-sos.’ It was not all of them; it was probably identifying three, four, five, six or seven agencies that, in the staff member’s view, constantly gave problems back and that were unwilling to come to the party to try to resolve issues.

**Mr WETTENHALL:** Given that the majority of referrals to the Ombudsman’s office are finalised by some sort of resolution, that would warrant the view by those staff, would it not, that the agencies that figure prominently in the applications to the Ombudsman that are not resolved in that way and that do require some formal finding do have those particular characteristics?

**Mr Smerdon:** You would need to do a much bigger sample of files than I had the opportunity to look at. Let me put a slightly different perspective on what you are saying. I appreciate your comments, but if an agency is, in effect, bludgeoned into making a compromised decision it would otherwise not be prepared to make, that is not a good outcome. If you say to the agency, ‘You’d better fix this up or else’ or words to that effect, then the agency might say, ‘I don’t really want the hassle of this. I’ll accept it and get on with life.’ So it depends on the attitude of the agency as to whether it is prepared to say, ‘This is not the right thing to do and we will argue about it,’ or whether it just says, ‘We really want to get this off our plate. We’ll resolve it and get on with life.’ I am hesitant to adopt the latter. I think good decisions are good decisions and they should be good decisions. People should not, if you like, be bullied into making decisions to the satisfaction of the complainant if it is not warranted.

**CHAIR:** They could not be consistent in their decision making. For the next person they may make the decision not in their favour, but that person does not make a complaint and just accepts it. That is still the same and the right decision. They cannot be consistent if they are forced to change their decision based on someone’s complaint.

**Mr Smerdon:** Sometimes it is a judgement issue. If they were all black and white decisions it would be relatively easy. In a lot of cases it is a judgement issue.

**Mr WETTENHALL:** Without wishing in any way to diminish the conclusion that you have reached would you accept, given what you have said, that it was a conclusion reached based on a subjective assessment rather than objective criteria?

**Mr Smerdon:** It depends on whether you say subjective totally or subjective as part of a decision-making process. As I have said to you, it is based on true elements. One is an interview with staff asking some fairly hard questions about processes, what they would do in this particular circumstance and what they would do in that particular circumstance, talking to agencies and then looking at files. Files were sometimes fairly hard evidence that a particular staff member involved could have adopted a slightly different approach to resolving the issue. I would not accept that it is totally subjective. I think it is a bit of each.

**Ms DARLING:** When the Information Commissioner came and spoke with us yesterday I was asking her about the sort of exchange of information that her office was having with other jurisdictions. I guess I am thinking along the lines of once you have established an independent office and you have taken on some recommendations that we could easily head down that path without checking back at some best practice models around the country. I am interested whether in other jurisdictions you encountered some really good-looking models that might be worthy of study by the committee and any other issues or struggles that other state jurisdictions or the Commonwealth jurisdiction is having with freedom of information in particular?

**Mr Smerdon:** One of the things is that there is no good model. They are all wanting to do something slightly different.

**Ms DARLING:** No good model.

**Mr Smerdon:** Not in the sense that it is a consistent model. States adopt different models depending on how they perceive their particular jurisdictions. Western Australia is going through a process of moving from an independent office back into the Ombudsman’s office, I think it is—which is questionable. Victoria has gone the VCAT route. I think I said in my report that if the government was thinking of adopting a different model it should look at the VCAT operations. They really are very good at getting things shifted through the system. People feel they are going through some sort of quasi-legal process because there has been an independent officer look at it.

A bit of subjective advice from me: if you were planning to go somewhere I would go to Victoria and talk to them about the Victorian operation. It was quite an eye opener to see the way they operated down there, not just across freedom of information but across a wide spectrum of decision making.

**Mr CRIPPS:** Henry, you said earlier that one of the first things that the Information Commissioner’s office could do to improve their performance was to write better decisions. Yesterday, I asked the Information Commissioner about what sort of steps she was taking to get her decisions made. She pointed directly to the professional development programs that the staff undertake. One of those was aimed at Brisbane

writing better decisions. Is that the only criteria for more effective decisions from that office or is it timeliness or is it several other criteria? Could you explain to me a little more what you would consider to be a better quality decision.

**Mr Smerdon:** Can I take two steps back without taking up too much time of the committee. If you go back to when FOI started and they started writing decisions, we know that it is a legal process. You can never walk away from the fact that it is a legal process. There is a legal decision involved that will supplant the decision of the agency. You have to be very careful about how you write it.

There was probably a need back in the early days for a significant writing of the decision so that people understood where the Information Commissioner was coming from in terms of making the decision. We probably passed the use-by date for that many years before it actually started to change. At the end of the day, those decisions go back to the person who has made the request.

I looked at one decision which was 26 pages long. I think I am a reasonably intelligent person, but I really struggled to understand what it was all about. If I were the applicant I would struggle to understand why my request was being refused. I think the essence is to make sure you have all the legal principles covered, that it is concise and that the person who receives it will actually understand why the decision has been made.

**CHAIR:** That is a requirement of the act. It specifically says that it should be without too much technicality.

**Mr Smerdon:** A 26-page decision being written back to an ordinary person in the street with no legal training defies imagination. You cannot expect someone to really comprehend what that means. The process is there to put a system in place for people to have issues resolved. If they are not getting the information and they are entitled to it, they can make an application—if they cannot get the agency to change—to an independent party. Once that decision is made they should be able to understand why the decision has been made. They should be able to read a page or two and say, 'I understand it. I don't like it, but I understand it and I accept the decision.' That is the criteria that I would use. There are quite a number of professional development programs around that will simplify decision writing.

**Mr CRIPPS:** Did you have an opportunity to scrutinise those programs?

**Mr Smerdon:** No, that is a management decision which the office really should take. It should decide which is best for them.

**Mr NICHOLLS:** I know we are pressed for time so I will roll a couple of questions into one. You just admitted that you are a reasonably intelligent fellow so I am sure you will probably be able to take it.

**Mr Smerdon:** I might accept that.

**Mr NICHOLLS:** You will. In your introduction you mentioned something about complaints not being captured in the system. Again in your report you say, 'Half the complaints referred back do not contact the agency and are lost to the system.' This needs to be addressed. You do not have any recommendation per se as to what needs to be done about that. Could I ask for your comment on that one.

I had a question as to what outcome own-motion investigations would achieve for the Ombudsman's office. They have the powers but what do they achieve? You have already dealt with timeliness so I will not go over that.

The other question is in terms of staff turnover. There seems to have been a reasonable staff turnover. In a submission to the committee staff turnover was raised with us. It has been said that there had been some degree of dissatisfaction with the Ombudsman's office and that had led to some staff turnover. However, you say that your exit interviews did not suggest any problem that needed to be addressed. In a submission to the committee the comment is made—

I would beg to differ. I distinctly heard a number of staff at the focus group strongly express to Mr Smerdon their dissatisfaction with the management style of the Ombudsman and senior management team and indicate that dissatisfaction was a key factor in their decision to leave the office.

If you want to go backwards from that one to the other two you can.

**Mr Smerdon:** I will start with the last one first. Certainly there was a dissatisfaction with his style. David Bevan, as the Ombudsman, has a particular style. He is a very strong bureaucratic type person. David and I have had a number of discussions about how he should be perhaps thinking of different ways to approach the same problem.

I do not recall anyone being quite so specific and saying, 'I left the office because I did not like the management style.' Most people leave the office because they want to move on and do something different or get captured by higher remuneration. Higher remuneration is certainly an issue for a lot of staff.

I had a focus group of all ex-staff. All people who had left the office in the previous five years were invited to come along. Quite a surprising number came to that. I think we had 10 or 12 ex-staff members come along. I did the Audit Office review. For the Audit Office we had four ex-staff members come along and three of those really just came along because they seemed to have nothing else to do. It really was not a big issue.

Of the 12 most were great advocates for the office. They had some issues about how it was managed, but they were great advocates for the office. They were quite happy to take time out to come Brisbane

along and talk. I am a little surprised by someone saying that there was widespread dissatisfaction and that is the reason they left because that was not the impression I had.

**Mr NICHOLLS:** It stated, 'A number of staff at the focus group expressed to Mr Smerdon their dissatisfaction with the management style.'

**Mr Smerdon:** Is this current staff or staff who had left the organisation?

**Mr NICHOLLS:** This is staff who had left.

**Mr Smerdon:** That is not my recollection.

**Mr NICHOLLS:** Key areas of dissatisfaction that were commented on by a number of staff included arbitrary decision making, lack of delegation, micromanagement, some gender-biased decision making, sexist comments and other general discontent with lack of empowerment and lack of consultation with staff. I just put that forward as a comment without knowing. I would be interested, because it is not necessarily reflected in what you say there, although, as I say, there was quite a substantial turnover of 20 per cent of the staff in one year.

**Mr Smerdon:** That is not unusual in an organisation. It is probably on the high side for an Ombudsman. These are professional people who have opportunities. Given the growth of the complaint management processes within agencies, particularly in the health area, there have been quite a number of staff who have moved from the Ombudsman to agencies. Yes, I am disappointed that that person has written it that way, because it is not reflective of what I believe was the general comment from past staff. Coming back to the—

**Mr NICHOLLS:** The unresolved complaints that do not get captured in the system.

**Mr Smerdon:** The unresolved complaints. You can have people who just ring up. They are very upset about a decision on a particular day. They phone and then decide that they are not going to take it anywhere. Even if we had a process in place, they may not go through with the complaint.

You can be very bureaucratic about dealing with it and put in place a whole system that captures those and you have follow-up things with agencies. I left the Ombudsman to really think about how best to handle those. I raised the issue as a matter of principle and left the Ombudsman to really deal with the detail. I think in a lot of cases a simple phone call back to the agency would probably assist the agency and the party to get together and that requires no further action.

To me, the essential part was to get those 50 per cent who are not currently going back to the agency to at least make one more call to the agency in the hope that it will be resolved.

**CHAIR:** Is that about the Ombudsman using his discretion to take action somewhere where it is not necessarily their jurisdiction, or where the other mechanisms of appeal have not been exhausted?

**Mr Smerdon:** It is really because the other mechanisms of appeal have not been exhausted in a lot of cases. What the Ombudsman says is, 'I can take you on now'—and in some case he has done that—'but there are really broad systemic issues involved.' Where it is a fairly simple issue, the Ombudsman needs to preserve the principle that the agency is the best placed entity to resolve the complaint in the first place and that the person should resolve that through the agency.

**CHAIR:** But referring the complainant—

**Mr Smerdon:** That is sometimes difficult.

**CHAIR:**—back to the agency.

**Mr Smerdon:** Back to the agency.

**CHAIR:** It does not really help them necessarily.

**Mr Smerdon:** Say they get a bad decision and then they say, 'To hell with this. I don't like that. I'm going straight to the Ombudsman.' If they had gone back and got another person within the agency to review that—perhaps there is some bad blood that has developed between the decision maker and the person; I do not know what the circumstances might be but you can envisage a whole raft of circumstances where that might occur—the agency may be prepared to sit down with some further and better particulars and resolve it. I think that is where the decisions should be resolved, if it is at all possible. I think the Ombudsman should always be only the last resort. So I tend to support David's view that he needs to get things back to the agency as much as possible. But it is a process that will assist that to ensure that it does get resolved.

**Ms LEE LONG:** If somebody has been given a bad decision, they are not likely to go back to them, thinking that they are going to hit their head against a brick wall, though, are they? People do not do that.

**CHAIR:** It depends on the agency and the size of the agency. Perhaps they can go to someone else.

**Ms LEE LONG:** I have a person up in my end of the world and he has gone as far as he can go—to the Ombudsman—and he has copped a bad decision all the way through. He is just totally disillusioned with the whole process.

**Mr Smerdon:** But sometimes a bad decision from his point of view is actually the right decision.

**Ms LEE LONG:** Yes it, might be.

**Mr Smerdon:** That is the great dilemma of applicants to the Ombudsman's office. People are not looking for the right decision; they are looking for the decision in their favour. That is never always going to be the case. In fact, if you look back through the decisions, a great majority of the decisions vindicate what the agency has done. They might not have handled the process well. There might be a whole lot of personality/relationship issues that go with the decision which have caused the person a lot of angst, but at the end of the day the right decision has been made and people find that hard to accept.

**Ms LEE LONG:** Somebody like that keeps going back and keeps going back until they find somebody.

**Mr Smerdon:** I have had a couple of people ring me. I remember one Sunday afternoon I got a call from a person in Townsville who has been battling with the Ombudsman for about four years. I felt really sorry for her. It was not something that I could do anything about. The decision is the correct decision, but she just finds it very hard to accept it. She is looking for somebody who is going to right that wrong.

**Ms LEE LONG:** I think that is what this fellow is about—to right his wrong.

**Mr Smerdon:** I agree. People do not like to go back to the agency. They feel that they are just going to get another bum deal.

**CHAIR:** Yes.

**Mr Smerdon:** But there are processes in place and I think that people need to follow those processes, or be encouraged to follow those processes. If they do not work, then the Ombudsman is there to help out. Otherwise you are going to have an Ombudsman that is three times as big as what it is.

**Ms DARLING:** Then it is being directed back to the right area. That is what you would hope the Ombudsman achieves—just do not go back to that department, but actually your complaints resolution point of entry. Do not go back to where the complaint stems from; go to the resolution area. If the Ombudsman can steer people in that direction—

**CHAIR:** The Ombudsman is giving support to agencies now with the extended Good Decisions training, which we hope they will be able to do even more. They are teaching other agencies better complaints and decision-making processes. So it is quite valid to say, 'If you have not exhausted those complaints mechanisms with that agency, do go back.'

**Mr Smerdon:** Resolution is one thing. I think also the Ombudsman needs to be out there with agencies a bit more. David tended to sit in the office a bit too much. He needs to get out and be a bit more visible.

**CHAIR:** The own-motion.

**Mr NICHOLLS:** Basically, what is an example of an own-motion? If you do it, is it like a spot check, or a spot audit? People know that you might be coming, so they had better use their best practices in case it does happen—that type of thing.

**Mr Smerdon:** There are many reasons own-motion investigations can take place. This is why they need to be alert to what is coming through the system. Sometimes you will pick up a trend coming through with three, four, five, six, seven or eight applicants which have a similar feel. Essentially, it seems to be a systemic issue. The Ombudsman can say, 'I am going to investigate that' and undertake a fairly short, sharp investigation to see whether there are, in fact, systemic issues. I think that puts him on the front foot in terms of getting better decisions within agencies.

David's colleagues in other states tend to use own-motion investigations probably a lot more frequently than even I would envisage for the Queensland office. The Ombudsman in Victoria is very active with own-motion investigations. It is just simply saying, 'I believe there is an issue here and I will investigate it. I do not need to have a complaint to investigate a specific complaint. There is a broad issue about how decisions are being made in agencies and I am going to investigate.'

**CHAIR:** Thank you everybody. Sorry we rushed through all of that but we are always so pressed for time. We are going to meet with the Ombudsman now. I appreciate your coming in.

**Mr Smerdon:** I hope I have given you all the answers that you want from me.

**CHAIR:** We might think of other questions later. It is always the way. It is a very interesting job that you undertake.

Sitting suspended from 3.35 pm to 3.38 pm.