

LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

**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**

December 2006

Report No. 57

# 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. <i>Hands on Parliament</i> – 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
56. 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	12 December 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 Ombudsman, April 2006*, and the 2005-2006 Annual Report, Office of the Ombudsman.

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 reviewer and the Ombudsman and members of the staff of the Office of the Ombudsman.

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 Ombudsman of functions conferred by the *Ombudsman Act*. It is pleasing to note that significant progress has been made towards the implementation of these recommendations by the Ombudsman.

The committee commends the 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 Ombudsman.

I thank Mr David Bevan, Ombudsman, Mr Shaun Gordon, Manager, Corporate Services, Ms Adeline Yuksel, Manager, Communication and Research Unit and Mr Peter Cantwell, Assistant Ombudsman, Administration Improvement Unit, for meeting with the committee, and the staff of the Office of the Ombudsman 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 Ombudsman 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) and has responsibility for administrative review reform, constitutional reform, electoral reform, and legal reform.

### THIS REPORT

- 1.2 This report to the Parliament follows consideration by the committee of:
- Office of the Ombudsman Queensland, *Better Access Better Decisions - Annual Report 2005-06* (2005-2006 Annual Report);<sup>1</sup> and
  - the *2005-2006 Report of the Strategic Management Review - Office of the Ombudsman, April 2006*, commissioned by the Queensland Government pursuant to the Ombudsman Act 2001 (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 28 November 2006, the committee met with the Ombudsman and staff of the Office of the Ombudsman and discussed issues relevant to:
- the strategic review report; and
  - the 2005-2006 Annual Report;
- 1.4 On 28 November 2006, the committee also met with Mr Henry Smerdon (reviewer) who had conducted the strategic management review of the Office of the Ombudsman. 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 on the 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 Ombudsman, Mr Smerdon conducted a strategic review of the Office of the Information Commissioner.<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 Information Commissioner as well as the strategic review of the Office of the Ombudsman.

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<sup>1</sup> Office of the Ombudsman Queensland, *Better Access Better Decisions - Annual Report 2005-06*, tabled on 10 November 2006.

<sup>2</sup> *Report of the Strategic Management Review - Office of the Ombudsman, 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 Information Commissioner, April 2006*; LCARC report 56 *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*.

## 2. RELEVANT COMMITTEE RESPONSIBILITIES

- 2.1 The *Parliament of Queensland Act* and the *Ombudsman Act 2001* (Qld) respectively confer the committee with responsibilities regarding the Office of the Ombudsman.

### *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>

### *OMBUDSMAN ACT*

#### Functions of the Ombudsman

- 2.4 Under the *Ombudsman Act*, the committee is required to:

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

- 2.5 The functions of the Ombudsman include:

- investigating administrative decisions of agencies;
- considering the administrative practices and procedures of an agency whose actions are being investigated and making recommendations to the agency:
  - about appropriate ways of addressing the effects of inappropriate administrative actions; and
  - for the improvement of practices and procedures;
- considering the administrative practices and procedures of agencies generally, and assisting agencies to improve their practices and procedures.<sup>8</sup>

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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> *Ombudsman Act*, s 89.

- 2.6 The *Ombudsman Act* provides that the Ombudsman is an officer of the Parliament, who is to report to Parliament by way of reporting to the committee.<sup>9</sup>

### Funding of the Ombudsman

- 2.7 In developing the proposed budget of the Ombudsman for each financial year, the Treasurer must consult with the committee.<sup>10</sup>

### Strategic review of the Office of the Ombudsman

- 2.8 The *Ombudsman Act* requires a strategic review to be conducted at least every five years of:
- the Ombudsman's functions; and
  - the Ombudsman's performance of those functions to assess whether they are being performed economically, effectively and efficiently.<sup>11</sup>
- 2.9 All such reviews must be undertaken by an appropriately qualified person, who provides a report on the review.<sup>12</sup>
- 2.10 After first consulting with the committee and the Ombudsman, the Governor in Council:
- appoints the reviewer; and
  - decides the terms of reference for the strategic management review.<sup>13</sup>
- 2.11 Once tabled in the Parliament, the report by the reviewer is referred to the committee.<sup>14</sup> The committee must consider that report and report on it to the Legislative Assembly.<sup>15</sup>

## 3. FUNDING OF THE OMBUDSMAN

- 3.1 The *Ombudsman Act* requires the Treasurer to consult with LCARC in developing the proposed budget of the Ombudsman for each financial year.
- 3.2 In his response to the strategic review report,<sup>16</sup> the Ombudsman stated that certain of the recommendations in that report would have resource implications for the Office or for specific units or programs.<sup>17</sup>
- 3.3 In consultation with the Under Treasurer, the Ombudsman drafted a Mid Year Review budget submission for additional funding to implement certain of the measures recommended in the strategic review report.
- 3.4 In a letter dated 22 September 2006 the Under Treasurer provided the committee with information regarding the proposed Mid Year Review budget submission by the Ombudsman. On 2 November 2006, the committee met with the Under Treasurer and then the Ombudsman to discuss the Ombudsman's proposed submission. Subsequently, the committee wrote to the Treasurer in relation to the proposed submission. A finalised submission was received from the Under Treasurer by way of a letter dated 15 November 2006.

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<sup>8</sup> *Ombudsman Act*, s 12.

<sup>9</sup> *Ombudsman Act*, ss 11 and 87.

<sup>10</sup> *Ombudsman Act*, s 88(3).

<sup>11</sup> *Ombudsman Act*, ss 83(2) and (8).

<sup>12</sup> *Ombudsman Act*, s 83(4).

<sup>13</sup> *Ombudsman Act*, ss 83(4), (5) and (6).

<sup>14</sup> *Ombudsman Act*, s 85(7) and *Parliament of Queensland Act*, s 84(2).

<sup>15</sup> *Parliament of Queensland Act*, s 84(3).

<sup>16</sup> In accordance with the *Ombudsman Act*, s 85.

<sup>17</sup> Strategic review report, p 125.

## 4. STRATEGIC REVIEW REPORT

### BACKGROUND

#### 2000 Strategic management review

- 4.1 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>18</sup> His report was tabled in the Parliament in May 1998.<sup>19</sup>
- 4.2 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>20</sup>
- 4.3 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.
- 4.4 On 26 August 1999, the Premier informed the Legislative Assembly that he endorsed the committee's recommendation for a 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.
- 4.5 The Parliamentary Commissioner and Freedom of Information Amendment Bill 1999 was introduced in the House on 23 November 1999. The bill:
- clarified that the scope of a strategic review of the 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.
- 4.6 The Legislative Assembly passed the bill on 8 December 1999. The bill was assented to on 14 December 1999.
- 4.7 The amended sections of the *Parliamentary Commissioner Act* regarding the conduct of strategic reviews required the responsible ministers to consult with the committee and the Ombudsman about the appointment of the reviewer and the terms of reference for the review.<sup>21</sup>
- 4.8 A Consultative Reference Group was established comprising representatives of the Premier, the Attorney-General, the committee and the Ombudsman to act as a forum for consultation for the duration of the review. This group was chaired by the then Chair of the committee.
- 4.9 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 management review. The Governor in Council also approved the terms of reference for the review.
- 4.10 In accordance with the review 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.

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<sup>18</sup> The *Parliamentary Commissioner Act* was replaced by the *Ombudsman Act 2001* (Qld) on 13 November 2001.

<sup>19</sup> Queensland Government, *Report of the Strategic Review of the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations)*, Brisbane, May 1998.

<sup>20</sup> See LCARC report no 14, *Review of the Report of the Strategic Review of the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations)* Brisbane, July 1999 (available at: [www.parliament.qld.gov.au/LCARC](http://www.parliament.qld.gov.au/LCARC))

<sup>21</sup> See *Parliamentary Commissioner Act*, s 32(5) and *Freedom of Information Act*, s 108A(5).

- 4.11 The Ombudsman took the opportunity to provide written comments on the reviewer's proposed report. His comments are appended to the report.<sup>22</sup>
- 4.12 The final report of the Forster review was tabled on 19 June 2000. As required by the *Parliamentary Commissioner Act*, the committee reviewed and reported to the Parliament on the report. The committee's report was tabled on 19 July 2000.<sup>23</sup>
- 4.13 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>24</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>25</sup>

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

- 4.14 On 8 September 2005, following consultation with the committee,<sup>26</sup> the Governor in Council:
- appointed Mr Henry Smerdon to undertake a strategic review of the Office of the Ombudsman; and
  - decided the terms of reference for the strategic review.<sup>27</sup>
- 4.15 During the conduct of the strategic review, the committee of the 51<sup>st</sup> Parliament provided Mr Smerdon with copies of correspondence, received by the committee since the previous strategic review, regarding complaints about the performance of functions by the Office of the Ombudsman (with the complainants' consent). In addition, the committee met with Mr Smerdon on 25 October 2005 and 14 December 2005 to discuss the strategic review of the Office of the Ombudsman. Discussion included matters regarding the committee's responsibilities in respect of the Ombudsman.
- 4.16 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 Ombudsman, April 2006, commissioned by the Queensland Government pursuant to the Ombudsman Act 2001*. The report was referred to the committee for its consideration and reporting.<sup>28</sup>
- 4.17 After the tabling of the strategic review report, the previous committee determined that its review would include:
- consideration of written submissions; and
  - questions of the reviewer, Ombudsman and Under Treasurer at public hearings to be held on 25 August 2006.
- 4.18 Prior to the dissolution of the 51<sup>st</sup> Parliament, the committee of the 51<sup>st</sup> Parliament tabled 10 non-confidential submissions it had received. A further confidential submission was received but not tabled.
- 4.19 Following the dissolution of the Parliament, those invited to the planned public hearings were advised that the hearings would not be convened on 25 August 2006.
- 4.20 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

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<sup>22</sup> See *Parliamentary Commissioner Act*, s 32(9) & (10) and *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>23</sup> See LCARC report no 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>24</sup> See reports no 30, 34, 37, 43, 44, 47, 49 and 52.

<sup>25</sup> Strategic review report, p 82.

<sup>26</sup> In accordance with the *Freedom of Information Act*, s 108A(6).

<sup>27</sup> In accordance with the *Freedom of Information Act*, s 108A(4) and (5).

<sup>28</sup> *Freedom of Information Act*, s 108AB(7).

- questioning the reviewer and Ombudsman about issues relevant to the report at respective meetings on 28 November 2006.

## GENERAL COMMENTS

4.21 The requirements for a strategic review of the Office of the Ombudsman are set out in sections 83 to 85 of the *Ombudsman Act* and the 2005-2006 strategic review has been conducted in accordance with these.

4.22 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 Ombudsman and the Office of the Ombudsman in order to assess whether those functions are being performed economically, effectively and efficiently.*<sup>29</sup>

4.23 The terms of reference then provided that:

*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.*

4.24 It was envisaged in the terms of reference that the review would take a maximum of 3 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.

4.25 The strategic review report contains 70 recommendations directed to structural and operational aspects of the Office of the Ombudsman and to its relationship with public sector entities, relevant Ministers, parliamentary committees and the Legislative Assembly. The recommendations in the strategic review report are positive and practical.

4.26 The committee is pleased to note that the strategic review report envisages the Office of the Ombudsman playing a very positive role in improving the quality of decision-making and administrative practice in agencies. Similarly, the report places emphasis on the benefits to the public sector as a whole. In the introduction, the strategic review report states:

*Agencies such as the Office are a necessary part of the overall accountability framework of government and should not be seen as a cost to be tolerated.*<sup>30</sup>

4.27 It is pleasing to note that the reviewer concluded, in relation to both the Office of the Ombudsman and the Office of the Information Commissioner 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.'

4.28 The committee commends the strategic review report to the Parliament as a framework for the continuing structural and operational economy, effectiveness and efficiency of the Office of the Ombudsman. Specific comment regarding certain recommendations is set out in paragraphs 4.29 to 4.114 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.

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<sup>29</sup> Terms of Reference, p 2: see Appendix A.

<sup>30</sup> Strategic review report, p 5.

## CONSIDERATION OF CERTAIN RECOMMENDATIONS

### Strategic and Operational Issues – Role of the Office of the Ombudsman

**Recommendation 1:** The current role of the Ombudsman in the overall accountability processes in government is endorsed.

- 4.29 On 28 November 2006, the committee met with the reviewer to discuss the strategic review reports on the Offices of the Ombudsman and the Information Commissioner. At that meeting, the reviewer said of each office:

*... they are two relatively small institutions but very important institutions in terms of the overall governance and accountability framework for government.<sup>31</sup>*

- 4.30 The committee concurs and supports recommendation 1.

- 4.31 In addition to section 12 of the *Ombudsman Act* concerning the functions of the Ombudsman,<sup>32</sup> the role of the Ombudsman is framed by sections 5 and 6 of the *Ombudsman Act*. These provide:

#### s5 Objects of Act

The objects of this Act are –

- a) to give people a timely, effective, independent and just way of having administrative actions of agencies investigated; and
- b) to improve the quality of decision-making and administrative practice in agencies.

#### s6 How objects are to be achieved –

The objects of this Act are to be achieved by –

- a) requiring an ombudsman to be appointed; and
- b) authorising the ombudsman –
  - i) to investigate administrative actions of agencies; and
  - ii) to make recommendations to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices.

- 4.32 It was observed by the committee and the reviewer during the meeting on 28 November 2006 that, 'Most applicants think the Ombudsman will right the wrong.'<sup>33</sup> However, the strategic review report notes that:

*It is unfortunate that the Office is not always perceived in the positive light that it should be...*

*One of the challenges going forward is to raise its profile and relevance and to change the mindset to one where the Office's budget allocation is seen, not as a cost, but as an investment that has the potential to reap a significant benefit for the budget and government through its administrative improvement work with agencies. It will not achieve this without some significant cultural changes.<sup>34</sup>*

- 4.33 As these comments were contained in the introduction to the strategic review report, they did not relate to any specific recommendation. At the meeting on 28 November 2006, the committee asked the reviewer to expand on them. His response indicates that the necessary 'cultural change' to which his report refers must occur broadly, both within the Office of the Ombudsman and in the relationships between public sector agencies and the Office:

*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.*

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<sup>31</sup> Meeting with the reviewer - Transcript of Proceedings, 28 November 2006, p 1: see Appendix C.

<sup>32</sup> See paragraph 2.5.

<sup>33</sup> Meeting with the reviewer - Transcript of Proceedings, 28 November 2006, p 3: see Appendix C.

<sup>34</sup> Strategic review report, p 5.

*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 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...*

*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 a while. The previous reviewer I think also had this issue in terms of the culture of the organisation.<sup>35</sup>*

- 4.34 In this context, the committee notes that recommendations 61 to 68 of the strategic review report relate to 'Building Relationships'. The committee suggests that the implementation of the strategies recommended in that part of the report, together with the implementation of other recommendations such as those concerning the expansion of the delivery of Good Decisions Training programs run by the Office, will assist in bringing about the necessary broad cultural change outlined by the strategic review report. These issues will be monitored by the committee.

### **Strategic and Operational Issues – Intake Process and the Role of Assessment and Resolution Team (ART)**

**Recommendation 2:** The Ombudsman should examine the current operations of ART with a view to ensuring sufficient resources are available at all times to deal with complaints as they are lodged, particularly via the telephone. While establishment of a call centre type operation along the lines of the New South Wales Ombudsman model is an option, changes should be made to the current resourcing and operations of ART to address the current queuing difficulties.

- 4.35 In his comments on the strategic review report, provided under section 85 of the *Ombudsman Act*, the Ombudsman observed that this recommendation would have resource implications for the Office's investigations program. Further, the Ombudsman stated:

*I am concerned that the reviewer has not recommended additional funding to help the Office implement these recommendations, notwithstanding his assessment that 'the Office resource position is tight'. I also disagree with his comment that the resource position is 'exacerbated by having too few resources engaged in the core investigative function'. My understanding is that the ratio of investigators to other staff in my Office is similar to the ratios in other Ombudsman Offices.<sup>36</sup>*

- 4.36 On 2 November, the committee met with the Under Treasurer and then the Ombudsman to discuss a proposed Mid Year Review budget submission by the Ombudsman.<sup>37</sup>

- 4.37 The committee notes that the 2005-2006 Annual Report of the Office of the Ombudsman states that the Office has enhanced its telephone intake so that where possible complaints are responded to immediately:

*... in January 2006 we amended our procedures which required ART staff to immediately handle as many new calls as possible (in addition to those handled by Reception) so that these calls do not go into the 'queued calls'*

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<sup>35</sup> Meeting with the reviewer - Transcript of Proceedings, 28 November 2006, p 3: see Appendix C.

<sup>36</sup> Strategic review report, p 125.

<sup>37</sup> See paragraphs 3.3 to 3.4.



system. ART's inquiry officers now immediately handle approximately 40% of complaint calls received by our Office.

To avoid the inconvenience of waiting on the line for an available officer, the remaining 60% of complaint calls are logged as 'queued calls' and are phoned back either the same day or the following day.<sup>38</sup>

- 4.38 When meeting with the committee, the reviewer advised:

*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.<sup>39</sup>*

- 4.39 The committee questioned the reviewer about this concern and, in particular, the reason why the report did not recommend a strategy to address it. In response, the reviewer said:

*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.<sup>40</sup>*

- 4.40 The committee commends the implementation of recommendation 2 and notes that the average time taken by the ART to finalise cases has fallen from 12 days to nine days.<sup>41</sup> The early resolution of a large number of complaints, where possible, is a positive development. At the same time, as acknowledged by the reviewer, it is important that complaints made to the Ombudsman which are referred on to a public agency for response do in fact receive an effective response from that agency. The committee looks forward to discussing with the Ombudsman at future meetings measures put in place to address this issue.

### Strategic and Operational Issues – Assessment and Investigation Process

**Recommendation 5:** The object of the *Ombudsman Act 2001* is the timely, effective, independent and just way of investigating administrative actions of agencies should continue to guide the investigative processes of the Office with informal resolution techniques and face to face contact being utilised wherever possible in resolving complaints.

- 4.41 A submission received from the Director-General, Department of Public Works supported this recommendation:

*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>42</sup>*

- 4.42 Similarly, the Cairns City Council stated that it supported this recommendation.<sup>43</sup>

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<sup>38</sup> 2005-2006 Annual Report, p 12.

<sup>39</sup> *Meeting with the reviewer - Transcript of Proceedings*, 28 November 2006, p 1: see Appendix C.

<sup>40</sup> *Meeting with the reviewer - Transcript of Proceedings*, 28 November 2006, p 6: see Appendix C.

<sup>41</sup> *Meeting with the Ombudsman - Transcript of Proceedings*, 28 November 2006, p 3: see Appendix B.

<sup>42</sup> Submission 8, p 1.

<sup>43</sup> Submission 4, p 2.

- 4.43 Some of the public submissions received indicated a level of dissatisfaction with the resolution techniques and level of face-to-face contact utilised by the Office of the Ombudsman in the resolution of complaints. Mr Guy Rauchle, for example, wrote in his submission:

*Please find enclosed a copy of a letter sent to the Ombudsman on 10<sup>th</sup> May, 2006. This is the third in a series of letters dealing with the same matter. In the first, I have made the substantive complaint. In the second, I sought a clarification of the decision and in the third, I have made a complaint in regard to the decision of the Assistant Ombudsman dealing with the matter.*

*I draw this to your attention as an enquiry by myself shows this matter has been closed by the Ombudsman without reply or even acknowledgement of my last letter.<sup>44</sup>*

- 4.44 The objects of the *Ombudsman Act* are central to the committee's responsibility to monitor and review the performance by the Ombudsman of the Ombudsman's functions under the *Ombudsman Act*. Accordingly, informal resolution techniques which contribute greatly to timely and effective investigations have been the subject of regular questions on notice at biannual meetings of previous committees with the Ombudsman. For the period 1 July 2005 to 31 June 2006, 98% of complaints were resolved informally, with a further 150 cases (out of 7155 complaints received) finalised using informal investigative processes.
- 4.45 While the timeliness of investigations is discussed below in paragraphs 4.72 to 4.83, the committee is pleased to note in this context also that, as at 31 June 2006, the number of open complaints was the lowest number of open complaints at 30 June since 1984. This is an encouraging indication of the perseverance with which the Ombudsman and staff of the Office have worked to increase the timeliness of investigations.
- 4.46 In relation to Mr Rauchle's submission, the committee notes that the timely acknowledgement and response to correspondence is an important element of the timely and effective resolution of matters. The committee trusts that this issue will receive the due attention of the Office of the Ombudsman and that any ongoing problems of this nature will be identified by Complainant Satisfaction Surveys, as recommended in recommendation 33 of the strategic review report.

### Strategic and Operational Issues – Role of own-motion Investigations

**Recommendation 7:** While the continuation of the current Major Projects Unit is endorsed, its on-going focus needs to clearly be its core activities of administrative improvement and special investigations, using a small staff and drawing resources temporarily from other units as required, as currently occurs. The Unit should also be renamed the Administrative Improvement Unit.

**Recommendation 8:** More appropriate procedures should be established to identify systemic issues or other matters worthy of investigation by the Ombudsman as an integral part of the complaint investigation process.

**Recommendation 9:** Where an own-motion investigation is undertaken by the Ombudsman, tight timelines for completion of the review should be established at the outset and except in exceptional circumstances, the investigation should be completed within 6 months of commencement.

- 4.47 At regular meetings with the Ombudsman, previous committees, by way of questions on notice, requested updates regarding the progress of lengthy own-motion investigations. Questions on notice included, for example, questions regarding the Ombudsman's Workplace Electrocutions investigation report tabled in June 2005 relating to nine incidents investigated between 1995 and 1999.<sup>45</sup>
- 4.48 The Ombudsman has stated that recommendations 8 and 9 will have resource implications for the Office's investigations program.<sup>46</sup> The 2005-2006 Annual Report of the Ombudsman indicates that a greater proportion of Office resources will be dedicated to special investigations and own-motion investigations.<sup>47</sup>

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<sup>44</sup> Submission 10, p 1.

<sup>45</sup> Report of the Queensland Ombudsman, *The Workplace Electrocutions Project*, June 2005.

<sup>46</sup> Strategic review report, p 126.

<sup>47</sup> 2005-2006 Annual Report, p 6.

- 4.49 At its meeting with the Ombudsman and staff of the Office on 28 November 2006, the committee was advised about the Office's response to these recommendations and, in particular, recommendation 8:

*Recommendation 8 of the review is that the office establish more appropriate procedures to identify systemic and other issues worthy of investigation. These are the more resource intensive investigations which place extra pressure on other areas of the office which have to deal with the day-to-day complaints which come through. Consistent with this recommendation, we are currently undertaking four investigations of this kind.<sup>48</sup>*

- 4.50 The committee notes the Ombudsman's concern about the impact on other investigations conducted by the Office if more own-motion investigations are carried out.<sup>49</sup> The recommendations regarding own-motion investigations were discussed with the reviewer who informed the committee that:

*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.<sup>50</sup>*

- 4.51 When meeting with the Ombudsman, the committee discussed in some detail the nature of three large own-motion investigations under way at that time, as well as the strategies adopted by the Office of the Ombudsman to allow the conduct of systemic investigations.
- 4.52 The committee endorses the strategic review recommendations regarding own-motion investigations. The identification, investigation and report on serious systemic issues in state and local government agencies is an important exercise of the functions of the Ombudsman. The recommendations made to agencies in such reports can effect significant improvement in the quality of agency decision-making and administrative practices. By way of example, reference is made to two reports of respective own-motion investigations tabled shortly before the tabling of this report: *The Miriam Vale IPA Report* and *The Daintree River Ferry Report*.<sup>51</sup>
- 4.53 The committee's discussion with the Ombudsman of recommendations 7 to 9 demonstrated that the Ombudsman is committed to ensuring that timely own-motion investigations are integral to the Ombudsman processes.

### Strategic and Operational Issues – Corrective Services

**Recommendation 10:** The Ombudsman continue to maintain dialogue with the Chief Inspector of Prisons to ensure that there is no or minimal overlap of responsibilities between the two Offices. The dialogue should include but not be limited to, an appropriate exchange of information to assist with the carrying out of the respective roles.

**Recommendation 11:** Appropriate measures should be put in place to monitor the impact of the legislative and other changes dealing with prisoners and the management of correctional facilities to assess what impact the changes have on the operations of the Office in both the short and longer term.

- 4.54 At its meeting with the Ombudsman, the committee was advised by the Ombudsman that, under a Memorandum of Understanding (MOU) with the Department of Corrective Services, the Office now has online access to the Corrective Services computer system:

*We now have online access to what is called the Integrated Offender Management System which has taken quite a while to implement because of some technical glitches. But we now have that access and it allows our officers to access prisoner records and also the department's policies and procedures which means we can get that*

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<sup>48</sup> Meeting with the Ombudsman - Transcript of Proceedings, 28 November 2006, p 2: see Appendix B.

<sup>49</sup> Meeting with the Ombudsman - Transcript of Proceedings, 28 November 2006, p 4: see Appendix B.

<sup>50</sup> Meeting with the reviewer - Transcript of Proceedings, 28 November 2006, p 7: see Appendix C.

<sup>51</sup> Report of the Queensland Ombudsman, *The Miriam Vale IPA Report - An investigation into the Miriam Vale Shire Council's management of development applications under the Integrated Planning Act 1997*, December 2006; and Report of the Queensland Ombudsman, *The Daintree River Ferry Report - A review of the Douglas Shire Council's tender process and related issues for the 2006 contract to operate the Daintree River Ferry*, December 2006.

information a lot faster and it means it is less work for our officers and for departmental officers in responding to our inquiries.<sup>52</sup>

- 4.55 The MOU allows the Office of the Ombudsman to access online documents that it would otherwise have accessed less efficiently in hard copy. As prisoner complaints are a large source of complaints to the Office of the Ombudsman, this development is a positive example of cooperation between the Office and an agency to facilitate inquiries and investigation by the Ombudsman. The committee notes that this MOU is possible as section 45(1) of the *Ombudsman Act* provides that agencies are not obliged to maintain secrecy or other restrictions on the disclosure of information relevant to a preliminary inquiry or investigation by the Ombudsman. While section 45(1) overrides the administrative privacy regime in operation in Queensland, the committee intends to discuss this matter further with the Ombudsman at its next meeting.

### Strategic and Operational Issues – Regional Visits Program

**Recommendation 13:** Regional visits should continue to be embraced as an important forum for rural and regional communities and an opportunity to keep the communities informed about the Ombudsman's Office and its role and functions.

**Recommendation 16:** Good decisions training as a primary strategic focus of visits should continue to be integral to any visit program.

- 4.56 In a public submission, the Chairperson of the Crime and Misconduct Commission advised the committee that:

*The CMC also conducts regional visits and sees that these play an important role in communicating with rural and regional communities and agencies. The CMC sees significant benefits to communities and agencies accruing through the Ombudsman's office and CMC working cooperatively in conducting regional visits wherever practicable. Constructive discussions have already taken place with the Ombudsman to advance the matter.*

*The CMC supports the recommendation.*<sup>53</sup>

- 4.57 The committee of the 51<sup>st</sup> Parliament was advised by the Ombudsman that reasons for an apparent over-proportion of complaints to the Ombudsman being received from regional and rural Queensland included good public awareness of the Office's regional program.<sup>54</sup> That committee also reported to the Parliament on increased public awareness of the functions of the Ombudsman and improved accessibility of Ombudsman services to all Queenslanders, particularly those in regional and rural areas and from non-English speaking backgrounds.
- 4.58 The committee is of the view that Good Decisions Training for decision-makers in regional areas would bring genuine benefits. It would assist state and local government agencies in those areas, many of which have relatively small numbers of staff required to take a range of decisions, to improve the quality of decision-making and administrative practices. Accordingly, the committee is pleased to note the high uptake of the Good Decisions Training program by regional agencies and local councils.
- 4.59 Similarly, the committee welcomes the analysis of complaints data by the Office of the Ombudsman to indicate regions which are proportionately over or under-represented. This information allows the Office to better target its information campaigns and its regional visits. These steps are positive ways in which the Office can, on the one hand, inform itself about the need for awareness of the role of the Ombudsman in identifiable parts of Queensland and, on the other, about training or assistance that might be required by agencies.

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<sup>52</sup> *Meeting with the Ombudsman - Transcript of Proceedings*, 28 November 2006, p 3; see Appendix B. See also 2005-2006 Annual Report, p 47.

<sup>53</sup> Submission 2, p 1.

<sup>54</sup> LCARC Report 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*, p 3.

- 4.60 In a related way, the committee was interested to discuss with the Ombudsman and staff of the Office analysis of complaints to identify specific problems shared by local governments. These statistics would have the capacity to inform and, where necessary, initiate legislative and policy reform.

### Strategic and Operational Issues – Demand Management

**Recommendation 17:** Efforts should continue to be made to improve decision making within agencies through programs such as the good decisions training program.

**Recommendation 19:** Given the benefit to agencies, good decisions training should be conducted by the Ombudsman on a cost recovery basis. Good decisions training should be an integral part of any regional visits program.

**Recommendation 20:** If required, additional funding should be sought from Treasury to ensure that adequate training is provided to staff of the Ombudsman's Office to conduct good decisions training and to engage specialist resources to assist with development and delivery of the program.

**Recommendation 21:** A directive should be issued under the *Public Service Act 1996* requiring departments and agencies to develop and implement, by a specified date, a complaints management system that complies with the relevant Standards.

- 4.61 Reports to Parliament by the committee of the 51<sup>st</sup> Parliament noted assistance provided to agencies to improve the quality of decision-making and administrative practices, particularly through the Good Decisions Training Program and the Complaints Management Project. In report no 53, the committee suggested it was likely that those activities might be contributing to reductions in the number of complaints received by the Office.<sup>55</sup> However, the committee noted in report no 49 and report no 53 that, in the absence of additional budgetary resources, the limited level of cost-recovery which could be sought from agencies for the provision of such training and assistance might impact upon the ability of the Ombudsman to meet other statutory functions. The committee indicated it would consider this matter in its (then forthcoming) review of the strategic review report.

- 4.62 In his comments to the strategic review report, provided under section 85 of the *Ombudsman Act*, the Ombudsman stated:

*One of the Office's biggest challenges since the last review has been to identify resources to re-allocate activities designed to help agencies improve their administrative practices without adversely affecting our investigations' outputs. This administrative improvement role is one the Office has statutorily acquired since the last review. Most of these resources have necessarily been drawn from the investigations' area.*

*The reviewer, in commenting on the Office's increased commitment to administrative improvement initiatives, makes the observation that:*

There is a limit to how much the Office can accept the reallocation without impacting seriously on the core investigative functions.

*I agree. I therefore welcome several recommendations made by the reviewer that submissions be made to Treasury for additional funding for administrative improvement initiatives highlighting, among other things, 'the benefits that may flow to the budget as a whole from the initiatives'. (I understand that the reference to 'budget' means the total State budget.) Additional funding, specifically for pursuing these initiatives, should reduce the drain on investigative resources and help address workload issues for investigators.<sup>56</sup>*

- 4.63 Further, the Ombudsman observed:

*Some recommendations have significant implications for the structure of the Office, particularly the recommendations to change the structure to better reflect the investigative role on the one hand and the*

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<sup>55</sup> LCARC Report 53: *Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner on 23 May 2006*, p 10.

<sup>56</sup> Strategic review report, p 126.

*administrative improvement role on the other. I believe these recommendations are timely having regard to the Office's increasing commitment of resources to its administrative improvement role.*<sup>57</sup>

- 4.64 In a public submission, the Gold Coast City Council made the following statements regarding the recommendations about demand management:

*Firstly, any strategy proposed to be adopted by the Ombudsman's Office that has the primary objective of delivering improved decision-making at the agency internal review stage is supported.*

*Secondly, and acknowledging the role that agencies can play in minimising demand on the Office, I am of the view that special attention should be given in its Charter to the provision of sufficient resources to ensure that the Good Decision Making training course can be effectively delivered to all agencies on a regular not-for-profit basis.*<sup>58</sup>

- 4.65 As the Ombudsman has stated, since the 2000 strategic management review of the Office of the Ombudsman, the *Ombudsman Act* was enacted to replace the *Parliamentary Commissioner Act 1974* (Qld) and the new Act provided the Ombudsman with a role in assisting agencies to improve their administrative practices and procedures.<sup>59</sup> Accordingly, the introduction of this function has required a corresponding commitment of resources.

- 4.66 On 2 November, the committee met with the Under Treasurer and then the Ombudsman to discuss a proposed Mid Year Review budget submission by the Ombudsman.<sup>60</sup>

- 4.67 In relation to recommendation 21, in a submission dated 7 June 2006, the Chairperson of the Crime and Misconduct Commission said:

*The CMC strongly supports this recommendation and understands that a draft directive has already been promulgated by the Public Service Commissioner. It is essential that any complaints management system acknowledges the specific obligations associated with reporting and dealing with official misconduct as set out in the Crime and Misconduct Act 2001.*<sup>61</sup>

- 4.68 In report no 53, tabled on 14 June 2006, the committee of the 51<sup>st</sup> Parliament stated that it supported the proposed directive of the Public Service Commissioner. It said such a directive was consistent with the representations of the Ombudsman and a recommendation of the reviewer,<sup>62</sup> and legislative amendments requiring local governments in Queensland to implement complaints management processes by 1 March 2006.

- 4.69 On 10 November 2006, a directive in line with recommendation 21 of the strategic review report was issued by the Public Service Commissioner and was gazetted. The directive can be accessed at: [www.opsc.qld.gov.au/directives/Dir\\_13-06\\_ComplaintsManagementSystems.pdf](http://www.opsc.qld.gov.au/directives/Dir_13-06_ComplaintsManagementSystems.pdf)

- 4.70 Agencies will have 12 months to comply with the directive. The Office of the Ombudsman will assist agencies to comply with the Public Service Commissioners' directive within that time:

*To assist officers to assess the compliance with the directive and with the new Australian standards on complaint handling, we are currently updating our complaints management resources. These include effective complaints management fact sheets, a self-audit checklist and a guide to developing effective complaints management policies and procedures. These updated resources will be posted on our web site in December. Our web site also currently features a link to the new directive ... via the OPSC's website.*<sup>63</sup>

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<sup>57</sup> Strategic review report, p 125.

<sup>58</sup> Submission 6, p 1.

<sup>59</sup> *Ombudsman Act*, s 12.

<sup>60</sup> See paragraphs 3.3 to 3.4.

<sup>61</sup> Submission 2, p 2.

<sup>62</sup> LCARC Report 53: *Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner on 23 May 2006*, p10

<sup>63</sup> *Meeting with the Ombudsman - Transcript of Proceedings*, 28 November 2006, p 2: see Appendix B.

4.71 Further, the Ombudsman advised the committee that:

*... at the end of the 12 months we will actually be following up with agencies as to whether or not they have complied with the directive, rather than the Public Service Commissioner, and that is by arrangement between our organisations. Also further down the track we can then audit the complaints systems of particular agencies when we think there is a good cause to do so. That also is consistent with one of the recommendations of Mr Smerdon.<sup>64</sup>*

### Strategic and Operational Issues – Timeliness

**Recommendation 23:** (a) Every effort should continue to be made to improve timeliness particularly with day to day dealings with all stakeholders, consistent with the aspirations expressed in the Strategic Plan for 'Our Service Standards'.

(b) Improved processes need to be put in place to ensure that files are not left idle during absences of the assigned officer.

4.72 In his comments to the strategic review report, provided under section 85 of the *Ombudsman Act*, the Ombudsman observed that this recommendation will have resource implications for the Office's investigations program.<sup>65</sup> On 2 November 2006, the committee met with the Under Treasurer and then the Ombudsman to discuss a proposed Mid Year Review budget submission by the Ombudsman.<sup>66</sup>

4.73 In a submission to the committee, Mr A Hadaway, raised the following concerns:

*Why were the numbers of complaints 'not accepted under their discretionary rights' not included in this report because they have distorted the time frames percentages in table 2 or table 1 if included under these categories or the report is incomplete and so incorrect.*

*How can complaints 'not accepted' be categorised as 'received and finalised'?<sup>67</sup>*

4.74 The committee notes that, in the 2005-2006 financial year, the Office of the Ombudsman changed the way in which it recorded statistics about new complaints. While the altered reporting system allows the Ombudsman to report on the full spectrum of ways in which assistance is provided to members of the public who contact the Office, the changes have also addressed the issues raised by Mr Hadaway. The Annual Report will now detail the most frequently provided advice for declining a complaint.<sup>68</sup> As the Ombudsman explains in the 2005-2006 Annual Report:

*Our Office is committed to providing timely and appropriate responses to members of the public who contact us for assistance. However, in a significant proportion of cases, we are not the appropriate agency to respond to the complaint.<sup>69</sup>*

*We may decline to investigate a complaint for a number of reasons. Our jurisdiction is limited to investigating complaints about the administrative decisions and actions of State and local government agencies and other public bodies such as universities. We cannot investigate many of the complaints we receive because they are out of our jurisdiction... When declining these matters, we try to refer the complainant to other available avenues of review or appeal.<sup>70</sup>*

*We made changes to Catalyst to record these 'out of jurisdiction' matters as 'referrals' (see p12). We also recognised that in some cases, a caller may be seeking information or assistance without expressing a complaint*

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<sup>64</sup> Meeting with the Ombudsman - Transcript of Proceedings, 28 November 2006, p 2: see Appendix B.

<sup>65</sup> Strategic review report, p 125.

<sup>66</sup> See paragraphs 3.3 to 3.4.

<sup>67</sup> Submission 5, p 1.

<sup>68</sup> 2005-2006 Annual Report, p 14.

<sup>69</sup> 2005-2006 Annual Report, p11.

<sup>70</sup> 2005-2006 Annual Report, p13.

or concern about an administrative action or decision of an agency. We consequently changed our procedures and Catalyst to record these types of calls as 'inquiries'.<sup>71</sup>

4.75 The committee notes that the 2005-2006 Annual Report of the Ombudsman indicates that, for the period 1 July 2005 to 31 June 2006, compared to the same period in 2004-05 the number of complaints:

- finalised, decreased by 8.2%;
- received, decreased by 7.6%; and
- under consideration, decreased by 4.8%.<sup>72</sup>

4.76 The number of complaints older than 12 months decreased by 5% (to about 12% of complaints).

4.77 At the meeting on 28 November 2006, the Ombudsman provided an update on the performance of the Office and, in particular, on improvements regarding performance targets relating to timeliness:

*... since 1 July the system now allows us to report on the average number of days taken by the various units within the organisation to finalise cases. For our assessment and resolution team, the average time taken to finalise cases has dropped from 12 days to nine days and the average time taken for the investigative teams to complete cases has dropped from 88 days to 59 days, which is quite a significant decrease. Also, in relation to the 2,294 complaints finalised since 1 July up to 31 October, 91.5 per cent were finalised in less than 60 days, which is an improvement of 4 ½ per cent on complaints finalised within 60 days last financial year, and 69 per cent of cases were finalised in the first 10 days of receipt compared with 66 ½ per cent of complaints in the previous financial year. Since 1 July the complaints have been received at about the same rate as the previous financial year.<sup>73</sup>*

4.78 In addition, the Ombudsman was asked by the committee about improved processes to ensure timely action regarding complaints. The Ombudsman informed the committee that:

*... as you can see in our annual report, there are less than 400 current complaints. I think 400 to 500 is about the right number of complaints to be open at any particular time within the organisation.*

*Our performance measure for the older complaints is 10 per cent more than 12-months-old. We want to get that down further but we have got it down, in raw numbers, to something like 30, 35, 37, which is the lowest it has ever been in the organisation for a long, long time. So I think we are getting on top of that backlog but it has certainly taken quite a struggle to do that.*

*We can monitor the progress of matters, which is the point I have made before. Our complaint management system is called Catalyst. With the enhancements we have recently made, which were implemented on 10 July, we are now able to better monitor the stages of the complaint and to report on whether officers meet time frames for those particular stages. That will help us in that way and we can see at a glance how many complaints are over a certain age. The team leaders are given those reports automatically every month or so.<sup>74</sup>*

4.79 In a letter to the Ombudsman dated 20 November 2006, the committee advised him that matters to be discussed at the committee's meeting with him on 28 November 2006 included 'the resolution of complex investigations and the length of time taken to resolve these - in this context, the committee will make reference to correspondence received regarding possible delay in the finalisation of a complex complaint'.

4.80 At the meeting on 28 November 2006, the committee asked the Ombudsman about possible systemic issues in the timely resolution of complex complaints. The Ombudsman advised the committee that:

*... in some cases we advise complainants that we are not going to reinvestigate the original matter which the agency has looked into but that we will look at the agency's processes. So that becomes more akin to an own-motion, systems-type investigation. In those cases, because they are own-motion investigations, we conduct them*

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<sup>71</sup> 2005-2006 Annual Report, p11.

<sup>72</sup> The number of open complaints is the lowest it has been at 30 June since 1984: 2005-2006 Annual Report, p 12.

<sup>73</sup> Meeting with the Ombudsman - Transcript of Proceedings, 28 November 2006, p 3: see Appendix B.

<sup>74</sup> Meeting with the Ombudsman - Transcript of Proceedings, 28 November 2006, p 10: see Appendix B.



when we have the resources to do them basically. So we do not see them as being subject to the same requirements in terms of timeliness.<sup>75</sup>

- 4.81 The committee then asked the Ombudsman whether, in those circumstances, the complainant was advised in a clear way that the original agency decision would not be reinvestigated, a systemic investigation would be undertaken, and that the systemic investigation might take some time. The Ombudsman confirmed that this was the case.
- 4.82 While the committee notes that own-motion and systemic investigations require more resources and time than investigations of agency decisions, we note also that strategic review recommendations 7 to 9 relate to the role of own-motion investigations. In particular, recommendation 9 proposes that such investigations be the subject of tight timelines and, other than in exceptional circumstances, should be completed within six months of commencement. Implementation of recommendation 9 is discussed further in paragraphs 4.47 to 4.53.
- 4.83 Finally, the committee notes that the strategic review report refers to concerns of Ombudsmen in other jurisdictions regarding the costs of investigating 'small complaints that have no systemic or similar issues and which take up valuable investigative resources that might provide greater good to the community if utilised in other areas'. The report suggests that 'The Ombudsman needs to consider the issues and monitor developments in other jurisdictions.'<sup>76</sup> The committee will monitor these matters also.

### Strategic and Operational Issues – Audit of Complaint Management Systems

**Recommendation 26:** In the meantime, the Ombudsman should use his own-motion investigative powers to undertake, when circumstances are appropriate, evaluations of the complaint management processes and procedures within an agency.

**Recommendation 27:** The Ombudsman should continue to discuss with the Auditor-General, ways by which the Auditor-General and his department might play a role in evaluating the complaint management systems within agencies.

- 4.84 In a submission, the Auditor-General of Queensland made the following comments regarding recommendation 27:
- While I believe that my mandate extends to conducting this type of audit, currently the Queensland Audit Office's resources are necessarily committed to carrying out the annual financial and compliance audit program required by legislation and to developing the performance management systems audit program as recommended by the Report of the Strategic Review for the Queensland Audit Office (4 October 2004). I do not believe at this time the Queensland Audit Office would be able to accept any additional audit responsibilities which are not part of the QAO's principal activities. However, I am willing to continue discussions on action which can be taken either jointly or independently to support this activity. In particular, QAO can assist the Ombudsman by sharing our experiences so that the Ombudsman's audit program may be organised and executed by staff of the Ombudsman's Office who already have particular expertise in this area.<sup>77</sup>*
- 4.85 The committee notes this submission from the Auditor-General. At its meeting with the Ombudsman on 28 November 2006, the Ombudsman advised the committee that he would:
- provide assistance to agencies to comply with the complaints management directive issued by the Public Service Commissioner; and
  - from late 2007, audit agency compliance with the directive.

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<sup>75</sup> Meeting with the Ombudsman - Transcript of Proceedings, 28 November 2006, p 7: see Appendix B.

<sup>76</sup> Strategic review report, p 10.

<sup>77</sup> Submission 9, p 1.

## Strategic and Operational Issues – Survey of Persons Referred to Agencies; Strategic and Operational Issues – Complainant Surveys

**Recommendation 30:** The Ombudsman should instigate a follow up process with agencies in appropriate circumstances. The follow up could involve simply a phone call to determine whether the agency and the complainant are pursuing the issue. However the Office needs to be mindful of the risks of being seen as an advocate for the complainant rather than a facilitator.

**Recommendation 33:** The Strategic and Operational Plans for the Office should continue to address the areas for improvement identified in the Complainant Satisfaction Research Report.

**Recommendation 34:** Appropriate mechanisms to receive more regular feedback from complainants whose complaints involve some form of investigation by the Office rather than referral back to an agency should be investigated as a matter of priority.

4.86 In his comments to the strategic review report, provided under section 85 of the *Ombudsman Act*, the Ombudsman observed that recommendation 30 would have resource implications for the Office's investigations program.<sup>78</sup> On 2 November, the committee met with the Under Treasurer and then the Ombudsman to discuss a proposed Mid Year Review budget submission by the Ombudsman.<sup>79</sup>

4.87 In a submission, Mr Guy Rauchle indicated the importance a complainant places on his/her complaint receiving an effective response:

*There must accountability in government. Those bodies set up to ensure accountability cannot be exempt from the processes they oversee.*<sup>80</sup>

4.88 The 2005-2006 Annual Report of the Office of the Ombudsman indicates an intention to conduct biannual Complainant Satisfaction Surveys:

*We are currently preparing to undertake a Complainant Satisfaction Survey. This survey first took place in 1998 with a view to providing our Office with information on our customer service levels and how we could improve them. Since then, we have relied on the survey findings to help us improve our services to complainants.*

*The 2006-2007 survey will seek to measure complainant satisfaction to enable comparisons to be undertaken with previous surveys and will henceforth be undertaken biannually to address the recommendation for continuous surveying contained in the report of the recent Strategic Review of the Office.*<sup>81</sup>

4.89 The committee looks forward to discussing with the Ombudsman the results of the Complainant Satisfaction Surveys and the measures put in place to facilitate response by the Office of the Ombudsman to the feedback received.

## Organisational and Administrative Issues – Benchmarking

**Recommendation 36:** The capability of Catalyst to produce appropriate performance data to assist the Office in measuring its performance against stated objectives should continue to be developed.

4.90 In relation to recommendation 36, the committee is pleased to report that, at the meeting with the Ombudsman on 28 November 2006, the Ombudsman said:

*On 10 July we implemented improvements to our complaints management system to help us better manage complaints. Again, that is in accordance with recommendation 36 of the strategic review, which is that we continue to develop the capability of the system to measure performance. The changes we have made to the system mean*

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<sup>78</sup> Strategic review report, p 125.

<sup>79</sup> See paragraphs 3.3 to 3.4.

<sup>80</sup> Submission 10, p 1.

<sup>81</sup> 2005-2006 Annual Report, p 30.

that the system automatically creates the next action which officers need to complete to process their cases. So that assists the case officers and also the team leaders to monitor progress on cases and report on performance on a team and officer level.<sup>82</sup>

### Organisational and Administrative Issues – Structure

**Recommendation 38:** In delivering the objectives for which the Office was established, the Office should adopt a flatter management structure more consistent with modern management practices.

**Recommendation 39:** The current 3 Deputy structure should be replaced by a single Deputy with responsibilities for the investigation teams. It will have a more strategic, whole of Office focus providing support to the leadership role of the Ombudsman.

4.91 On 28 November 2006, the Ombudsman advised the committee of the implementation of these recommendations:

*... we have recently appointed a single deputy to the Office... the position of the two current deputies will become redundant as from 8 December. I just want to mention the service of those deputies ... to acknowledge their great contributions to the Office over the years.*<sup>83</sup>

### Organisational and Administrative Issues – Workloads; Remuneration and Reward Structures; Staff Turnover and Recruitment

**Recommendation 44:** The Office should continue to monitor closely the workloads of individual officers, particularly in ART to ensure that officers are not carrying a disproportionate workload.

**Recommendation 45:** An evaluation of key positions within the Office should be undertaken in the light of potential changes to job descriptions and responsibilities following the review of delegations and other structures.

**Recommendation 47:** The current high level of staff departures should continue to be closely monitored to ensure that any potential systemic issues are quickly identified and dealt with.

4.92 At a number of meetings with the Ombudsman, the committee of the 51<sup>st</sup> Parliament discussed matters related to these recommendations. See, for example, report no 49 which reported on a committee discussion with the Ombudsman about reasons for high staff turnover and strategies being implemented to address the issue.<sup>84</sup>

4.93 In report 52, the committee stated that it believed that the investigation by the Ombudsman of administrative action by agencies had not, in the previous financial year, been unduly affected by staff retention issues. The committee said such investigations remained an important focus of the work of the Office of the Ombudsman, as did their timely resolution, particularly through informal means, where appropriate. Measures undertaken by the Ombudsman to address staff turnover in 2004-05 were noted. Staff losses, as outlined by the Ombudsman in his responses to the committee's questions on notice, indicated that the issue of staff retention was not as significant as when discussed with the Ombudsman at the biannual meeting on 24 May 2005.

4.94 Similarly, the reviewer advised the committee that rates of staff departures experienced by the Office were not unusual but '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.*<sup>85</sup>

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<sup>82</sup> Meeting with the Ombudsman - Transcript of Proceedings, 28 November 2006, p 3: see Appendix B.

<sup>83</sup> Meeting with the Ombudsman - Transcript of Proceedings, 28 November 2006, p 3: see Appendix B.

<sup>84</sup> LCARC Report 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, p 3.

<sup>85</sup> Meeting with the reviewer - Transcript of Proceedings, 28 November 2006, p 6: see Appendix C.

- 4.95 The committee notes that the 2005-2006 Annual Report of the Office of the Ombudsman identifies measures being implemented to address staff turnover and other human resource challenges being faced by the Office. These measures include:
- streamlining and improving business processes to ensure maintenance of high investigative standards and output targets; and
  - development of a succession plan to –
    - analyse trends in staff turnover and identify any systemic issues;
    - establish a staff coverage plan to prevent problems arising from absences of two weeks or more; and
    - develop strategies to address recruitment practices, training and development activities and other issues identified by staff surveys.<sup>86</sup>
- 4.96 These identified measures will assist the Ombudsman to monitor the level of staff departures and to identify potential systemic issues, as required by recommendation 47. The committee notes also, in the context of recommendation 44, the relevance of recommendation 36 which recommends the continued development of the capability of the Office's complaints management system to measure performance, including on a team and individual officer basis.

### Organisational and Administrative Issues – Accommodation

**Recommendation 60:** Options for relocation of the Office to more appropriate accommodation, preferably within the government precinct, with appropriate fit out strategies, should continue to be investigated.

- 4.97 On 7 March 2006, the committee of the 51<sup>st</sup> Parliament inspected the present accommodation of the Office of the Ombudsman. The committee of the 52<sup>nd</sup> Parliament will continue to monitor this matter.

### Communication Issues – Building Relationships

**Recommendation 61:** The Ombudsman should continue to investigate opportunities to improve communication with all stakeholders using all available mediums.

**Recommendation 62:** The Ombudsman should take more opportunities to raise the profile of the Office and promote its services with all stakeholders, including Directors-General and CEOs.

- 4.98 In relation to recommendation 61, in its reports to the Parliament following biannual meetings with the Ombudsman, the committee of the 51<sup>st</sup> Parliament made reference to strategies being implemented by the Ombudsman in this context; for example:
- initiatives aimed at informing people from non-English speaking backgrounds about the functions of the Office;<sup>87</sup> and
  - the launch of a redeveloped website on 1 December 2005 and a subsequent significant increase in usage of the redeveloped site.<sup>88</sup>
- 4.99 At the meeting on 28 November 2006, the committee discussed with the reviewer a related issue, namely, the suggestion that the Office of the Ombudsman can be 'a rather structured and somewhat bureaucratic organisation' that should be more flexible in its approach. This would extend to communication with stakeholders. In this context, the committee is pleased to note, for example that the 2005-2006 Annual Report of the Office of the Ombudsman states that it allows the Office 'to communicate [its] achievements and challenges to all interested parties', and further that:

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<sup>86</sup> 2005-2006 Annual Report, p 53.

<sup>87</sup> LCARC Report 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*, p 3.

<sup>88</sup> LCARC Report 53: *Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner on 23 May 2006*, pp 6 and 11.

*A major aim of this report is to fulfil the diverse information needs of our readers, and ensure that the outcomes of our activities are clearly communicated.*<sup>89</sup>

4.100 In relation to recommendation 62, the Ombudsman informed the committee at its meeting with him on 28 November 2006 of ways in which this recommendation was being implemented; for example, the Ombudsman has taken more opportunities to raise the profile of the Office and promote services with stakeholders, including the CEOs of agencies.<sup>90</sup>

4.101 The committee notes these developments.

### Communication Issues – Relationship with Agencies

**Recommendation 66:** The current format of the annual complaints report to agencies could be reviewed in consultation with agencies to address any concerns they might have.

4.102 The Ombudsman advised the committee of developments regarding recommendation 66:

*... we have been preparing 17 [reports analysing the complaints received about specific agencies] for the main complaint-generating agencies, seven for councils and 10 for state agencies. Recommendation 66 is relevant to these reports. It suggests that we review the current format of these reports in consultation with the agencies we provide the reports to in order to address any concerns that they have. We sent a short survey to agencies before we commenced preparing the current batch of reports and their responses were taken into account when we prepared the reports this time.*<sup>91</sup>

### Communication Issues – Relationship with the Crime and Misconduct Commission

**Recommendation 67:** The Office should consider entering into a Memorandum of Understanding with the Crime and Misconduct Commission to document the arrangements and protocols that characterise the relationship between the two agencies.

4.103 In a submission, the Chairperson of the Crime and Misconduct Commission stated that:

*A good working relationship exists between the Ombudsman's office and the CMC. Notwithstanding, the CMC has no objection to entering into a Memorandum of Understanding so that the current arrangements and protocols might be documented for the future.*<sup>92</sup>

4.104 The committee notes this submission and brings it to the attention of the Ombudsman.

### Davies Report

**Recommendation 69:** The Ombudsman should continue to monitor developments in regard to the Davies Report as they may affect the Office and should also keep funding agencies such as Treasury apprised of potential funding needs.

4.105 In report no 52, the committee of the 51<sup>st</sup> Parliament supported the proposal, discussed in the *Queensland Ombudsman Annual Report 2004-2005*, that the Ombudsman be given an oversight role in relation to public interest disclosures (PIDs) involving serious maladministration made under the *Whistleblowers Protection Act 1994* (Qld). That proposal was first raised in a submission of the Ombudsman to the Bundaberg Hospital Commission of Inquiry, a copy of which was subsequently provided to the Queensland Health Systems Review and the Queensland Public Hospitals Commission of Inquiry. The proposal would provide the Ombudsman with similar functions in relation to PIDs of serious maladministration as are conferred on the Crime and Misconduct Commission in relation to PIDs involving serious misconduct. In supporting the proposal, the committee discussed

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<sup>89</sup> 2005-2006 Annual Report, Contents page.

<sup>90</sup> *Meeting with the Ombudsman - Transcript of Proceedings*, 28 November 2006, p 2: see Appendix B.

<sup>91</sup> *Meeting with the Ombudsman - Transcript of Proceedings*, 28 November 2006, p 2: see Appendix B.

<sup>92</sup> Submission 2, p 2.

with the Ombudsman at a meeting on 29 November 2005 the need, should the proposal be adopted, for appropriate additional budgetary allocation to the Office of the Ombudsman.<sup>93</sup>

- 4.106 Subsequent to that meeting with the Ombudsman, the Hon Geoffrey Davies AO handed down a report, *Queensland Public Hospitals Commission of Inquiry*.<sup>94</sup> Paragraph 6.150 of that report recommended a central oversight role by the Ombudsman of PIDs involving serious maladministration along the line proposed by the Ombudsman.
- 4.107 On 14 December 2005, the committee wrote to the Premier conveying its support for the proposal, as recommended by the Hon G Davies.
- 4.108 Similarly, report no 71 of the Parliamentary Crime and Misconduct Committee supported recommendations made by the Ombudsman and by Commissioner Davies and made a number of recommendations in this regard.<sup>95</sup>
- 4.109 In October 2006, the Office of the Public Service Commissioner (OPSC) issued *Review of the Whistleblowers Protection Act*.<sup>96</sup> The report recommended that the *Whistleblowers Protection Act* be amended to allow public interest disclosures to be made to members of the Legislative Assembly. Subsequently, the Whistleblowers (Disclosure to Member of Parliament) Amendment Bill 2006 was introduced to the Legislative Assembly on 31 October 2006 by the Premier and Minister for Trade. On the same day, a private member's bill, the Whistleblowers Protection Amendment Bill 2006, was introduced by the Leader of The Nationals, Leader of the Opposition and Leader of the Queensland Coalition and Shadow Minister for Trade.
- 4.110 The OPSC report did not recommend a role for the Ombudsman in relation to public interest disclosures in line with the earlier recommendations of Commissioner Davies and the Parliamentary Crime and Misconduct Committee. The report did recommend, however, the establishment of an interagency reference group convened by the OPSC and comprising the Crime and Misconduct Commission and the Ombudsman's Office. It also recommended that the Ombudsman's Office continue to provide research support, training and practical assistance to agencies in the management and investigation of public interest disclosures as a subset of their work in improving the general complaints handling capacity of agencies.
- 4.111 The committee will continue to monitor and discuss with the Ombudsman any potential resource implications for the Office of the Ombudsman resulting from the recommendations in the OPSC report.

### Legislative Issues

**Recommendation 70:** A review of the *Ombudsman Act 2001* in accordance with the proposals outlined in the Ombudsman's letter to the reviewer of 8 February 2006 should be undertaken and progressed through normal channels. The review also should incorporate appropriate changes to the legislation to facilitate Ombudsman staff becoming public servants, with an appropriate recognition of operational independence.

- 4.112 The key legislative changes proposed by the Ombudsman, and supported by recommendation 70, relate to:
- the Ombudsman's capability to undertake administrative audits;
  - enabling an agency to issue an apology without fear of an express or implied admission of guilt; and
  - removal of the requirement that the Ombudsman give written reasons in all cases for non-investigation.

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<sup>93</sup> LCARC Report 53: *Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner on 23 May 2006*, p 8.

<sup>94</sup> Hon Geoffrey Davies AO, *Queensland Public Hospitals Commission of Inquiry*, 30 November 2005, available at: [www.qphci.qld.gov.au/final\\_report/Final\\_Report.pdf](http://www.qphci.qld.gov.au/final_report/Final_Report.pdf)

<sup>95</sup> Parliamentary Crime and Misconduct Committee Report 71, *Three Year Review of the Crime and Misconduct Commission*, Recommendations 22 to 26, p 96.

<sup>96</sup> Available at: <http://www.opsc.qld.gov.au/pubs/Whistleblowers%20review.pdf>

4.113 The reviewer observed that:

*The Act has not been reviewed since 2001 and is in need of some attention. The Ombudsman should be encouraged to undertake this process as part of the normal functions of his Office.*<sup>97</sup>

4.114 The committee notes this recommendation and that the committee of the 49<sup>th</sup> Parliament undertook a role in the drafting of the *Ombudsman Act*.

#### CONCLUSION

4.115 When meeting with the committee on 28 November 2006, the reviewer commended the Ombudsman for the progress made regarding the implementation of the recommendations in the strategic review report.<sup>98</sup> The committee endorses this view.

4.116 In the 2005-2006 Annual Report, the Ombudsman says of the role of the Office in implementing the recommendations:

*We are confident that over the next 12 months, the implementation of the report's recommendations will enhance our position in the Queensland Government's accountability framework and will assist us to more effectively achieve our dual objectives of investigating the administrative actions of agencies and improving the quality of their decision-making and administration practices.*<sup>99</sup>

4.117 In accordance with the functions conferred on the committee by the *Parliament of Queensland Act* and the *Ombudsman Act* and as noted above in paragraphs 4.29 to 4.114, the committee will continue to monitor the implementation of all strategic review report recommendations. This will include recommendations not specifically discussed in this report, such as recommendations 51 and 52 to 54 regarding gender and equity considerations.

4.118 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>97</sup> LCARC Report 53: *Meeting with the Queensland Ombudsman; Meeting with the Queensland Information Commissioner on 23 May 2006*, p 85.

<sup>98</sup> *Meeting with the reviewer - Transcript of Proceedings*, 28 November 2006, p 1: see Appendix C

<sup>99</sup> 2005-2006 Annual Report, p 51.

## 5. 2005-2006 ANNUAL REPORT

### BACKGROUND

- 5.1 The 2005-2006 Annual Report of the Ombudsman was tabled on 10 November 2006.
- 5.2 In 2001, to meet responsibilities conferred on the committee by the *Ombudsman Act*, the committee of the 50<sup>th</sup> Parliament established a process of continual, open dialogue with the Ombudsman. This 'biannual meeting process' was continued by the committee of the 51<sup>st</sup> Parliament and included:
- holding two general meetings with the Ombudsman each year;
  - timing these biannual meetings so that one preceded the estimates process and the other followed the tabling of the Ombudsman's annual report;
  - forwarding to the Ombudsman, prior to each meeting, written questions on notice relevant to the committee's responsibilities;
  - the Ombudsman providing written responses to those questions;
  - considering those written responses; and
  - meeting with the Ombudsman, and some senior officers of the Office of the Ombudsman, to further discuss the responses and ask additional questions without notice relevant to the committee's responsibilities; and
  - a report to the Legislative Assembly on the matters discussed with the Ombudsman, with the report including a transcript of the meeting with the Ombudsman.
- 5.3 The committee of the 52<sup>nd</sup> Parliament has considered the 2005-2006 Annual Report and discussed matters arising out of the report at a meeting with the Ombudsman on 28 November 2006.
- 5.4 Substantive matters given consideration by the committee are discussed in paragraphs 5.5 to 5.11.

### MATTERS DISCUSSED WITH THE OMBUDSMAN

- 5.5 At the meeting on 28 November 2006, topics discussed with the Ombudsman and staff of the Office relevant to the committee's examination of the 2005-2006 Annual Report included:
- the strategic development of the Office, particularly regarding the implementation of strategic review report recommendations;
  - improved capacity for timeliness in resolving complaints, including mechanisms to reduce days taken to finalise complaints and new reporting tools enabling better reporting;
  - Good Decisions Training delivered to agencies in 2005-2006, including positive feedback received from agencies;
  - staff retention rates in 2005-2006;
  - own-motion investigations and larger systemic investigations identified in the 2005-2006 Annual Report;
  - the development of training regarding complaints management; and
  - with reference to the large number of complaints regarding local governments resolved in favour of the complainant or through investigation or advice, whether common issues generate complaints across local governments, indicating needs for legislative and policy reforms.

### COMMITTEE COMMENTS

- 5.6 The meeting on 28 November 2006 was the first formal, transcribed meeting of the committee of the 52<sup>nd</sup> Parliament with the Ombudsman. As the *Ombudsman Act* confers the committee with significant functions, the



committee was pleased to have the opportunity to discuss the nature of the Ombudsman's functions under that Act and to discuss structural and operational aspects of the Office of the Ombudsman.

- 5.7 Where relevant, the 2005-2006 Annual Report of the Office of the Ombudsman refers to the implementation of recommendations made in the strategic review report. Accordingly, many matters discussed in the Annual Report are discussed in Chapter 4 of this report. The committee will not repeat those comments in this chapter.
- 5.8 The committee is pleased to note that the Office of the Ombudsman continues to improve the timely resolution of complaints. The 2005-2006 Annual Report provides the following statistics:
- 91.5% of complaints finalised within three months (2004-2005: 92.2%);
  - 98.2% of complaints finalised within 12 months (2004-2005: 98%);
  - number of complaints more than 12 months old falling slightly to 34 (2004-2005: 36);
  - 7,305 oral and written complaints finalised (2004-2005: 7,949); and
  - enhanced telephone intake so that where possible, complaints were responded to immediately.<sup>100</sup>
- 5.9 The 2005-2006 Annual Report stated a large number of complaints about local governments was resolved in favour of the complainant or through investigation or advice. The committee was interested to discuss with the Ombudsman whether these complaints related to common issues across a number of local governments. In particular, the committee noted that such data would be useful in the context of legislative and policy reforms. Accordingly, the committee was pleased to be advised that the Ombudsman had made a submission to a review being conducted of the *Integrated Planning Act 1997* (Qld).
- 5.10 The committee welcomes the use of the 2005-2006 Annual Report as a communication tool. The report states:
- A major aim of this report is to fulfil the diverse information needs of our readers, and ensure that the outcomes of our activities are clearly communicated.*<sup>101</sup>
- 5.11 Finally, the committee commends the Ombudsman and staff of the Office of the Ombudsman on their significant achievements in 2005-2006 as demonstrated in the Annual Report.

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<sup>100</sup> 2005-2006 Annual Report, p 10.

<sup>101</sup> 2005-2006 Annual Report, Contents page.

# APPENDIX A

## Terms of Reference

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2005 STRATEGIC REVIEW OF  
THE OFFICE OF THE QUEENSLAND OMBUDSMAN

**TERMS OF REFERENCE**

**CONTEXT**

Section 83 of the *Ombudsman's Act 2001* (the Act) requires a strategic review of the Ombudsman (the Office) 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.

During debate on the Ombudsman Bill 2001 in November 2001, the Premier suggested that the Committee meet with the Ombudsman every year to examine the effectiveness of the Office and subsequently report to Parliament. Under section 89 of the Ombudsman Act, the Committee's functions are stated to include monitoring and reviewing the performance of the Ombudsman of the Ombudsman's functions under the Act. Accordingly, the Committee has met with the Ombudsman twice each year since April 2002 and has tabled reports on each meeting.

The Committee has 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 Ombudsman 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 the 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 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 Ombudsman and the Office of the Ombudsman in order to assess whether those functions are being performed economically, effectively and efficiently, as set out in section 83(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 modern decision making frameworks and 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 on the 2000 strategic management review (Report No. 30), and the Committee's reports concerning its biannual meetings with the Ombudsman (Reports No. 34, 37, 38, 43, 44 and 47).

Particular reference is to be given to:

- (a) current and alternative complaint handling methodologies and processes, including case management, demand management and early intervention strategies;
- (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, including the organisational structure and/or skill profile of the Office and whether it is adequate for the Office to effectively discharge its functions, and whether the Ombudsman ceasing to hold the office of Information Commissioner has had any impact on the operations of the Office;
- (d) the impact upon the operations of the Office of the *Ombudsman Act 2001* which commenced on 13 November 2001, and whether any amendments to that Act are necessary or desirable to enhance operational effectiveness;
- (e) the effectiveness of existing processes and methodologies in fulfilling the legislative mandate of the Office, having regard to the contemporary accountability requirements of Queensland's government agencies and local governments;
- (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 standard and quality of service provided by the Office to agencies, Ministers of the Crown, complainants and other participants;
- (h) 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
- (i) 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 85 of the *Ombudsman Act 2001*.

## **REPORTING**

The reviewer is to prepare a written progress report at the end of the first and second months and is to provide a copy of each progress report to the Attorney-General and the Ombudsman. The Attorney-General will determine the matters the reviewer is to address in the progress reports.

As required under section 85 of the Act, the reviewer will provide a copy of the proposed report to the Attorney-General and the Ombudsman prior to finalising the report. The Ombudsman 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 85(3) of the Act.

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

## **Attachment B**

### **List of Agencies and Others Interviewed**

Crime and Misconduct Commission  
Department of Child Safety  
Department of Corrective Services  
Department of Education  
Department of Communities  
Department of Industrial Relations  
Department of Justice and Attorney-General  
Department of the Premier and Cabinet  
Legal, Constitutional and Administrative Review Committee  
Local Government Association  
Office of Public Service Merit and Equity  
Queensland Audit Office  
Queensland Police Service  
Transport Department  
Treasury Department  
WorkCover Qld

**Interstate and Overseas:**

New South Wales Ombudsman  
Victorian Ombudsman  
President , Victorian Civil and Administrative Tribunal  
New Zealand Ombudsman

In each case the department or agency was represented by the Director-General, Acting Director-General, Chief Executive as well as senior supporting staff.

# **APPENDIX B**

**Transcript of meeting with the Ombudsman**

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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 OMBUDSMAN**

### **TRANSCRIPT OF PROCEEDINGS**

**TUESDAY, 28 NOVEMBER 2006**

**Brisbane**

## TUESDAY, 28 NOVEMBER 2006

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Committee met at 3.38 pm.

**BEVAN, Mr David, Queensland Ombudsman, Office of the Queensland Ombudsman**

**CANTWELL, Mr Peter, Assistant Ombudsman, Administrative Improvement Unit, Office of the Queensland Ombudsman**

**GORDON, Mr Shaun, Manager, Corporate Services Unit, Office of the Queensland Ombudsman**

**YUKSEL, Ms Adeline, Manager, Communication and Research Unit, Office of the Queensland Ombudsman**

**CHAIR:** Welcome, David and your staff. Thank you for being with us. You have all been provided with a copy of instructions to committees regarding witnesses. The committee will be following these instructions during the meeting. The meeting will be recorded by Hansard. Mr David Bevan, would you like to make an opening statement?

**Mr Bevan:** I would like to introduce my staff and where they fit into the organisation. Peter Cantwell is the Assistant Ombudsman of the Administrative Improvement Unit, which was formally the Major Projects Unit until the strategic review which recommended the change of title and function. Adeline Yuksel is the Manager of our Communications and Research Unit and Shaun Gordon is the Manager of our Corporate Services Unit.

The strategic review was obviously a very significant event for the office last financial year. It is going to guide our strategic direction for the next few years, and we are currently finalising an implementation plan, although some of the recommendations have already been implemented. For example, we have made a submission to the CBRC for funding, as recommended by Mr Smerdon. We have merged the Ombudsman management group and the senior officers group and amended the Ombudsman management group charter to reflect its role in budget development and monitoring, which was recommendation 55 of the review. As I have said, the Administrative Improvement Unit is the new name of the Major Projects Unit, as recommended by Mr Smerdon, and that unit reports directly to me in recognition of the significance of the issues which are dealt with by that unit.

The review coincided with the first year of our delivery of our Good Decisions Training Program, which marked a new direction for the office in being more proactive in addressing maladministration. The review has strongly supported our training role, and recommendation 17 is that efforts continue to be made to improve decision making within agencies through programs such as that Good Decisions Training Program.

Last financial year we delivered 60 sessions to about 1,200 public servants, including local government officers from 14 state government agencies and 23 local councils, and 52 of those 60 sessions were conducted outside of Brisbane. This year we have already conducted 38 sessions, and we will reach our target of 40 before Christmas. Sixteen state agencies and 12 local governments have participated, and we also have a substantial number of expressions of interest for the next calendar year. In accordance with recommendation 16 we are continuing to make that training a primary focus of our visits program, so since 1 July training has been conducted at Rockhampton, Townsville, Cairns, Toowoomba and Maroochydore.

The feedback on the training has been extremely positive. Peter provides a lot of that training. He has conducted quite a few of the sessions both last financial year and this financial year. At the end of the sessions a small feedback form is filled out by the participants. I will ask Peter to give you some feedback on what people are saying about the program.

**Mr Cantwell:** This is the survey that we conducted of the 1,200 officers who have attended. I am pleased to say that most of the feedback percentages are in the mid to high nineties. In response to the question that the course clearly outlines the Queensland Ombudsman's role, 99.4 per cent of participants agreed that that was the case; 98.2 per cent agreed that the course clearly defined the concepts of administrative action and maladministration; 96.7 per cent agreed that the information presented to them would help them make sound decisions in their daily work; 96 per cent agreed that the examples and the workshop scenario that we gave them were helpful and relevant to their work; 99.1 per cent agreed that the presenter's skill and knowledge were excellent; and 96.9 per cent importantly would recommend that the training be provided to other officers.

**Mr Bevan:** The key statistic there is the high percentage of people who thought that it would assist them with their daily decision making, which of course is what the training is all about. As you know, I have sought extra funding to deliver that program. While I am satisfied that we have developed a quality product, the benefit to an agency and to the government as a whole really depends on the number of officers in a particular agency who can attend the training. We also need to ensure that sufficient of our officers are adequately trained to present the training. We have lost a couple in recent times to the new Health Quality and Complaints Commission—two of our presenters—so we need to train up more people.

We are also seeking funding to develop training sessions on good complaints handling, which is at the request of some of the agencies we have provided the other training to. The first draft of that training program, which is based on material we have developed, has been prepared by an academic from one of the universities with Peter's assistance, and Peter is currently evaluating the draft program, which has been provided. We intend to start delivering that training before the end of June next year.

Recommendations 22, 25 and 26 are relevant to our role in promoting good complaint handling within agencies, and an important development has occurred in relation to our complaints management project. In my report to parliament on phase 1 of the project last December, I recommended that the Public Service Commissioner issue a directive requiring agencies under the Public Service Act to put in place complaint handling systems which meet certain best practice standards for complaint handling. The previous committee took an interest in that very issue, as did Mr Smerdon, who not only endorsed it but restated it in recommendation 21. I am pleased to be able to report that the Public Service Commissioner recently issued that directive—it is No. 13 of 2006—and that appeared in the *Government Gazette* on 10 November.

Under the directive, agencies have 12 months to develop systems that comply with its terms. I will ask Adeline to brief the committee on what we will be doing to help agencies comply. I also have copies of that directive for the committee, if you have not seen it.

**Ms Yuksel:** To assist officers to assess the compliance with the directive and with the new Australian standards on complaint handling, we are currently updating our complaints management resources. These include effective complaints management fact sheets, a self-audit checklist and a guide to developing effective complaints management policies and procedures. These updated resources will be posted on our web site in December. Our web site also currently features a link to the new directive, which you have in front of you, via the OPSC's web site.

We have just been advised this week that the OPSC is currently drafting an email to all agencies advising them of the new requirements of the directive and any joint activities that both our officers will be engaging in in helping them to upgrade or develop their systems. One of these initiatives is the joint information session which we will hold in conjunction with the OPSC in early 2007, and the session will provide more information on the directive and what it means for agencies' complaints management systems. We will also provide tips on how to use our resources more effectively.

**Mr Bevan:** Thanks, Adeline. There was another point I was going to make in relation to that program—that is, at the end of the 12 months we will actually be following up with agencies as to whether or not they have complied with the directive rather than the Public Service Commissioner, and that is by arrangement between our organisations. Also further down the track we can then audit the complaints systems of particular agencies when we think there is a good cause to do so. That also is consistent with one of the recommendations of Mr Smerdon.

Our other ongoing administrative improvement activity in complaints analysis has been taking up a lot of our time in recent months and we have been preparing 17 of these reports for the main complaint-generating agencies, seven for councils and 10 for state agencies. Recommendation 66 is relevant to these reports. It suggests that we review the current format of those reports in consultation with the agencies we provide the reports to to address any concerns that they have. We sent a short survey to agencies before we commenced preparing the current batch of reports and their responses were taken into account when we prepared the reports this time. I have been taking the opportunity to present the reports not just to the heads of the agencies but to their senior management and senior executive group. By the end of December I will have presented 10 sessions to those groups. When presenting the reports I have also invited those present to tell us how we can make the reports more useful to them, and those presentations are being well received by the groups. Again, that is consistent with another recommendation, recommendation 62, which is that I take more opportunities to raise the profile of the office and promote services with stakeholders, including CEOs of agencies.

Recommendation 8 of the review is that the office establish more appropriate procedures to identify systemic and other issues worthy of investigation. These are the more resource intensive investigations which place extra pressure on other areas of the office which have to deal with the day-to-day complaints which come through. Consistent with this recommendation, we are currently undertaking four investigations of this kind. The EPA investigation, which is mentioned in our annual report at pages 23 and 24, is one such investigation. We have prepared a very comprehensive draft report on that investigation which is currently with the EPA for comment. That is in accordance with the requirement of the act where, if we are going to make a recommendation about it which could impact on an agency, we have to give them

the opportunity to comment on the investigation. That investigation is based on an extensive audit we undertook of the agency's operational cases in which we compared the action taken on those cases with the agency's policies and procedures and what we considered to be best practice for regulatory agencies.

The reports on the other three investigations of systemic issues are also currently being finalised and I intend to present the reports of those investigation to the Speaker for tabling in parliament in December. Two of these are mentioned in the annual report at pages 36 and 37. The first relates to our review of the Douglas Shire Council's tender process for the 2006 contract to operate the Daintree River ferry and the second to the Miriam Vale Shire Council's processing of applications for development approval under the Integrated Planning Act. Both of the complaints which gave rise to the investigations resulted in a lot of media attention and quite a bit of local concern, and that is why we are going to report on them to parliament. The Miriam Vale Shire Council investigation was conducted in a similar manner to the EPA investigation in that our approach was not to investigate individual complaints but to conduct an administrative audit of council files relating to the way they had processed development applications, and we have made recommendations based on our findings. The final investigation relates to the administrative practice of Queensland public sector agencies in the way in which they assist coronial inquiries and the way they respond to coronial recommendations, and that arose out of a previous complex investigation we conducted called the workplace electrocution project, where we noted that coronial recommendations were not being implemented by relevant agencies. Again, that is going to be the subject of a report to parliament.

On 10 July we implemented improvements to our complaints management system to help us better manage complaints. Again, that is in accordance with the recommendation 36 of the strategic review, which is that we continue to develop the capability of that system to measure performance. The changes we have made to the system mean that the system automatically creates the next action which officers need to complete to process their cases. So that assists the case officers and also the team leaders to monitor progress on cases and report on performance on a team and officer level.

Recommendation 23 is that we continue to improve time lines, particularly in our day-to-day dealings with agencies. Just to give you an update on our performance, since 1 July the system now allows us to report on the average number of days taken by the various units within the organisation to finalise cases. For our assessment and resolution team, the average time taken to finalise cases has dropped from 12 days to nine days and the average time taken for the investigative teams to complete cases has dropped from 88 days to 59 days, which is quite a significant decrease. Also, in relation to the 2,294 complaints finalised since 1 July up to 31 October, 91.5 per cent were finalised in less than 60 days, which is an improvement of 4½ per cent on complaints finalised within 60 days in the last financial year, and 69 per cent of cases were finalised in the first 10 days of receipt compared with 66½ per cent of complaints in the previous financial year. Since 1 July the complaints have been received at about the same rate as in the previous financial year.

Another matter which I wanted to update the committee on (which was really a recommendation of the previous review and something we have been pushing for since the previous review) is that we have online access to the Corrective Services computer system, and that has now happened. That is as a result of approaches I made to the DG when he was appointed last year. We now have online access to what is called the Integrated Offender Management System which has taken quite a while to implement because of some technical glitches. But we now have that access and it allows our officers to access prisoner records and also the department's policies and procedures which means we can get that information a lot faster and it means it is less work for our officers and for departmental officers in responding to our inquiries.

Finally, recommendations 38 and 39 were that the office adopt a flatter management structure based on a one-deputy model. Those recommendations have been implemented and we have recently appointed a single deputy to the office. The successful applicant is Mr Forbes-Smith, who is currently the chief inspector of Queensland Corrective Services. He will commence duty on 11 December. His appointment means that the position of the two current deputies will become redundant as from 8 December. I just want to mention the service of those deputies. Frank King joined the office in December 1977. He commenced as an investigating officer and, except for a short stint in another government agency, he has been in the office since that time and has occupied the deputy's position since 1991. The second deputy, Rod Metcalfe, has occupied that position since 1995 and before that he had a long career in local government. If I could just take the opportunity to acknowledge their great contributions to the office over the years.

**CHAIR:** Certainly.

**Mr Bevan:** They were all of the remarks that I wanted to make at this stage, but we are happy to respond to any questions from members of the committee.

**CHAIR:** I have no questions now! You have covered everything very comprehensively, but Tim or other members may have questions.

**Mr NICHOLLS:** Yes. Thanks, David, for that very comprehensive statement. I do not know if you were trying to answer all of the questions that you thought we might ask, but I am sure you have gone a long way to doing it.

**Mr Bevan:** It was a bit of a difficult one this, because usually we get the questions on notice. But here I was not sure to what extent you wanted me to talk about the strategic review and to what extent you wanted me to talk about the annual report. So I have tried to cover a bit of both in my opening remarks.

**CHAIR:** You did so, yes.

**Mr NICHOLLS:** I am going to comment on a couple of issues from the strategic review and some of the things I have noted on the way through. One is in relation to own-motion investigations. You gave us a little history of four investigations that you have undertaken. Were they own-motion investigations and do you see a role in increasing the number of own-motion investigations to address perhaps systemic issues, or are you satisfied that your current level is satisfactory?

**Mr Bevan:** Three of the four were own-motion investigations. The Miriam Vale Shire Council investigation came to us in various ways but it was not an own-motion investigation. Certainly the way in which we conducted the investigation was a departure from the way in which we conduct our investigations normally in that it was an administrative audit of the way in which the council had handled development applications.

The coronial riders project came out of the workplace electrocution project which we finalised on 30 June 2005. The Douglas Shire Council was an own-motion investigation which we initiated because of the concern which was expressed in the media and elsewhere. In terms of the one involving the Environmental Protection Agency, I point out that we had had complaints about the agency's investigative processes but this was much more wide ranging. In that sense we would regard it as an own-motion investigation.

As I mentioned, I think, one of the recommendations was that we do more of these types of investigations, but there is a complication in terms of the way in which we handle the run-of-the-mill investigations. We have to make sure that those investigations do not blow out. That is just a dilemma which we have to confront and deal with on a case-by-case basis.

Peter is in charge of the area where we usually conduct these systemic investigations, and our process has been to move officers into the unit for the duration of the particular investigation and then they go back to their teams. We rotate people through Peter's unit which gives them exposure to a different sort of work. Then they go back into their own team. Peter's unit has broadened its role in that it will also be responsible for those broader administrative improvement activities such as the complaints management project, which it has not had responsibility for up to this time but will have responsibility for in the future. Certainly the good decisions training, the complaints management training and also the complaints analysis will all be funnelled through that unit in the future.

**Mr NICHOLLS:** Has the reduction or seeming fall off in the number of complaints to the Ombudsman not released some more resources to carry out those sorts of own-motion investigations, or is it a matter of balancing the reallocation of those resources, or has it not freed up any resources? There seems to have been a drop-off in complaints or referrals?

**Mr Bevan:** There has been some. I think when I met the committee previously I did report on what a lot of that fall-off was. A lot of it was made up of matters outside of our jurisdiction anyhow. That would have not impacted upon investigation teams. But the way complaints are tracking this year so far they are at about the same level as they were for the last financial year. So we are not seeing any further drop-off at least at this stage. One thing we have started doing through Adeline's area is an analysis of regions to see how complaints are going in those regions and whether any particular region is proportionately under or over-represented. We found that Moreton region was under-represented so we mounted a strategy of advertising about our role in that region. I think Adeline actually has results on what happened in that region.

**Ms Yuxsel:** In about May this year we conducted an information campaign targeting the Moreton region because it was quite under-represented. As part of that campaign we undertook a direct mail-out of information packs to MPs, local councils, libraries, community centres. We developed community service announcements to be put on major radio stations like B105, Triple M and so on reaching about 780,000 people.

In the last two quarters since the campaign there has been an improvement in representation of about 5.65 per cent. This represents an under-representation of 3.25 per cent compared to 8.25 per cent in the region. We are seeing some small results but hopefully we will continue to track and target specific areas that we can identify as under-represented areas.

**Ms DARLING:** So you are trying to increase the complaints?

**Ms Yuxsel:** We are trying to increase the awareness of the role so that people are more likely to approach the office.

**Mr Bevan:** It is the same with regional areas too. If we find that a particular area is under-represented then we would put similar strategies in place in that region. It is only where they are significantly under-represented.

**CHAIR:** It could not be that they are just happier with the decisions being made in that area?

**Mr Bevan:** A lot of them live by the sea and that might be something to do with it.

**Ms LEE LONG:** You talk about under-representation of an area. What is the average representation you are looking at for a 12-month period?

**Mr Bevan:** All that we have done is look at the population per region in proportion with the complaints we have received for the year.

**CHAIR:** Per head of population what is the average percentage of complaints?

**Ms DARLING:** Eight per cent, did you say?

**Mr Bevan:** That was just at Moreton. It was eight per cent under what we expected it to be based on its population. It will be .00 something. I cannot tell you. We can easily provide you with that.

**CHAIR:** I was just curious because you must have something to measure it against to say this is an under-representation. By the same token are there any over-representations?

**Ms Yuksel:** Yes, there are a few areas that are over-represented. I can give you those figures.

**CHAIR:** You do not have to give them to us now. You can send them through. That would be interesting for the committee's information.

**Ms Yuksel:** They are mostly the small towns because they have smaller populations.

**Ms DARLING:** Do you track by government department and local government department as well? I know you have your usual suspects—departments like Corrective Services, as you said. Do you track complaints about local governments?

**Mr Bevan:** We break down why it is under-represented.

**Ms DARLING:** A local government as the subject of a complaint.

**Mr Bevan:** I see.

**Ms DARLING:** Do you track and monitor that?

**Ms Yuksel:** We do. We have the top 20 most complained about agencies. They are recorded in the annual report as well. We do that analysis.

**Ms DARLING:** And they include local government?

**Ms Yuksel:** They do.

**Mr CRIPPS:** I wanted to ask you a little bit more about local councils being over-represented as a proportion of complaints. It was a point that was made in your annual report. A number of the complaints that are brought to you about local councils are resolved in favour of complainants. Is there any particular issue or area of decision making that local councils are failing? You mentioned earlier when you were talking about Miriam Vale that that related to an integrated planning issue.

**Mr Bevan:** To handling development applications.

**Mr CRIPPS:** In my area of the world I would have to say that every time I turn around there is an issue with regard to councils administering IPA issues.

**CHAIR:** Not just in your part of the world, Andrew.

**Mr CRIPPS:** Is there some sort of issue with the capacity of local councils or is it an issue about the systemic decision-making capacity of councils dealing with legislation that has been handed down to them from the state government?

**Mr Bevan:** I think it is certainly the latter issue you mention. If we take Miriam Vale Shire Council, you have a council where there was rapid development going on in the area. Therefore, the number of applications suddenly increased substantially. It was not only that the complexity of those applications increased substantially. One of the causes has been the agency simply has not been able to keep up. The other problem is that they have not been able to recruit officers with the requisite skills for dealing with the applications. That is one thing we have recognised in the report. It is an ongoing problem, not just for Miriam Vale but also for a lot of small councils throughout Queensland. One of the reasons we are doing that as a public report is that we think it is relevant to so many other small councils throughout Queensland.

**CHAIR:** Not just small councils—big councils can struggle with it as well because of the sheer volume of applications they are dealing with, like Gold Coast City Council.

**Mr CRIPPS:** So, David, IPA always coming before you?

**Mr Bevan:** It is certainly a significant area. Yes, planning decisions would be one of the significant areas.

**Mr CRIPPS:** Followed by the environment?

**Mr Bevan:** We probably have some complaints on that but their regulatory functions would be probably the main area—whether that be parking or other sorts of enforcement. That is a very big area for local councils. Barking dogs is a big area for local councils, as are other animals.

**Mr CRIPPS:** Really? To the point where they refer it to the Ombudsman?

**Mr Bevan:** Yes.

**Mr CRIPPS:** That is interesting. People will refer to the Ombudsman to the point of parking and dogs?

**Mr Bevan:** They will, but a lot of the time we will not take up those issues.

**Mr CRIPPS:** Of course.

**Mr Bevan:** We have a limit of a couple of hundred dollars. We sometimes do take them up, but we have that discretion not to if it is under a certain amount.

**Mr CRIPPS:** It would be interesting to have an itemised indication to see whether there was a trend with the legislation that local councils consistently had difficulty implementing.

**Mr Bevan:** That is a good point. I certainly do not think we have done that sort of analysis on a legislation basis. When we do these reports for particular local governments—and I think we did seven for local governments this financial year—we certainly break down their complaints into complaint categories. We can break it down to three levels—under ‘regulatory functions’, we can go to ‘infringements’ and then to ‘parking’ and see where the complaints are arising. We can also compare the rate of complaints against that particular local government with complaints against local governments as a whole and against like local governments, because local governments are categorised in certain ways.

**CHAIR:** I was interested in that but I missed the end of what you were saying in relation to the acts or legislation that Andrew was referring to. Can you identify whether there is a trend that all councils or a number of councils find it difficult to interpret particular pieces of legislation? Not now, but do you have the capacity to do that?

**Mr Bevan:** Yes, we would have to drill down further, but we have our complaints types. For example, if there are complaints about nonenforcement of environmental issues, we can actually get a printout of each complaint and see what it related to and whether there was any trend. We would have to drill down to that individual complaint level.

**Mr CRIPPS:** The basis of my interest in that is that I notice from the annual report that a high proportion of complaints regarding the councils with respect to those pieces of legislation are resolved in favour of the complainants, so that points me to the capacity of the councils to implement those pieces of legislation. That is why I am particularly interested in knowing what those pieces of legislation are.

**Mr Bevan:** Yes.

**CHAIR:** Potentially, the government departments that have the carriage of that legislation could reform that legislation. If it cannot be implemented, then what is the point of having it?

**Mr CRIPPS:** That is exactly right.

**CHAIR:** I think the government agencies would rather know that that legislation is just unworkable at the council level because their decisions are being overturned by you.

**Mr Bevan:** Some of the recommendations in our report on the Miriam Vale Shire Council investigation are actually directed to the department.

**Mr CRIPPS:** Good.

**Mr Bevan:** We have shown the recommendations to them and they are supportive. That is about helping with training for local council officers who have to deal with these planning issues.

**CHAIR:** Is the banning of particular dog breeds one of those?

**Mr Bevan:** Yes.

**CHAIR:** With the pit bull terrier identification.

**Mr Bevan:** It is a very difficult issue for council. There was a matter which went before a magistrate recently where the plaintiff in that case was successful against the council in challenging the classification of the dog as a dangerous dog.

**CHAIR:** I am not actually sure if there have been any successful applications or applications of that act by the Brisbane City Council or the Gold Coast City Council. I think they have all been overturned somewhere, either in court or by you.

**Mr Bevan:** It is certainly a matter that has been brought to our attention by various complainants, as you would appreciate. The other area generally for local government is perhaps in that environmental area where their responsibilities overlap with the state agency. That is something we will be addressing in the EPA report as well.

**Mr Cantwell:** Especially in relation to nuisance complaints, so noise and odour. There are concurrent jurisdictions with the local council and the EPA—who goes, who does not.

**CHAIR:** For example, the neighbour’s air-conditioning unit: whose jurisdiction does that come under? It is constant.

**Mr Cantwell:** Other examples are noisy farm equipment, a neighbour’s air-conditioning unit, a residential house too close to a unit.

**Mr CRIPPS:** It would be interesting to know the statistics in that direction. In relation to the capacity of councils to implement these pieces of legislation, and given the observation in your annual report about complaints being resolved in favour of the complainant, I would be interested to know what those particular pieces of legislation are.

**CHAIR:** Steve, do you have a question before you have to leave?

**Mr WETTENHALL:** Mr Bevan, to the extent that your inquiries have revealed some issues with the administration of the legislation, particularly the Integrated Planning Act, is the minister for local government and planning aware of that? There is currently a review of the Integrated Planning Act.

**Mr Bevan:** We are aware of that. We actually made a submission to that review. I will be providing a copy of my report to the minister, as I am empowered to do under the act, as well as to the department.

**Mr CRIPPS:** That is good.

**Mr WETTENHALL:** That is the issue I had.

**CHAIR:** I want to raise one issue about timeliness, and it refers to timeliness and your jurisdiction—for example, complex investigations and the resolution of one particular investigation that has been brought to our attention. I refer to correspondence about a possible delay or a perceived delay by them in the finalisation of a complex complaint. I wonder if you have a comment on that.

**Mr Bevan:** I think under the confidentiality provision of the act—

**CHAIR:** I know, it has to be a general sort of comment.

**Mr Bevan:** I cannot talk about particular matters. The point I can make is that in some cases we advise complainants that we are not going to reinvestigate the original matter which the agency has looked into but that we will look at the agency's processes. So that becomes more akin to an own-motion, systems-type investigation. In those cases, because they are own-motion investigations, we conduct them when we have the resources to do them basically. So we do not see them as being subject to the same requirements in terms of timeliness.

**CHAIR:** Okay, so you cannot refer to that specific matter. Generally speaking, before you would commence an own-motion investigation into a matter that has been identified for you by a particularly complex investigation, you would inform those complainants that your ability to investigate their complaint further has closed and then you would commence an own-motion related investigation?

**Mr Bevan:** Yes, we certainly advise them what we are going to investigate.

**CHAIR:** And that would be into the process of that agency that they have complained about?

**Mr Bevan:** Yes. We would advise the complainant whether we are going to investigate their original complaint—

**CHAIR:** The substantive matter of their complaint.

**Mr Bevan:** Or whether we are going to investigate the way in which the agency dealt with their particular concern, which of course is a more complex process. It would be similar to what we did with the EPA investigation. How many matters did we review then, Peter?

**Mr Cantwell:** We looked at 200 files. So we may only have three or four complaints about something, but we find we get more value for our investigative effort if we can look at more files. We know that those particular complaints have raised a couple of issues so, instead of just looking at those issues in the context of three files, we will look at 200 files to see if it is a widespread, systemic issue.

**CHAIR:** Okay. You cannot refer to that matter, can you, thinking of an own-motion in relation to that matter?

**Mr Bevan:** Unfortunately, I cannot.

**CHAIR:** That is fine. That is sufficient. We are curious about it, that is all.

**Mr Bevan:** I can also say we advise complainants of what the thrust of the investigation is so that they should be under no misapprehension of what we are investigating.

**CHAIR:** Finally, on the jurisdictional issue, have you got jurisdiction to investigate complaints brought about publicly funded, nongovernment organisations in respect of the public money they are expending?

**Mr Bevan:** It is a little bit unclear. It depends on whether they are performing a function on behalf of the agency under the act. It would depend on an assessment in a particular case about whether they were doing that or not.

**CHAIR:** Sorry? If they are doing—

**Mr NICHOLLS:** If they are being paid to do something the government wants them to do.

**Mr CRIPPS:** An outsourcing of work?

**CHAIR:** So an agency in receipt of substantial funding to deliver specific services that government does not deliver could potentially fit into that?



**Mr NICHOLLS:** Like Employment National gets paid by the federal government to deliver employment services to people who are out of work. They are not an agency of government; they are an outside body. They receive government money.

**CHAIR:** That is a federal example.

**Mr NICHOLLS:** That is a federal example. I am trying to think of a state example.

**Mr Bevan:** It depends on whether it comes within section 10 of the act, which says that it has to be an administrative action of the agency, and an administrative action includes—

- (b) an administrative action taken by or for an officer of the agency; and
- (c) an administrative action taken for, or in the performance of functions conferred on, an agency, by an entity that is not an agency.

So it would depend on whether it fell within that particular limb of our jurisdiction. As I say, we would have to make an assessment on an individual case as to whether we did have jurisdiction in such an instance. It is certainly not clear cut, put it that way.

**Mr Cantwell:** It is a case-by-case assessment.

**Ms LEE LONG:** You do not look into federal government magistrates?

**Mr Bevan:** No, just state.

**CHAIR:** There is a Commonwealth Ombudsman.

**Mr Bevan:** There is a Commonwealth Ombudsman. The Commonwealth Ombudsman has an office in each of the states, and in each case the Commonwealth office subleases part of the state office. That is the case for us, too. The Commonwealth office shares part of our accommodation and we provide reception services to them.

**Ms LEE LONG:** Do you have much to do with each other? Do you swap information?

**Mr Bevan:** Obviously, when we have a joint reception, the receptionist makes that initial call. Sometimes it is a bit more complex, so it would be our assessment and resolution area which makes that decision on whether it is a Commonwealth matter or not. But we do have a fair bit of interaction with them.

**Mr NICHOLLS:** I have a couple of quick questions. How long has your draft report to the EPA been with the EPA for comment?

**Mr Cantwell:** It has been with them about six weeks and the response is due today.

**Mr NICHOLLS:** So they have a time frame to respond to?

**Mr Cantwell:** Yes, it is due today.

**Mr Bevan:** We granted an extension because it was originally a month, I think.

**Mr Cantwell:** We gave them four weeks originally and they wanted a bit more time so we had a meeting with them to discuss a few issues and they asked for a further two-week extension, so six weeks in all.

**Mr Bevan:** The report is very detailed. It is not in a format for presenting as a public report to parliament. I do not mind indicating that what we intend to do is use that as a basis for a public report in due course, which would be of interest to regulatory agencies generally, just to try to take some general learnings out of that investigation and provide them to other regulatory agencies.

**Mr NICHOLLS:** We have been talking a bit about training and those sorts of things and there has been the Public Service Commissioner's direction. Is there a whole-of-government approach to people attending departmental training? In your earlier comments, you were talking about people attending when they can be spared almost. You were saying that those who attend from departments—

**Mr Bevan:** I did not mean if they could be spared. It is really up to the departments to indicate whether they want their officers to go through the training.

**Mr NICHOLLS:** On that basis, is there a whole-of-government approach that says, 'You should value this training because it assists in better decision making and those sorts of things'? So as a government or across all departments there ought to be a requisite amount of this training that goes on. Is that covered by the Public Service Commissioner's bulletin?

**Mr Bevan:** No, it is not and our training is not the subject of any such publication that I am aware of. As far as all of government training, maybe Shaun could answer that from a HR perspective.

**Mr Gordon:** From a HR perspective, we are aware that there are government agencies now which consider that the Good Decisions Training will form part of that agency's induction program. So an agency which is bringing in a new employee will teach them, 'These are all the processes our agency undertakes and here is a course in how to make a good decision in the first place,' and then they go and take up their duties within that agency.

**Mr NICHOLLS:** I guess the corollary to that is: would it make sense to have a whole-of-government approach to that type of Good Decisions Training in terms of achieving the outcomes that you are trying to with that process?

**Mr Bevan:** We would not really be in a position to suggest that in that it is a user-pays training. I suppose it is really up to the agency as to whether it avails itself of that training. Certainly we have promoted the training in public sector-wide publications as well as for local governments.

**Mr NICHOLLS:** Can you give some examples of departments and councils to whom you have given that training?

**Mr Cantwell:** The Department of Child Safety was one of the main ones. We have done 14 individual day modules for the department from Brisbane, Cairns, Townsville and Rockhampton. Certainly for the Gold Coast City Council last year we did 15.

**Mr Bevan:** The Office of Fair Trading.

**Mr Cantwell:** The Office of Fair Trading, four. On most of them are single numbers. Some of the larger agencies are looking to have us give the training for four or five occasions. It takes one day to deliver the training; it is a one-day course. We try to limit the participants to 25, otherwise it becomes a lecture if there are 50 or 60 and we want it to be a participating day. So we have 25. That is why we have the numbers that we do. If we can do about 40 sessions every six months or so, that is the number we can train. It is basically a whole lot of the main agencies and councils.

**Mr Cantwell:** With some of the smaller councils, we will have a session for local government. They will send in a number of representatives if they cannot put together a full group and they will do it jointly with other local governments.

**Mr Bevan:** We do a lot of mixed sessions. So if we go to a smaller place, we might have four from this agency, four from this and four from this.

**Mr CRIPPS:** You were talking about that last time.

**Mr Bevan:** It works quite well.

**Mr NICHOLLS:** In the report by the independent reviewer, he referred to the requirement for a significant cultural change. Can you touch on the issues regarding significant cultural change and whether you think the office has done that? That is on page 5 in the executive summary, in the second last paragraph.

**Mr Bevan:** I think that is a reference to a significant cultural change within government agencies to not see the Ombudsman as a policeman, I suppose, but to see that there is some value for the agency if the Ombudsman investigates an issue and makes recommendations, particularly for systemic improvements or in respect of the training which the office can provide or the assistance we can provide with complaints management systems as well.

**Mr NICHOLLS:** It is interesting that you say that, because that is not the impression we got from the independent reviewer. The issue was in fact in relation to the Office of the Ombudsman. I think that needs to be clarified. When we had that discussion with the independent reviewer and I asked him specifically about that paragraph, he felt there might be some cultural change required in the Office of the Ombudsman. It was not clear to me so I asked the question.

**CHAIR:** He was clearly referring to the Ombudsman's office.

**Mr NICHOLLS:** I suggest that a question might need to be asked on that one. I do not mean to embarrass you by any stretch of the imagination; I was genuinely asking.

**Mr Bevan:** That is fine, but if you look at the lead into that, it says, 'One of the challenges for the office going forward is to raise its profile and relevance and to change the mindset to one where the office's budget allocation is seen not as a cost but as an investment that has the potential to reap a significant benefit for the budget and government through its administrative improvement work with agencies.'

Certainly, that has been a lot of our focus over the last couple of years. The training we have provided, the complaints management project, the complaints analysis—they are all new directions for the organisation. So I think we have made significant strides in terms of doing just that. Again, that is the purpose of my going around and not just talking to CEOs but addressing their senior managers on complaints about their agencies, the steps they can take to deal with complaint hot spots in the agencies and the assistance we can provide them in terms of these administrative improvement activities. I would probably have to go to the actual body of the report to see what comes through from that. Again, I am happy to come back to you on that if you like.

**Mr NICHOLLS:** Sure. I just asked the question because it was not immediately apparent to me. I actually initially suspected, as you did, that it might have been the agencies but that certainly was not the feedback when we asked Mr Smerdon in here what he felt it would be. So some clarity on that would go some way to helping us because it flips it 180 degrees, if I can put it that way. It is quite significant to the understanding.

Page 11 of that report refers to the timeliness not only of finalising complaints but also in terms of the internal process through there. You gave us some figures about the reduction in the average number of days taken to deal with the number of complaints since 1 July. In terms of the process, have you mentioned in the past that you were looking at your systems improvement and those sorts of things? Is there a response to that type of thing that the file does not get into that too-hard basket? I have one of those baskets myself.

**Mr Bevan:** Perhaps I will go back a number of years. When I joined the organisation, there were something like 1,500 current complaints and at least a quarter of those were more than 12-months-old. Now, as you can see in our annual report, there are less than 400 current complaints. I think 400 to 500 is about the right number of complaints to be open at any particular time within the organisation.

Our performance measure for the older complaints is 10 per cent more than 12-months-old. We want to get that down further but we have got it down, in raw numbers, to something like 30, 35, 37, which is the lowest it had ever been in the organisation for a long, long time. So I think we are getting on top of that backlog but it has certainly taken quite a struggle to do that.

We can monitor the progress of matters, which is the point I made before. Our complaint management system is called Catalyst. With the enhancements we have recently made, which were implemented on 10 July, we are now able to better monitor the stages of the complaint and to report on whether officers meet time frames for those particular stages. That will help us in that way and we can see at a glance how many complaints are over a certain age. The team leaders are given those reports automatically every month or so.

**CHAIR:** As there is nothing further, I thank you very much for coming along to meet with us and spending all that time with us.

**Committee adjourned at 4.30 pm.**

# APPENDIX C

Transcript of meeting with 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.