Attachment A

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

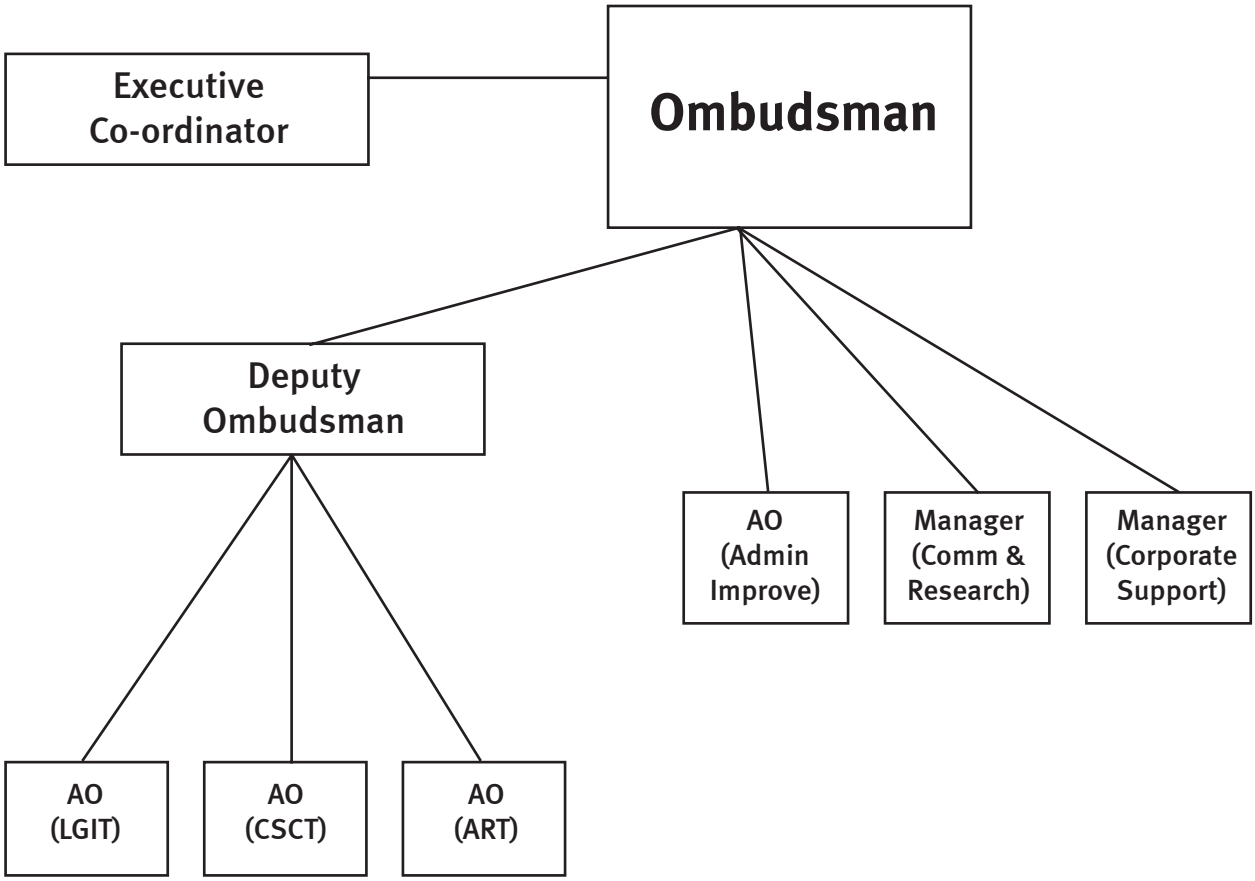
President , Victorian Civil and Administrative Tribunal

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.

Attachment C

Proposed Staffing Structure



Attachment D

Queensland Ombudsman[506]

6.468 The Ombudsman can investigate administrative actions of an agency,[507] including Queensland agencies that provide health services, deal with complaints about the provision of health services, and regulate the health service professions. The Ombudsman can investigate the administrative actions of the Health Rights Commissioner, the Medical Board of Queensland, Queensland Health and the Queensland Nursing Council.

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[500] *Nursing Act* 1992 s103A(2)
[501] *Nursing Act* 1992 s104A
[502] *Nursing Act* 1992 s104
[503] The Nursing Tribunal is established under the *Nursing Act* 1992 Pt 5 Div 1
[504] The Health Practitioners Tribunal hears matters concerning health practitioners other than nurses
[505] The actions that the Tribunal can take are contained in the *Nursing Act* 1992 s116
[506] The Queensland Ombudsman helpfully provided to me a copy of his submission of August 2005 to the Bundaberg Hospital Commission of Inquiry. I have relied upon the submission to describe the role of the Queensland Ombudsman so far as it relates to dealing with complaints about the Health Service and particularly for a case study done by the Queensland Ombudsman of a health related complaint. The case study illustrates well some unsatisfactory consequences which arise from Queensland's system which allots to different authorities different responsibilities for dealing with health complaints.
[507] As defined in ss8 and 9 of the *Ombudsman Act* 2001

6.469 The Ombudsman is expected to liaise with other complaints entities to avoid inappropriate duplication of investigative activity[508] and would not ordinarily accept an initial complaint about the provision of a health service if the complaint more appropriately fell within the jurisdiction of the Health Rights Commission, the Medical Board of Queensland (or another registration board), or the Queensland Nursing Council.

6.470 In most cases, the Ombudsman will not accept a complaint unless the complainant has tried to resolve it with the agency which is the subject of the complaint.

6.471 In the 2004/2005 financial year, the Ombudsman's Office received 339 health related complaints. Of those:.

- 156 related to Queensland Health;
- 50 related to the Health Rights Commission;
- 33 related to a registration board or the Queensland Nursing Council.

6.472 In accordance with the Ombudsman's normal practice in relation to Queensland Health complaints, many of the 256 complaints received (126) were referred to Queensland Health for internal review, while an additional 37 complaints were referred to the Health Rights Commission or to the relevant registration board.

6.473 The Ombudsman received no complaints about medical services at Bundaberg Base Hospital or about maladministration by health agencies in dealing with complaints about medical services at Bundaberg Base Hospital.

Recommendations for complaints management

Health Systems Review recommendation for complaints management

6.474 The final report of the Queensland Health Systems Review[509] (the Forster Report) recommends changes to the current system of complaints management within Queensland Health.[510]

6.475 Some key features of the Forster Report's proposed complaints model are:

- A complaints model be adopted that provides for local resolutions first whilst requiring escalation to an independent complaints body, a Health Commission if the complaint is not resolved in 30 days;[511]
- the proposed Health Commission would have powers to investigate

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[508] *Ombudsman Act* 2001 s15
[509] *Queensland Health Systems Review*, Final Report, September 2005
[510] Queensland Health Systems Review, Final Report, September 2005 p190-192
[511] *Queensland Health Systems Review*, Final Report, recommendation 9.16 at p196

the complaints;[512]

- There should be better coordination of the work of the Health Rights Commission, the Medical Board of Queensland and the other Health Practitioner registration boards, the Crime and Misconduct Commission, the State Coroner and the Queensland Ombudsman;[513]
- A separate and short review needs to be undertaken of the legislation and working arrangements between those external bodies to determine how their work can be better coordinated;[514]
- The proposed Health Commission could assume within its functions the role of the current Health Rights Commission;[515]
- The proposed Health Commission would adjudicate complaints in a timely way.[516]

6.476 The Forster Report did not explain what powers should be given to the proposed Health Commission as part of its role as an adjudicator of complaints. It was not obvious from the report whether the Health Commission would be 'one stop shop' with power to discipline or power to impose conditions upon the right to practice of doctors, nurses or allied health professionals.

Ombudsman's proposals for a new health complaints system

6.477 The submission of the Queensland Ombudsman[517] set out a comprehensive outline of features for a proposed new health complaints system.[518] The Queensland Ombudsman's office initiated a project in March 2003 called the Complaints Management Project and provided a report to the Director-General of Queensland Health on 8 March 2004 concluding that the Queensland Health system of complaint management 'compares very favourably to those in most other departments and meets nearly all the criteria for good complaints management.' However, the Ombudsman's office had recommendations for improvement then. That office has considered the matter since and in particular in light of the experience of the Bundaberg Base Hospital and has set out a comprehensive outline of the health complaints system which the Ombudsman proposes.

6.478 Some features of the Ombudsman's submission relating to a new health complaints system differ from the features I have extracted from the Forster

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[512] *Queensland Health Systems Review*, Final Report, p190
[513] *Queensland Health Systems Review*, Final Report, p198
[514] *Queensland Health Systems Review*, Final Report, recommendation 9.22 p198
[515] *Queensland Health Systems Review*, Final Report, p199
[516] *Queensland Health Systems Review*, Final Report, p191
[517] Submission to Bundaberg Hospital Commission of Inquiry, August 2005, which was resubmitted to this Inquiry
[518] Ombudsman's submission at Section 5.4

Report. The Ombudsman's recommendations included the following features not apparent among the Forster Report's recommendations:

- A new and independent body which could provide complainants with a 'one stop shop' in that it would have jurisdiction to deal with all aspects of complaints in relation to both registered and non-registered providers of health services in both public and private sectors with power to assess and coercive powers to investigate.[519] The Medical Board and the other registration boards would no longer conduct investigations of complaints about their own registrants, except by arrangement with the new body;
- Generally before the new body would accept a complaint the complainant would be required to demonstrate that the complainant had attempted to resolve the matter with the health service provider. In this respect the recommendation of the Ombudsman is somewhat similar to the recommendation of the Forster Report. However, the Ombudsman adds significant practical exceptions:

> There should be exceptions to this, for example where there is an immediate risk to the health or safety of a user or consumers, or where a complaint is made by a staff member of the relevant HSP who is fearful of reprisal.[520]

6.479 On the basis of the evidence and submissions received I am not in a position to recommend, in any detailed way the indicia of a better system. Some deficiencies are obvious. By dividing the jurisdiction to deal with complaints between numerous bodies there is a confusion for the complainants as to which is the best authority or the appropriate one for a practical resolution. Complaints often pass from one body to another and back again with consequential delays. The transfer of matters from one authority to another is dispiriting for complainants. From the Ombudsman's case study, it emerged that the Medical Board and the Nursing Council had no statutory power to investigate the matter for the first few months after receiving the complaints while the Health Rights Commissioner was assessing them. During the same months, while the Health Rights Commissioner was empowered to assess, he lacked the Medical Board's and Nursing Council's powers to investigate and had no power to adjudicate. The same case study reveals that for the next ten months, the backlog of Medical Board investigations prevented an investigation. When the investigation was assigned by the Medical Board to an external investigator it took six months to complete. In total, the time between complaint to the Medical Board and the

[519] Ombudsman's submission to the Bundaberg Hospital Commission of Inquiry August 2005 p74
[520] Ombudsman's submission to the Bundaberg Hospital Commission of Inquiry August 2005 p77

disciplining of the doctor about whom the complaint was made was two years and eight months. When, in August of this year, the Ombudsman submitted the case study three years and four months had elapsed since the complaint to the Queensland Nursing Council. The complainants then were still waiting to learn what disciplinary action, if any, would be taken against the registered nurse about whom they first complained.

6.480 There are obvious advantages in having one independent body which could act upon complaints from patients and health practitioners or on its own initiative with the powers to assess and to investigate doctors, nurses, allied health professionals, private hospitals and public hospitals and which had the power to conciliate but also to adjudicate, discipline and suspend in cases where there exists a real risk to patients.

6.481 On the basis of the complaints made by Ms Hoffman in October 2004 some authority independent of Queensland Health ought to have existed with sufficient investigators to verify in no more than thirty days whether there existed a real risk that patients were in imminent danger and with the willingness and the power to suspend Dr Patel. If necessary, the suspension could be followed by a subsequent, more thorough, prompt investigation into whether the suspension was justified and whether it should continue. Fairness to a doctor or nurse suspended could be offered with a right to appeal and provisions such as those appearing in s92 of the *Public Service Act* 1996. That section provides so far as relevant:

> **92 Effect of suspension from duty**
>
> (1) An officer suspended from duty under this part is entitled to full remuneration for the period for which the officer is suspended, unless the employing authority otherwise decides.
>
> (2) If the officer is suspended without full remuneration, the authority cancels the officer's suspension and the officer resumes duty, then, unless the authority otherwise decides, the officer is entitled to be paid the prescribed remuneration to which the officer would have been entitled apart from the suspension, less any amount earned by the officer from additional employment undertaken during the suspension period.

Complaint by litigation

6.482 Some significant claims against doctors, nurses and allied health professionals are made without notice to the Health Rights Commissioner or to the relevant registration board. This commission received a copy of an extract from a foreign newspaper that asserted that Dr Patel had been made the subject of several medical malpractice suits in the United States and that those suits had been settled without trial and without public record.

6.483 It is common for insurers to require of their insured that the insurer be notified by their insured if a claim for professional negligence is made against them. It would be useful if the insurer of a doctor, nurse or allied health professional gave notice of receipt of claims for professional negligence against its client and, upon resolution of the claim, details of the resolution. Legislation to compel this should be considered. The appropriate body to whom such notice should be given by the insurer is the body which has power to suspend or impose conditions upon the practise of the doctor, nurse or allied health professional, whether that body be the relevant registration board or the proposed 'one stop shop'.

6.484 In summary, it seems to me that serious consideration should be given to legislation to oblige insurers to report notice of claims for negligence against health practitioners and to creating a body which:

- Is a 'one stop shop' independent of Queensland Health and the registration boards having sole power to act upon complaints from or on behalf of patients or issues raised by health practitioners or upon notice of claims notified to insurers of health practitioners;
- Has power to investigate, conciliate and adjudicate;
- Has the power, where there is a real risk to a patient's health or safety from acts or omissions of a doctor, nurse or allied health professional, to immediately suspend or impose conditions on the doctor, nurse or allied health professional. Patient safety should have a higher priority than fairness to the practitioner. A sensible compromise for the practitioner would be a preliminary assessment of the reality of the risk to patients and, if a suspension or the imposition of a condition upon practise were to be ordered, it would be followed by a prompt investigation into whether the suspension or condition was justified and whether it should continue, a right of appeal, and a fair approach to remuneration for the practitioner for the period of suspension.

Whistleblower protection and reform

6.485 The people of Queensland owe a great deal to Ms Toni Hoffman, whose decision to speak to her local member of Parliament about her concerns regarding the activities of Dr Patel and the apparent threat he represented, led to his exposure and this Inquiry. Without her taking that step, the extent of Dr Patel's actions may yet remain unknown. As shown in Chapter Three above, that was not the first time that she had complained about Dr Patel.

6.486 Whether Ms Hoffman realised it or not, her disclosure to Mr Messenger MP was not protected by the *Whistleblowers Protection Act* 1994.[521] The fact that Ms Hoffman had to reveal her concerns to Mr Messenger MP, to have those concerns dealt with, and that her disclosure was not protected, reveals the failure of the current system of protecting whistleblowers.

The present system of Whistleblower protection

6.487 When introduced in 1994, Queensland's *Whistleblowers Protection Act* was the first of its kind in Australia and indeed one of the first in the common law world.[522] Whistleblower protection is an attempt to encourage people to speak out against corruption and poor practices without fear of reprisal as a result of speaking out. The *Whistleblowers Protection Act* recognises and attempt to achieve a balance of competing interests such as:

- The public interest in the exposure, investigation and correction of illegal, improper or dangerous conduct;
- The interests of the whistleblower in being protected from retaliation or reprisal and in ensuring that appropriate action is taken regarding the disclosure;
- The interests of persons against whom false allegations are made, particularly the damage to reputations and the expense and stress of investigations;
- The interests in the organisation affected by the disclosure in ensuring its operations are not disrupted and also in preventing disruptive behavior in the workplace; and
- The need to ensure that whistleblower protection has appropriate safeguards to protect against abuse.[523]

6.488 In attempting to strike a balance between these competing considerations the *Whistleblowers Protection Act* permits specified persons to make disclosures to particular entities about specified conduct. As the system presently stands, public officers are entitled to make public interest disclosures afforded the protections in the *Whistleblowers Protection Act* provided that disclosure is to a public sector entity about conduct that amounts to:[524]

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[521] Under Part 4 Division 2 of the *Whistleblowers Protection Act* 1994, in order to attract the protections of the Act public interest disclosures must be made to a public sector entity. A public sector entity is defined in Schedule 5, section 2 of the Act. That definition does not include disclosures to a member of the legislative assembly.
[522] See: 'Three Whistleblower Protection Models: A comparative analysis of Whistleblower Legislation in Australia, the United States and the United Kingdom' a report of the Public Service Commission of Canada avaliable at: www.psc-cfp.gc.ca/research
[523] These points are drawn from the Ombudsman's submissions
[524] For the source of this information see the Ombudsman's submission to the Bundaberg Hospital Commission of Inquiry, see also: Sections 15, 16, 17, 18, 19, and 26 *Whistleblowers Protection Act* 1994

- Official Misconduct;
- Maladministration that adversely affects anybody's interests in a substantial and specific way;
- Negligent or improper management involving a substantial waste of public funds; or
- A substantial and specific danger to public health or safety or to the environment.[525]

6.489 Apart from public officers[526] any person[527] may make a public interest disclosure about:

- A substantial and specific danger to the health or safety of a person with a disability
- An offence under certain legislation that is or would be a substantial and specific danger to the environment
- A reprisal taken against anybody for making a public interest disclosure

6.490 There are two significant limitations to this system. Firstly, disclosures must be made to an 'appropriate entity'. Secondly, only public officers are permitted to make disclosures about official misconduct, maladministration, waste of public funds, or threats to public health.

Disclosures to an 'appropriate entity'

6.491 Section 26 of the *Whistleblowers Protection Act* provides:

> **26 Every public sector entity is an appropriate entity for certain things**
>
> (1) Any public sector entity is an appropriate entity to receive a public interest disclosure—
>
> (a) *about its own conduct or the conduct of any of its officers*; or
> (b) made to it about anything it has a power to investigate or remedy; or
> (c) made to it by anybody who is entitled to make the public interest disclosure and honestly believes it is an appropriate entity to receive the disclosure under paragraph (a) or (b); or
> (d) referred to it by another public sector entity under section 28.4.
>
> (2) Subsection (1)(c) does not permit a public sector entity to receive a public interest disclosure if, apart from this section, it would not be able to receive the disclosure because of division 4, 5 or 6.5.

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[525] Clearly Ms Hoffman's complaint would fall into this category, however her disclosure to Mr Messenger MP was not a disclosure to a 'public sector entity' as defined by the Act.
[526] A public officer is an officer of a public sector entity see Schedule 6, *Whistleblowers Protection Act* 1994
[527] as opposed to a public officer

(3) If a person makes a public interest disclosure to an appropriate entity, the person may also make a public interest disclosure to the entity about a reprisal taken against the person for making the disclosure

6.492 The term 'appropriate entity' is defined in the *Whistleblowers Protections Act* 1994 as including bodies such as:

- a committee of the Legislative Assembly;
- the Parliamentary Service;
- a court or tribunal;
- the administrative office of a court or tribunal;
- the Executive Council;
- *a department*;
- a commission, authority, office, corporation or instrumentality established under an Act or under State or local government authorisation for a public, State or local government purpose.

6.493 Section 26 of the *Whistleblowers Protection Act* has the effect that, as far as Queensland Health is concerned, under that section an appropriate entity to receive a public interest disclosure about Queensland Health is itself.[528]

6.494 There was considerable evidence before this Commission about staff of Queensland Health having little or no faith in Queensland Health in dealing with complaints. In an organisation that actively conceals information and uses Cabinet confidentiality provisions to avoid Freedom of Information laws, it seems unlikely that public interest disclosures by employees would be dealt with any differently.

6.495 In any event, Ms Hoffman's complaint to Mr Leck would amount to a public interest disclosure[529] to an appropriate entity under the *Whistleblowers Protection Act*.[530] However, Ms Hoffman did not consider that the actions taken by Queensland Health were appropriate to her complaint.

Limitations of persons and entities to whom a protected disclosure can be made

6.496 Noticeably a member of Parliament is not an 'authorised entity' to whom a public interest disclosure can be made under the *Whistleblowers Protection Act*.

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[528] s26(1) of the *Whistleblowers Protection Act* 1994 states that a public sector entity is the appropraite entity to receive a public interest disclosure about its own conduct or the conduct of any of its officers
[529] concerning a threat to the health and safety of patients at the Bundaberg Hospital
[530] Queensland health is an appropriate entity to receive a disclosure about the conduct of one of its own officers.

6.497 Furthermore, a disclosure to a journalist or a member of the media attracts no protection under the *Whistleblowers Protection Act*. During the course of this Commission of Inquiry, there was at least one instance of a report being provided to *The Courier-Mail* newspaper.[531] How that document came into the possession of the *The Courier-Mail* before being disclosed to the Commission was not investigated. However, needless to say that disclosure was afforded no protection under the *Whistleblowers Protection Act*.

6.498 The findings made in respect of Bundaberg, Rockhampton, and Queensland Health show that Ms Hoffman had no choice but to complain to her local member of Parliament, and that another person felt the need to disclose a confidential report regarding the Rockhampton Emergency Department should be provided to *The Courier-Mail*, in my opinion demonstrates that the protection to whistleblowers in the Queensland public sector needs reform.

Limitations on who can make a protected complaint

6.499 As set out in paragraph 6.488 and 6.489 above, it is not just any person who can make a public interest disclosure about maladministration or a threat to public safety. Patients, or their family members, are unable to gain the protections of the *Whistleblowers Protections Act* should they wish to make a public interest disclosure. The categories of persons permitted to make protected disclosures needs expansion.

Lack of central oversight of public interest disclosures

6.500 As submitted by the Ombudsman, another failure of the current system is the lack of a central body charged with overseeing and managing public interest disclosures. Under the present system, the Office of Public Service, Merit and Equity is responsible for administering the *Whistleblowers Protection Act*.[532] That office has no role in overseeing public interest disclosures, each department being required to develop its own policy and procedures for managing public interest disclosures.[533]

6.501 Queensland Health has developed a document titled 'Policy and Procedures for the Management of Public Interest Disclosures' that sets out the processes to be used in managing public interest disclosures under the *Whistleblowers Protections Act*.

6.502 Broadly, the procedures in place at Queensland Health are as follows:

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[531] Exhibit 129: Rockhampton Emergency Department Review, which was 'leaked' to *The Courier-Mail* prior to being disclosed to the Commission of Inquiry
[532] See Administrative Arrangements Order (No 2) of 2005 available at: http://www.premiers.qld.gov.au/library/pdf/admin_arrangements2_05.pdf
[533] See Ombudsman's submission August 2005

- Public interest disclosures must be brought to the attention of the Director-General to determine appropriate management and investigation of the disclosure.
- The Director-General is also charged with considering the risk of reprisals and with taking steps to ensure that an employee who makes a public interest disclosure is not disadvantaged as a result of making the disclosure.
- The Audit and Operational Review Branch of Queensland Health is obliged to record the public interest disclosure and also record the action taken. This information is collected for publication in the department's annual report.

6.503 At present there is no single body charged with overseeing public interest disclosures within the Queensland Public Sector (save where that public interest disclosure involves official misconduct[534]). In my opinion this is a serious shortcoming. As the facts revealed in this Inquiry show, it was futile to expect Queensland Health to manage public interest disclosures about itself with no external oversight.[535]

6.504 The Queensland Ombudsman has provided a helpful submission to the Commission, in which he recommends changes to enhance the protection of whistleblowers in the public sector. The Ombudsman makes the following recommendations regarding changes to the current whistleblowers protection system.

6.505 Firstly the Ombudsman recommends that his office be given a supervisory role over public interest disclosures made under the *Whistleblowers Protection Act* 1994[536]. That role would be similar to the role which the Crime and Misconduct Commission has in overseeing and investigating complaints about official misconduct. The Ombudsman recommends a model where:

> agencies would have an obligation to refer to the ombudsman all public interest disclosures that involve serious maladministration but do not amount to official misconduct.[537]

6.506 The Ombudsman takes the view that the phrase 'serious maladministration' includes such things as conduct that would amount to a danger to the health and safety of the public or the environment and also negligent or improper management affecting public funds.[538]

6.507 The Ombudsman recommends that public interest disclosure regarding official misconduct should remain subject to the present arrangements of referral to, and oversight by, the Crime and Misconduct Commission.

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[534] in that case the complaint must be dealt with in accordance with the *Crime and Misconduct Act* 2001 which obliges notification of the Crime and Misconduct Commission
[535] the same can be said for any public sector body

[537] See Ombudsmans Submission to the Bundaberg Hospital Commission of Inquiry, August 2004
[538] See the *Queensland Ombudsman, Annual Report 2004/2005*

6.508 I adopt those recommendations.

Proposals for reform

6.509 I recommend the following changes to the *Whistleblowers Protection Act* 1994:

Central oversight of public interest disclosures

6.510 Firstly I recommend that the Queensland Ombudsman be given an oversight role with respect to all public interest disclosures save those involving official misconduct. I recommend a system similar to that involving Official Misconduct where all public interest disclosures must be referred to the Ombudsman who may then either investigate the disclosure itself, or refer it back to the relevant department for investigation, subject to monitoring by the Ombudsman.

Increase the class of persons who may make a public interest disclosure

6.511 Secondly, I recommend that the categories of persons who may make a public interest disclosure protected by the *Whistleblowers Protection Act* be expanded in cases involving danger to public health and safety, and negligent or improper management of public funds, to include any person or body.

Expansion of bodies to whom a complaint may be made

6.512 Finally, I recommend a scale of persons or bodies to whom a complaint may be made. Effectively a whistleblower ought to be able to escalate his or her complaint in the event that there is no satisfactory action taken with respect to it. The scale should be as follows:

(a) A whistleblower should first complain to the relevant department – or public sector entity under Schedule 5 of the *Whistleblowers Protection Act* – subject to the Ombudsman's monitoring role discussed above. The *Whistleblowers Protection Act* must also provide strict time limits to investigate and resolve the disclosure. A time of 30 days would be appropriate.

(b) If the matter is not then resolved within the time, to the satisfaction of the Ombudsman, the whistleblower ought to be able to make a public interest disclosure to a member of Parliament.[539]

(c) If disclosure to a member of Parliament does not result in resolution, to the satisfaction of the ombudsman, within a further 30 days, then the whistleblower should be entitled to make a further public interest disclosure to a member of the media.

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[539] It should not be restricted to a local member of Parliament, but should be any member of Parliament, for example an Opposition spokesperson on the relevant matter.