

# Attachment E

## **Recommendations – Forster Strategic Management Review Report**

### Section 2: Goals, Principal Functions and Philosophy

1. The strategic direction and operating philosophy of the Office fundamentally change, so that priority is afforded to improving the quality of practice, as well as continuing to achieve administrative justice for all individuals.
2. The Office rely on informal complaint resolution processes to a far greater extent and use formal investigations only when informal approaches are not effective.
3. The Office exercise greater discretion in the number and depth of merits based investigations undertaken to ensure minor matters are resolved by agencies, and that the Office mandate to investigate administrative action is not exceeded.
4. The Office further develop its relationships with State and Local Government agencies to ensure that its approach to resolving individual complaints and its review of systemic administrative issues is perceived as objective and impartial by all parties.

### **Section 3: Complaint Handling Methodologies and Processes**

5. The Ombudsman initiate discussions with LCARC and the Premier as the responsible Minister about the limitations imposed by S.16.(1) of the Act with a view to recommending legislative change
6. The initial point of contact for all telephone, written and walk-in complaints should remain at reception.
7. A roster be generated to ensure that at all times during office hours an Administrative Review Officer is available promptly to advise complainants who present at the Office's premises.
8. The Office's case and record management system incorporate a facility to record and track incoming correspondence and telephone generated complaints.
9. Written complaints be directed to respective Assistant Commissioners who complete complex coding, breach assessment and signing classification within one working day of receiving each complaint.
10. Files be created and an acknowledgment letter dispatched by team administrative staff within two working days of receiving each complaint.
11. The Office amend reporting practices so that, where possible, file and complaint statistics are reported together.
12. The Office adopt the Draft National Performance Indicators currently being trailed by Australian Ombudsmen for recording and reporting complaints and file counts.

13. Complaints received in writing or by interview which are clearly out of jurisdiction should not be made up as complaint files but counted separately.
14. The Office develop a case management system with the capacity to report on file status, elapsed time at each key stage and the average cost of closing complaints.
15. Officer caseloads and complaints closure rates be monitored, and necessary action taken, to ensure the achievement of prescribed targets with more even closure rates throughout any twelve month period.
16. The Office adopt a target of no more than 800 files on hand by 31 December 2001.
17. As file backlogs are progressively reduced, the Office redesignate some investigative positions to reflect an increased focus on demand management strategies and activities.
18. The Office form a small project team and seek a highly experienced systems officer/project leader to develop user requirements for a new case management and records management system and implement a proven system.
19. Early intervention strategies and approaches already partially operating across the team be encouraged so that they are fully operational and use the full range of skills available within the Office commencing with telephone reception function, and including empowered AO3/AO4 personnel and administrative review officers within teams.

#### **Section 4: Early Intervention / Informal Resolution Approaches**

20. The Office pursue improved working relationships with a number of agencies and seek to establish "contact officers" with a view to making informal resolution as efficient as practical with satisfactory outcomes.
21. The Office strive to resolve many more issues informally, and empower those responsible for informal resolution with the necessary authority to close matters appropriately resolved.
22. The revised case and record management system keep a record of the number of complaints resolved by informal means, so the Office can monitor in progress towards having significantly fewer matters resolved through formal means.

#### **Section 5: Demand Management**

23. The Office liaise with the project team established within the Department of the Premier and Cabinet, other central agencies and associations and major complaint generating agencies to further whole of Government customer service initiatives and select a range of demand management initiatives likely to improve customer service and response to complaints in agencies and reduce the incidence of complaints being referred to the Ombudsman.

24. Office management and Senior Administrative Review Officers lead by example in adopting informal complaint resolution approaches with agencies, and play an active role in contributing to new demand management initiatives considered appropriate in Queensland.
25. An appropriately skilled development officer be engaged to assist Deputy Commissioners in the development of practice guidelines, conduct awareness raising, training and development programs for agency staff involved in dealing with complaints and with the Ombudsman's Office in resolving complaints relative to their agency.

### **Section 6: Delegation of Authority**

26. Assistant Commissioners be granted full delegated authority under all legislative sections where delegation is permissible, and be empowered to manage their caseload, referring very complex or sensitive issues for the Ombudsman's or Deputies' information and support.
27. Subject to attaining and maintaining satisfactory levels of performance, investigative staff be delegated authority to handle complaints assigned by their Assistant Commissioner.
28. The Deputy Commissioners' roles be changed to facilitate strategic policy development and demand management initiatives for the Office for all agencies with a percentage of time still available to respond to requests from Assistant Commissioners and the Ombudsman relating to the most complex or sensitive cases.
29. The Office maintain an active workplace consultative committee including management and staff representatives, communicating directly with the Ombudsman to revise workplace agreements and monitor the quality of management practices and stewardship within the Office.
30. The Ombudsman and Deputy Commissioners ensure that the new team arrangements are provided with the best practice management systems and practices which support the professional work and development of all staff.
31. The Office involve all staff in the annual revision of its Strategic and Operational Plan which would then be used as a basis for setting team and individual performance targets.
32. Assistant Commissioners be included in the Management Committee for the Office with separate monthly meetings for Ombudsman and Information Commissioner teams if necessary.
33. Staff and management develop and implement revised performance measurement systems which are linked to the Office's Strategic and Operational Plan, and utilize a full range of case related indicators.
34. The Queensland Ombudsman participate in the Nation Performance Indicators project and introduce the suggested range of draft indicators for reporting performance information.

35. Internal indicators discussed in 7.6 be implemented progressively over a period of six to twelve months.
36. Corporate and Research Division develop performance agreements with operation divisions in both Offices.
37. External indicators recommended in 7.7 and consistent with draft National Performance Indicators be implemented progressively over a six to twelve month period following full consultation with investigative teams.
38. The Ombudsman ensure that all staff have the opportunity to contribute to policy development activities during the initial development stage, and are fully informed about the basis for management decisions through their Assistant Commissioners.
39. The Office management and staff spend more time with Queensland Public Sector agency personnel attending seminars/workshops and explore Ombudsman Office staff interchange and local secondment opportunities, as well as joint development opportunities with other Officers of the Queensland Legislative Assembly.

### **Section 8: Corporate and Administrative Systems**

40. The Office progressively make available voice recognition technology to those in the Office who request it.
41. The Office Internet access policy be progressively revised as the Office gains experience in Internet use.
42. The Office conduct enquiries to determine whether the use of pagers would significantly improve communication and service delivery for those staff working away from the Office.
43. The Office maintain the information technology infrastructure necessary to support off-site access to Office databases.
44. The Director, Corporate and Research Division provide monthly financial management reports to the Management Committee and comply with all financial management reporting obligations.
45. Financial management milestones and performance indicators be developed as part of the annual budget cycle and monitored at each Management Committee meeting.
46. The Office maintain the current resourcing level for personnel administration.
47. Personnel administration performance indicators be identified and monitored at each Management Committee meeting.
48. The Office adopt a computerized record management system fully integrated with the case management system.
49. The Office conduct a trial whereby files relating to the complaints assigned to teams are created and maintained by those teams.

50. The Office examine its telephone system to identify any system flaws or misunderstandings about its use and functions.
51. The Office continue its current practice of supplementing vehicle resources with hire cars when circumstances dictate.
52. Staff performing reception duties receive training in dealing with difficult situations.
53. The Office develop guidelines on the use of telephone interpreter services.
54. The Office reconsider postal and travel booking arrangements.

### **Section 9: Visits Program**

55. The focus during regional trips shift from complaint gathering to complain resolution with sufficient time allowed to provide for the examination of both existing complaints and those emerging during public enquiry sessions.
56. The Assistant Commissioners assume responsibility for managing the trip program subject to co-ordination with Deputy Commissioners and the Ombudsman.
57. In the majority of cases, public enquiry sessions be conducted by Assistant Commissioners and subordinate investigative staff.
58. The appointment for all public enquiry sessions be arranged by the Office.
59. The current Office practice of regular visits to correctional institutions be continued.
60. The Assistant Commissioner, Corrections Team, be given responsibility for managing the visits to correctional centers.
61. The Assistant Commissioner, Corrections Team arrange to access data on-line in consultation with the Department of Corrective Services.
62. The Assistant Commissioner, Corrections Team in conjunction with the Deputy Commissioner, SGPAD, initiate discussions with Queensland Corrections and the Department of Corrective Services about developing a more coordinated response to prisoners' complaints management to ensure all internal review mechanisms are performing to their full potential.

### **Section 10: Human Resources Management Issues**

63. If staff remain outside the Public Service, then the Office formalize arrangements with the Office of the Public Service Commissioner or other "best practices" human resources agencies to receive updated information and implement enhance human resource management policies and practices.
64. The Office endeavor to increase the proportion of permanent and term contract staff, lessen the reliance on temporary appointments, and make full use of secondment opportunities in line with case workloads.

65. All staff who cease employment with either Office be invited to participate in an exit interview.
66. An experienced senior human resources professional from the Office of the Public Service Commissioner be invited by the Office to participate in the next round of selection interviews so that the office can ensure that its practices are consistent with Public Sector standards.
67. The Ombudsman ensure that all officers participate in the formal performance planning and review processes linked to work outputs.
68. Office managers avail themselves of management development opportunities with senior executives from other agencies whenever practical.
69. The Office conduct a training needs analysis based on team discussions with a view to producing a training strategic plan and instituting program delivery during 2000/01.
70. The Office grievance handling policy incorporate a process of securing external mediation and counselor review services from a panel of names acceptable to staff in addition to the Queensland Industrial Relations Commissioner.
71. The Office examine the feasibility of broadening the span of working hours from 8.00am to 6.00pm to 7.00am until 7.00pm.
72. The Office adopt the same practices as the rest of the Public Service for rewarding officers for out of hours work.
73. The Office develop a policy which encourages the supports part time employment.
74. Officers at Assistant Commissioner level and above be provided with the discretion to allow staff to work from home, from time to time when circumstances warrant.
75. The Office continue to adopt the same provisions in respect of parental leave as the rest of the Queensland Public Sector.
76. The Office induction process include a series of key steps to be achieved by all new appointees. This process would be monitored by the appointee's immediate supervisors.
77. The Office develop a comprehensive policy covering recruitment, selection and relieving standards, such policy reflecting contemporary HRM practice in the Queensland Public Sector.
78. The Office explore officer interchange options both within the Queensland Public Sector and within Ombudsman Offices elsewhere.

## **Section 11: Funding**

79. A modest reallocation of funding occur during 2000/01, progressively redirecting resources from investigative effort as caseloads reduce, to fund demand management initiatives, development and human resource officer positions, training and development initiatives, and the new case and record management system.

## **Section 12: The Structure**

80. The current team structure be retained, but the merits of making immediate minor changes to team boundaries to reflect overlapping themes should be considered.
81. The current practice of managing new complaints in teams be maintained.
82. The vacant A07 position in Team B be filled.
83. The Office adopt the following designations:
  - A05/A06 Administrative Review Officer – appointed at either level depending on experience;
  - A03/A04 Investigative Assistant – appointed at either level depending on experience; and
  - A02 Administrative Officer as at present
84. The Office upgrade two Administrative Assistant positions (A02) to Administrative Review Assistants A03/A04, redesignate two A03 Investigative Assistant positions to Administrative Review Assistants (A03/A04) and appoint sufficient additional A02s to have one in each team.
85. The Office supplement its current HRM capacity by either:
  - creating a term position and recruiting a human resource professional (A06/A07), or
  - changing the emphasis of the position, Director, Corporate and Research Division to reflect a focus on HRM experience, and readvertising this position.
86. The Corporate and Research Division be called the Corporate Services Division and the A03 Research Assistant be redesignated as Administration Officer A03.
87. An experienced Project Leader with requisite IT capability be contracted to manage the development and implementation of new or enhanced case management and record management and financial management systems within the Office.
88. The Management Committee consider how best to handle FOI requests and resolve a policy on this issue.
89. The Office adopt classification levels and designates summaries in Attachment 9 and the revised position descriptions for benchmark positions provided separately to the Ombudsman.

### **Section 13: Strategic Review Recommendations**

90. The Office implement the remaining strategic review recommendations outlined in Chapter 13, together with associated recommendations arising from this management review.

### **Section 14: Administrative Efficiencies**

91. The review and investigative roles of the two Offices remain separate at the present time but the current practice of seconding staff from the Office of the Ombudsman to the Office of the Information Commissioner, be continued whenever circumstances indicate that this is appropriate.
92. That the potential benefits that might be gained by integrating the review and investigative roles of both Offices be reviewed periodically.
93. The Office of the Information Commissioner continue to access corporate services from the Office of the Ombudsman, including reception and case management services.
94. The Office of the Information Commissioner and the Office of the Ombudsman establish a joint demand management advice and awareness function within the Ombudsman's Office to include development of initiatives such as practice guidelines, information services, education and training initiatives for agency personnel.

### **Section 15: External Consultation**

95. The Office evaluate and, where necessary, modify service levels in accordance with the findings of a complainants' satisfaction survey conducted at two yearly intervals.
96. The Office continue to support practices considered helpful by agencies and take action to discuss suggestions for improvement with agencies during work related visits.
97. The Office review the philosophy and scope of its investigation of complaints to ensure that they focus on administration action and do not investigate merits of a complaint where professional discretion forms the basis of the agency decision.



## Attachment F

Level 25, 288 Edward Street, Brisbane QLD 4000  
GPO Box 3314 Brisbane QLD 4001



8 February 2006

Mr Henry Smerdon

Dear Henry

**Re: Strategic Review - Ombudsman's Office**

As you know, the Ombudsman Act came into effect in late 2001. During that time a number of problems and issues have arisen that affect, or have the potential to affect, the operational effectiveness of the Office.

I note that item (d) of your terms of reference specifically refers to *"the impact upon the operations of the Office of the Ombudsman Act 2001... and whether any amendments to that Act are necessary or desirable to enhance operational effectiveness"*.

Attachment A contains a summary of the issues we have identified as needing amendment.

We believe that the issues discussed in the Attachment demonstrate that a review of the Act is warranted with a view to its amendment, particularly as the Act will have been in operation for 5 years by the end of 2006.

It is a matter for you whether you endorse any particular proposed amendment or simply conclude that a review of the Act is appropriate.

I would be pleased to discuss or clarify any aspect should you so wish.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D Bevan'.

David Bevan  
Queensland Ombudsman

## **Substantive proposed amendments to the Ombudsman Act 2001**

### **Administrative audits**

The Ombudsman has a dual role of investigating complaints and helping agencies improve their administrative practice. These roles support each other and often overlap. Our view is that the functions set out in s.12 empower the Office to conduct administrative audits. However, the issue is not clear. In South Australia, the Ombudsman Act has been amended by specifically empowering the Ombudsman to conduct such audits.

I recommend inserting a section in our Act similar to s.14A of the South Australian Ombudsman Act, which provides:

*(1) If the Ombudsman considers it to be in the public interest to do so, the Ombudsman may conduct a review of the administrative practices and procedures of an agency to which this Act applies.*

*(2) The provisions of this Act apply in relation to a review under subsection (1) as if it were an investigation of an administrative act under this Act, subject to such modifications as may be necessary, or as may be prescribed.*

### **Ex gratia payments**

The Ombudsman sometimes recommends that agencies make ex gratia payments to rectify the effect of maladministration. Agencies are sometimes concerned about their authority to do so in response to the Ombudsman's recommendation. In particular, local government agencies have claimed that they have no power to make such payments.

Therefore, it is recommended that the Ombudsman Act be amended by inserting a provision similar to s.26A of the Ombudsman Act NSW authorising agencies including local governments to make ex gratia payments if recommended by the Ombudsman.

### **Apologies**

One of the recommendations we may make to an agency is that it apologise to a complainant. In some cases agencies have refused to do so because they assert that this will constitute an admission of liability. In NSW this situation has been dealt with by an amendment to the Civil Liability Act 2002 which provides that an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person does not constitute an express or implied admission of liability and is not admissible in any civil proceedings.

In Queensland, the Civil Liability Act 2003, provides protection from civil liability for “expressions of regret”. However, this protection is more limited than in the NSW Act because it only applies to the extent that the expression does not contain an admission of liability.

The NSW Ombudsman advises that this provision has been particularly useful in helping his agency to informally resolve many complaints.

It is recommended that a similar provision be introduced in Queensland.

### **Provide protection for Ombudsman officers from civil liability**

Under s.29(1) of the repealed Parliamentary Commissioner Act 1974 neither the Commissioner nor officers of the Commissioner were liable to any civil or criminal proceedings if an act was done in pursuance of the Act, unless the act was done in bad faith. This section was not transferred to the Ombudsman Act. The protection given in the Ombudsman Act does not extend to acts done negligently but honestly.

The justification for this change at the time was that Ombudsman officers would be protected in the same way public servants are protected – that is, by an undertaking that had been given by the Minister for Justice & Attorney-General. However, that undertaking does not appear to apply to officers of the Ombudsman.

A new directive was being considered by the then Minister as long ago as August 2001 but has never been approved. In the meantime, officers are concerned that they do not have the same protection as other public officers.

### **Informing complainants of decision not to investigate (s.23(4))**

The following proposal to amend s.23(4) is taken from a letter I recently sent to the Department of Justice and Attorney General recommending that this amendment be included in the Justice and Other Legislation Amendment Bill 2006, currently being prepared. If the amendment is not included it should be dealt with in any future review of the Act.

Section 23(4) provides:

*If the ombudsman –*

- (a) can not investigate a complaint; or*
- (b) refuses to investigate a complaint; or*
- (c) refuses to continue an investigation of a complaint;*

*the ombudsman must inform the complainant, in writing, of the decision and the reasons for the decision as soon as reasonably practicable.*

The requirement that written reasons for not investigating a matter be provided in every case has been a problem since the commencement of the Act in December 2001. The Act repealed the Parliamentary Commissioner Act 1974. Under the old Act, all complaints to the Ombudsman had to be made in writing (s.16(1)) and it was appropriate for the Ombudsman's response to be provided in writing also.

However, s.20(1)(a) of the new Act provides that a complaint may be made orally or in written form. This was consistent with one of the major themes of a statutory review of the Office undertaken in 2000 by the Consultancy Bureau, namely, that the Office make greater use of informal processes to deal with complaints.

Consistent with the recommendations of the reviewer (subsequently endorsed by the Legal, Constitutional and Administrative Review Committee, to which the Ombudsman reports), the Ombudsman's Office has since used informal processes to deal with the majority of the complaints it receives, being the complaints received by telephone. The Office does not have the resources to respond in writing to the thousands of complaints it receives by phone.

All written complaints are responded to in writing.

To appreciate the extent of the problem that s.23(4) creates for the Office, it needs to be understood that most complaints are received by telephone. By way of example, last financial year, 1872 complaints were received in written form and 5604 were received by phone. Many of the complaints received by phone are dealt with simply by providing some advice to the complainant or by referring them to a more appropriate agency to deal with their complaint.

Interestingly, where the Office investigates a matter, the Act does not require that the complainant be informed of the decision in writing. Section 57 provides as follows:

*If the ombudsman investigates administrative action because of a complaint, the ombudsman must, as soon as possible, inform the complainant, in the way the ombudsman considers appropriate, of the result of the investigation.*

It is incongruous that a higher duty is imposed on the Ombudsman in deciding not to take up a complaint for investigation than when advising of the outcome of a matter that has actually been investigated.

Therefore, it is submitted that s.23(4) should be amended to make it consistent not only with s.57 but also with informal resolution practices. This can be done quite simply in the proposed Bill by omitting from s.23(4) the words "in writing" and substituting the words "in the way the Ombudsman considers appropriate".

## **Section 45 – information disclosure and privilege.**

### **Power to over-ride privilege**

Section 45 of the Ombudsman Act over-rides the application to officers of public sector agencies of secrecy provisions in other Acts as well as legal professional privilege and other privileges attaching to the State or an agency. Section 45(3) gives people who provide to the Ombudsman information or produce documents relevant to a preliminary inquiry or investigation, equivalent privileges to the privileges they would have as witnesses in a legal proceeding.

However, s.45(4) states the s.45(3) has effect subject to part 4, division 1. This division contains the provisions empowering the Ombudsman to compulsorily obtain records or other information. Therefore, it seemed that section 45(4) operated to prevent persons to whom investigation requirements were issued under division 4, from refusing to provide the information on the grounds of self-incrimination.

Because of a lack of clarity of s.45, we sought legal advice from Senior Counsel who advised that, although the wording of s.45(3) “is lamentable”, the better view is that people can refuse to comply with an investigation requirement if to do so would tend to incriminate them.

In other words, although the Act appears to say that a person does not have court equivalent privileges in responding to an investigation requirement under part 4, Counsel’s view was that, for these protections to be overridden, clearer wording was required.

This has the potential to limit the effectiveness of the Ombudsman’s powers to obtain information especially from public servants as they could object to answering simply on the basis that to do so may incriminate them in a disciplinary breach.

It is recommended that the section be amended to over-ride privileges and to include appropriate protection for individuals in such cases similar to s.197 of the Crime and Misconduct Act (this section requires persons to provide information to the Commission but any information they give cannot be used against them in any civil, criminal or administrative proceeding.)

### **Section 92 – Secrecy.**

The following proposal to amend s.92 is taken from a letter I recently sent to the Department of Justice and Attorney General recommending that this amendment be included in the Justice and Other Legislation Amendment Bill 2006, currently being prepared. If the amendment is not included it should be included in any future review of the Act.

**Section 92 provides that:**

*(1) An officer of the ombudsman, an officer of an agency, or another person who obtains information in a preliminary inquiry or an investigation or the performance of another function of the ombudsman under this Act must not –*

*(a) disclose the information other than as part of-*

- (i) the performance of the function; or*
- (ii) formulating a report about the performance of the function; or*
- or*
- (iii) formulating a recommendation arising out of the performance of the function; or*
- (iv) proceedings for an offence under this Act alleged to have been committed in the performance of the function; or*

*(b) use the information to benefit any person.*

The section appears to prevent the Ombudsman from using information obtained in the course of an investigation for the purpose of another function, the most significant one being the function under s.12(c) of the Act of helping agencies improve their practices and procedures.

In discharging this function my Office provides training to officers of public sector agencies on good decision-making and develops publications (such as its newsletter for local government) on aspects of good administrative practice. For these purposes my Office needs to use information obtained in the course of its investigations, albeit, in a de-identified form.

A literal reading of s.92 may lead to the conclusion that my Office cannot include details of the complaints it has investigated as case studies when carrying out its non-investigative responsibilities.

Section 92 may also restrict the Office's ability to conduct research relevant to its functions. For example, the Office is currently involved in a research project being undertaken by Griffith University to identify best practice in the treatment of whistleblowers. Other project partners include the Crime and Misconduct Commission, the Office of Public Service Merit and Equity and most other Ombudsman Offices throughout Australia. My Office's role includes interrogating our own complaints data to identify relevant cases for the purpose of the project.

In my view, Parliament cannot have intended that s.92 act as a hindrance to the Ombudsman's effective performance of his non-investigative functions.

Once again, the matter can be simply addressed in the proposed Bill by omitting “the” where it appears immediately before “function” in subparagraphs (i), (ii), (iii) and (iv) and substituting “a” in each case.

## **Other amendments**

### **1. Section 16 – What ombudsman may not investigate**

- **Deliberative functions of tribunals.**

This term “tribunal” is very imprecise. This makes it difficult to determine in individual cases whether we have jurisdiction. The approach taken in recent amendments to the Freedom of Information Act (s.11A) was to list the tribunals not within the jurisdiction, which provides greater certainty.

The words “deliberative functions” are also unclear. For example, is a complaint that a tribunal has not adequately explained its decision a complaint about the tribunal in the performance of its deliberative functions?

It is recommended that the Ombudsman’s jurisdiction in relation to tribunals be clarified.

- **Legal advisers to the State**

The Ombudsman cannot investigate administrative action taken by a person acting as legal adviser to the State or as counsel for the State in any legal proceedings. The question is - do the words “in any legal proceedings” apply to legal advisers or only counsel? If the words do not apply to legal advisers, the Ombudsman would be prevented from investigating administrative actions taken by the many in-house lawyers employed in the public sector. This appears to be inconsistent with the fact that the State or an agency required to provide information for an Ombudsman investigation is not entitled to claim any privilege it could claim in a legal proceeding (s.45).

It is recommended that the section be amended to clarify that the Ombudsman has jurisdiction to investigate administrative actions of a legal adviser to the State except where the legal adviser is acting for the State in a legal proceeding.

### **2. Section 21 – Effect of restrictive provisions on complaints.**

This provision prohibits restrictions on persons, presumably prisoners in the main, making a complaint to us under the Act. However, once the complaint has been made, the section would not appear to prevent restrictions on –

- communications from us to the complainant, or

- communications from the complainant to us that don't actually constitute the making of a complaint (e.g. responding to inquiries from this Office or commenting on the outcome of our investigation.)

These types of communications need to be protected also.

**3. Section 23(1)(e) – refusal to investigate complaint on the basis of right of appeal, reference or review or other remedy.**

Section 23(1)(e)(i) gives the Ombudsman a discretion not to investigate or to discontinue an investigation if the complainant had a right of appeal, reference or review or another remedy “that is exhausted”. Confusion has occurred in the past as to whether “exhausted” means –

- the complainant has unsuccessfully utilised that right, or
- the right has not been utilised and has expired by effluxion of time.

The provision should be amended to allow the Ombudsman to exercise the discretion in both situations.

**4. Sections 28 and 29 – Requirements to give document or information and/ or to attend.**

We have received advice from Senior Counsel that, notwithstanding the Ombudsman's power of delegation in s.86 of the Ombudsman Act –

- If the ombudsman issues a notice to appear, the notice must require the person to appear before the Ombudsman, not some other officer, and
- If the Ombudsman delegates his/her power to issue the notice the notice must require the person to appear before the delegate.

This means that if the Ombudsman issued a notice to someone outside Brisbane to produce documents, the documents would have to be produced to the Ombudsman personally and not to the officers conducting the investigation. This is impracticable.

**5. Section 34 – Investigation at agency premises.**

S.34(1) allows us to enter and inspect a place and take extracts from or copy any documents located there, but it doesn't authorise us to actually remove documents or other material from the premises. It is not clear why this should be the case.

**6. Section 47 – protection of person helping ombudsman.**

S.47 makes it an offence for a person to cause or threaten to cause detriment to someone who actually gives us relevant information or a relevant document. However it doesn't apply, i.e. it isn't an offence, if a person causes or threatens detriment to someone –



- in the belief that that person may assist us or
- in the mistaken belief that the other person has assisted us.

**7. Section 49 – Investigations to which div 1 applies**

- (a) S.49(1) says that “This division applies to an investigation *other than an investigation started because of a Parliamentary reference*”, and goes on to indicate the types of administrative error the Ombudsman considers in deciding to report on an investigation.

However the Act does not indicate what the Ombudsman needs to consider in relation to an investigation started because of a Parliamentary reference. This appears to be oversight and should be corrected.

**8. Section 50 –Report and recommendation.**

Where the Ombudsman sends a report about a local council to the CEO of the council, the CEO is required by s.50(4) to provide a copy to each councillor. However, there is no requirement for the mayor to table the report at a council meeting to ensure it is debated. It is recommended that the section be amended to require this to happen.

## Attachment G

Level 25, 288 Edward Street, Brisbane QLD 4000  
GPO Box 3314 Brisbane QLD 4001



4 April 2006

Mr Henry Robert Smerdon  
Strategic and Financial Consulting Services

Dear Mr Smerdon

I refer to your letter dated 15 March 2006 enclosing the proposed report on the strategic review of the Office of the Queensland Ombudsman.

I have now considered the proposed report and attach my comments in accordance with s.85 of the *Ombudsman Act 2001*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Bevan', is positioned above the printed name.

David Bevan  
Queensland Ombudsman

Enc

## **Comments by the Queensland Ombudsman under s.85 of the *Ombudsman Act 2001* to the proposed report on the strategic review of the Ombudsman's Office**

Mr Henry Robert Smerdon has been appointed by the Governor in Council to conduct a strategic review of the Ombudsman's Office under s.83 of the *Ombudsman Act 2001* (the Act).

Section 85(1) of the Act requires a reviewer to give the Ombudsman a copy of the proposed report on the review. Section 85(2) of the Act authorises the Ombudsman to give the reviewer written comments on anything in the proposed report within 21 days of receiving it.

This is my response to the reviewer's proposed report on the review.

At the outset, I wish to acknowledge that the reviewer has engaged in extensive consultation and discussion in the course of the review. He has met with me on several occasions to discuss numerous issues and has held focus groups for staff. That is not to say I am in total agreement with every comment or recommendation made in the report. It would be extremely surprising if I were. However, I am satisfied that I have had the opportunity to express my views on all issues dealt with, and recommendations made, in the report.

I am pleased to note the reviewer's comments that the Office has "come a long way" since the last strategic review of the Office in 2000 and that "staff should be commended on the progress that has been made". It is also gratifying that the reviewer reports that:

*In discussion with agencies, the role of the Ombudsman is generally well understood and accepted and indeed appreciated.*

I acknowledge that, like any organisation, especially one that handles a high volume of complaints, there are areas where the Office can improve its performance. A periodic, independent review is one way of identifying improvement strategies. This report will help the Office refine its processes and refocus the way it approaches its role.

Some of the recommendations have resource implications for the Office's investigations program; for example:

- The recommendation that sufficient resources be available at all times in the Assessment and Resolution Team to enable it to deal with all complaints as they are received, particularly those received by telephone;
- The recommendation that the Team follow up with agencies, complaints it has declined to investigate because the complainant has not tried to resolve the complaint with the relevant agency;
- Recommendations for improving the timeliness of both complaints investigations and own motion investigations; and

- The recommendation that own motion investigations be completed within tighter timelines.

I also note the suggestion to increase the number of “own motion” investigations using existing resources.

Therefore, 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.

One of the Office’s biggest challenges since the last review has been to identify resources to re-allocate to 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 function.*

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.

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 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.

Another suggestion (rather than a formal recommendation) of the reviewer that warrants some comment is that the Office should more actively manage the level of complaints it deals with. He bases this suggestion on his observation that other Ombudsmen are more frequently using their discretion to not investigate “claims that while perhaps important to the individual, are not considered of sufficient merit to apply scarce resources to investigate it”. Therefore, he suggests: “It is probably timely for the Ombudsman to assess whether he needs to make greater use of these powers in the future.”

The Office already extensively applies the Ombudsman’s discretion not to investigate complaints. For example, in 2004-2005, the main grounds on which we declined to investigate complaints (that were within our jurisdiction) were:

- The complainant had not tried to resolve the complaint with the agency concerned (2595 complaints);
- The complainant was awaiting the outcome of a decision yet to be made by the agency concerned (643 complaints);
- The complainant had a right of appeal or review that had not been exhausted (329 complaints);
- The complainant needed to put the complaint in writing (455 complaints);
- Investigation was considered to be unnecessary or unjustifiable (400 complaints).

In the same financial year, we investigated 1389 complaints.

Although the Office can further raise the threshold for complaints it accepts for investigation, it needs to be understood that this is likely to result in criticism from disgruntled complainants. However, in the absence of additional resources for the investigations' function, I see no other alternative, particularly if the Office implements the reviewer's recommendations to conduct more own motion investigations and to conduct administrative audits of agencies' complaint management systems.

This financial year marks the end of the Office's current four year planning cycle and the Office is about to commence its strategic planning for the next four years. Therefore, the reviewer's report will provide a timely resource to assist the Office to chart its future course.

I am confident that implementation of the report's recommendations will enhance the Office's position in the Queensland public sector's accountability framework and assist the Office to more effectively achieve its dual objectives of providing people with a timely, independent and just service for investigating the administrative actions of agencies and improving the quality of decision-making and administrative practice in agencies.



David Bevan  
Queensland Ombudsman  
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